

CHAPTER VIII

Service Dogs and Emotional Support Animals

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BAR ASSOCIATION
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Service Animals and Emotional Support Animals: Lingo and the Law

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What you need to know about the ADA

- ▶ The **Americans with Disability Act (ADA)** is a federal law that requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make "reasonable modifications" in their policies, practices, or procedures when necessary to accommodate people with disabilities.
- ▶ Title II covers state and local governments
- ▶ Title III covers public accommodations and commercial facilities (businesses, etc)
- ▶ Allowing the use of service animals is an accommodation that falls within this requirement!!!

First, the lingo....

Service Animals/Dogs

1. Defined and protected by ADA AND other federal laws.
2. Are specially trained to perform tasks or work
3. Are **NOT PETS**-

Emotional Support Animals (ESA)

1. Sometimes referred to as **Therapy Dog** or **Therapy Animal** or **companion animal** or **support animal**
2. Provide a "benefit" to a person with a verified disability (comfort, emotional support or companionship)
3. No special training required
4. Not protected by the ADA but protected under other statutes (more later.....)

Are **NOT PETS**

Pets

1. Are neither Service Animals nor ESAs
2. Are generally not allowed in places of public accommodation (except Petsmart®, the park, the vet's office)

What is a Service Animal?



- ▶ Definition provided by the Americans with Disabilities Act (ADA):

- ▶ "A service animal is defined as a **dog** that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability."
- ▶ In 2011, regulations were added to include **miniature horses** as service animals.



Service Animals and Their Jobs

- ▶ They are **TRAINED** to perform tasks or work for the disabled person:
- ▶ Common Examples of work/tasks:
 - ▶ **GUIDING**- a blind/visually impaired person in daily movement, or guiding a person to a safe place in the case of a panic attack,
 - ▶ **ALERTING** a person who has seizures or panic attacks that an event is imminent or protecting that person during the event or waking a person who is self harming during sleep.
 - ▶ **GROUNDING**: providing a point of reference for someone who may become disoriented or suffer distress.
 - ▶ **PROTECTION** – can help balance or serve as a counterweight or remove from harmful situations
 - ▶ **RETRIEVING**: documents for identification, household items such as telephones
 - ▶ **REMINING** a person to take medication or to perform ADLs,
 - ▶ **Note**: It is common for service animals to be trained to do more than one task.

RIGHTS: Where are Service Animals allowed in public?

Generally, anywhere in public a disabled person needs to go!
(EQUAL ACCESS)

Examples: Restaurants, hospitals, stores, public transportation, doctor's offices, banks, government offices (ex. DMV), schools

NOTE: Allergies, fear of dogs is not a legal basis to deny access

REQUIREMENTS FOR SERVICE ANIMALS IN PUBLIC SETTINGS

- ▶ Must be on a LEASH, TETHER or HARNESS at all times in public unless in very specific, required cases the handler can control the animal with signals or voice.
- ▶ Must be calm and trained for public situations. (no barking, lunging, growling, attempts to bite or any other disruptive behavior)
- ▶ Must be CLEAN and in GOOD HEALTH
- ▶ Must be housebroken
- ▶ The handler must maintain control at all times.


WHAT IS NOT REQUIRED???

Vests, Tags,
Registration and
Certificates

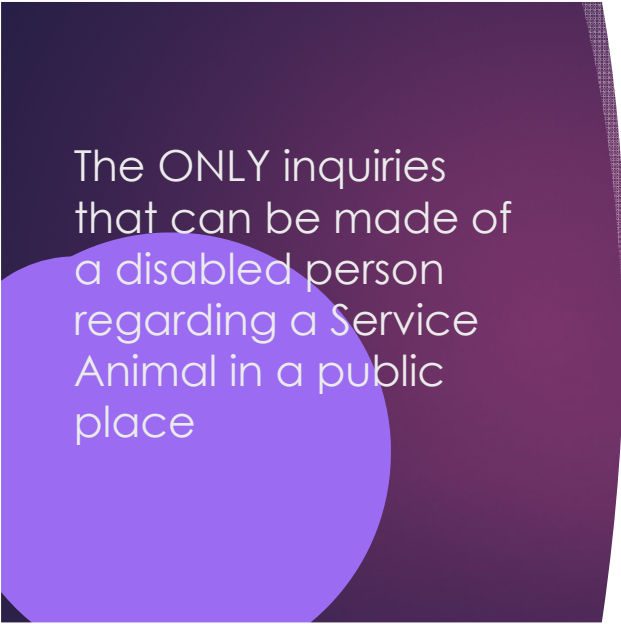
NONE OF THESE ARE
REQUIRED FOR A
SERVICE ANIMAL
ASSISTING A
DISABLED PERSON IN
PUBLIC.




