SERVICE ANIMALS: THE ADA VS. THE FAIR HOUSING ACT

By Jo Becker, Education/Outreach Specialist, Fair Housing Council of Oregon

I know this article is needed because we get these questions frequently:

- "The Americans with Disability Act (ADA) says that service animals have to be trained or certified…"
- The ADA was recently changed, how does that affect the need to accommodate disability-related animals in housing?"
- "The ADA now only allows for the use of service dogs and, sometimes, miniature horses. Does that mean I can serve an eviction notice to those I've accommodated in the past with companion kitties?"

And so it goes.

Folks, there's a fundamental point that many are missing. The ADA is not the Fair Housing Act (FHA). The ADA has nothing to do with the FHA. Changes to the ADA have no effect on the FHA. In fact, to a great extent, the ADA has little to do with housing at all. Unfortunately, the ADA has been in the news a good deal and articles about it rarely delve into the fact that disability-related animals in housing is a different critter all together.

The ADA addresses public accommodations in businesses, restaurants, and the like. The only place it touches the housing industry is where is speaks to 1) the accessibility needs of model homes and sales / rental offices and 2) the accessibility requirements of any publicly available places within a housing complex (for example, a community center available for anyone to rent for private functions).

The FHA, on the other hand, deals with housing. The portion of this federal law that addresses disability as a protected class includes provisions for reasonable accommodations and modifications. The request for a disability-related animal despite a no-pets (or other pet-restricted) policy is, in fact, one of the more common reasonable accommodation requests we see. And it's not surprising given that the range of services such animals can provide and knowing that an even broader array of medical conditions that can benefit from such treatment is staggering.

In housing, under the FHA, it doesn't matter what you call them (service animals, companion animals, therapy animals, working animals, etc.); if the animal exists to serve the individual's disability it is not legally a pet and may not be treated as such. That means no pet fees, pet deposits, or pet rent. You may not restrict such animals by breed or species in housing. You may not request or require proof of training or certification for such animals in housing. You may have assistance animal rules as long as they're no restrictive any pet rules you may have. Now, as with any other accommodation / modification request, the disability-animal request must, too, be "reasonable[1]" and the resident *is* responsible for their animal. That means that you would be within your rights to respond to the service bird that shrieks at two in the morning, the companion cat that attacks other residents, or the seeing-eye-dog that soils the carpet.

For a wealth of information on disability as a protected class visit http://www.FHCO.org/disability.htm. For service animal-specific information look to

1 To determine what is reasonable in each unique situation, visit www.FHCO.org/disability.htm to study the reasons for denying a request.

http://www.FHCO.org/serviceanimals.htm which includes a memo from HUD on the new ADA regulations and what that means for service animals in housing under the FHA and Section 504 of the Rehabilitation Act.

You can download and pass on our Reasonable Accommodation / Modification Guide for Perplexed Medical or Therapeutic Professionals at www.FHCO.org/pdfs/RAguide.pdf. And, check out several related sample documents at http://www.FHCO.org/forms.htm.

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