ALSO NOT
REQUIRED.....



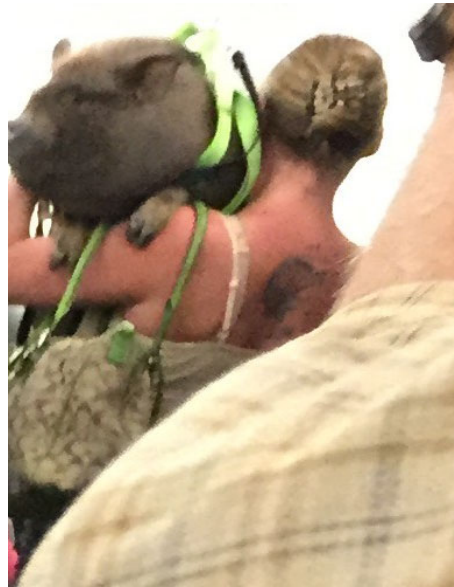
A DISABLED PERSON
IS NOT OBLIGATED
TO DISCLOSE THE
NATURE AND EXTENT
OF THEIR DISABILITY
JUST BECAUSE THEY
BRING A SERVICE
ANIMAL INTO AN
ESTABLISHMENT.



The ONLY inquiries
that can be made of
a disabled person
regarding a Service
Animal in a public
place

- 
1. IS THE ANIMAL
REQUIRED BECAUSE
OF A DISABILITY?
 2. WHAT WORK OR
TASK HAS THE
ANIMAL BEEN
TRAINED TO
PERFORM?

Emotional Support Animals (ESAs)



Emotional Support Animal (ESA)

DEFINITION:

Animals who may not be specifically trained to perform a job or task but provide a "benefit" to a person with a verified disability (comfort, emotional support or companionship). Usually, the benefit is amelioration of some symptom of a mental health or psychiatric issue.

Not limited to dogs or miniature horses like the ADA definition so could include other species of animals to include cats.

****Sometimes referred to as companion animals or comfort animals or therapy dogs/animals.**

****ARE NOT PETS**

NOT COVERED BY THE ADA, but ESAs are covered by other federal laws.

ESAs in PUBLIC PLACES

- ▶ Generally, ESAs are not granted the same public access rights as Service Animals since they are not specifically trained to work or perform a task.
- ▶ ESAs CAN be excluded from public places by law!!
 - ▶ Ex: Hotels/motels view them as PETS and can exclude from property or charge additional fees.
- ▶ Often confused with Service Animals when the animal is a dog wearing a vest or "official" looking gear.

REQUIREMENTS of ESAs

- ▶ To claim coverage under federal laws defining and protecting Emotional Support Animals in specific situations, a person will need the following:
 - 1) VERIFIABLE DISABILITY AND
 - 2) LEGITIMATE NEED for the animal

Usually, this is in the form of a letter from a medical professional with stated credentials.

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HOUSING

► FAIR HOUSING ACT (FHA)

- Federal Law that prohibits discrimination against people with physical or mental disabilities and requires landlords to provide reasonable accommodations to allow “assistance animals” to reside in the residence .
- “Assistance animals” are Service Animals OR ESAs under the FHA

What documentation is required when requesting a reasonable accommodation for a service animal or assistance animal?

If disability is KNOWN OR OBVIOUS, documentation may not be required.

HOWEVER, housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal." ([FHEO Notice: FHEO-2013-01](#) at page 3).

*Generally, a letter from a medical provider that explains how the reasonable accommodation helps or mitigates symptoms of the disability is sufficient.

HOUSING: Case by Case analysis

What does the housing provider need to consider in order to determine if the request for accommodation is reasonable? 2 questions:

- (1) Does the person seeking to use and live with the animal have a disability — i.e., a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

IF ANSWERS TO BOTH ARE **YES**, then landlord must accommodate.

HOUSING

When does a landlord NOT have to accommodate an assistance animal?

- 1) If the presence of the animal would impose an **undue** financial or administrative **burden**, or
- 2) would **fundamentally alter** the nature of the housing provider's services, **or**
- 3) the specific assistance animal in question poses a **direct threat** to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, **or**
- 4) the specific assistance animal in question would cause **substantial physical damage** to the property of others that cannot be reduced or eliminated by another reasonable accommodation.



HOUSING: Restrictions on Restrictions

IF ACCOMMODATION IS
REQUIRED, LANDLORD MAY NOT:

DEEM THE SERVICE OR ASSISTANCE
ANIMAL A "PET" AND DENY
ACCESS.

OR

CHARGE FEES IN ORDER TO ALLOW
THE ASSISTANCE ANIMAL TO RESIDE
WITH THE DISABLED PERSON

OR

OUT RIGHT RESTRICT A CERTAIN
BREED OF ASSISTANCE ANIMAL
BECAUSE PETS OF THAT BREED ARE
NOT ALLOWED. (EX PIT BULLS)

OR

REQUIRE CERTIFICATION OF
TRAINING



AIR TRAVEL

- ▶ **Air Carrier Access Act (ACAA)**- Prohibits discrimination against passengers with physical and/or mental disabilities and requires passenger airlines to provide reasonable accommodations to the disabled to include travel with service animals or emotional support animals.
- ▶ ACAA applies to all flights in the United States and flights to and from the US by foreign airlines.
- ▶ THE **ADA** DOES NOT REGULATE AIR TRAVEL but does regulate the airports, shuttles, and other public facilities/activities surrounding air travel.

AIR TRAVEL

- ▶ Under the **Air Carrier Access Act (ACAA)** a service animal is any animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support.
- ▶ ACAA applies to BOTH service animals AND emotional support animals (ESAs).

AIR TRAVEL:

SERVICE ANIMALS

- No documentation of need or training required (Airlines encourage paperwork to be completed but it is not REQUIRED)
- No advance notice required unless for specific types of lengthy flights
- Airlines determine whether an animal is a service animal by:
 - ▶ The credible verbal assurances of an individual with a disability using the animal; (the 2 ADA questions)
 - ▶ Looking for physical indicators such as the presence of a harness or tags; (**Not required but helpful**)
 - ▶ Observing the behavior of animal.

(see [transportation.gov](https://www.transportation.gov)- The US Department of Transportation)

AIR TRAVEL:

EMOTIONAL SUPPORT ANIMALS (ESA)

- **Documentation** (not older than 1 year) and **advance notice** of intent to travel is almost always required for a Emotional Support and Psychiatric Service Animals

► Documentation usually includes:

- a) a **Letter** provided by a mental health professional-with stated credentials,
- b) stating the passenger is under their care and suffers from an emotional or mental disability (as defined in the DSM) and,
- c) that the passenger requires an Emotional Support Animal or Psychiatric Service Animal as an accommodation in order to travel.

****Some airlines ALSO are now requiring:
vaccination records AND some
certification of training AND **passenger liability form**

AIR TRAVEL: Access Rights

- A)** You cannot be charged additional fees for requesting Service Animal or ESA accommodation.
- B)** The airline cannot refuse to allow you to travel with your Service Animal or ESA just because it makes other passengers or crew uncomfortable. (Note some types of animals are prohibited as ESAs)
- C)** If there is a dispute regarding your service animal or ESA, airlines must provide a CRO (Complaints Resolution Official= disability accommodations expert) to assist with resolving the issue.

AIR TRAVEL

Requirements are becoming more stringent and specific due to dramatic increase of passengers traveling with ESAs of varying species.

****Must check with each individual carrier before traveling to determine restrictions and always have appropriate paperwork.**

Ex: Delta has banned pit bull type dogs as service animals or ESAs on their flights.

Ex: Southwest now only recognizes dogs and cats as ESAs.

Ex: Most airlines now only allow one (1) ESA or service animal per person.

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