

# ASSISTANCE ANIMALS

# FAIR HOUSING ACT

It is unlawful:

- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
  - (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.

42 U.S.C.S. Section 3604(f)(1)

# PROHIBITED DISCRIMINATION

## Definition of Discrimination includes:

- a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

42 U.S.C.S. Section 3604(f)(3)(B)

# DEFINITION OF DISABLED

- The Fair Housing Act defines a person with a disability to include:
  - 1) Individuals with a physical or mental impairment that substantially limits one or more major life activities;
  - 2) Individuals who are regarded as having such an impairment; and
  - 3) Individuals with a record of such impairment

# WHAT IS A REASONABLE ACCOMMODATION?

- A change in rules, policies, practices or services that are necessary for a person with a disability to use and enjoy a dwelling.
  - An example of a reasonable accommodation includes allowing a disabled person to live with their assistance animal.
- Determined on a case-by-case basis.

**ASSISTANCE ANIMALS ARE NOT PETS.**

# WHAT IS A ASSISTANCE ANIMAL?

- Works, provides assistance, or performs tasks for the benefit of a disabled person or provides emotional support that alleviates one or more identified symptoms of a person's disability.
- Assist disabled individuals in some identifiable way that makes it possible for them to make more effective use of their housing.
  - Do not have to be certified, individually trained or require a special license.
  - Includes dogs, but may also include other animals such as cats, birds, or other domesticated animals.
  - May be any breed, size or weight.
  - Not required to wear special collars or harnesses.

## WHEN DO THE FHA'S REASONABLE ACCOMMODATIONS REQUIREMENTS NOT APPLY?

- Reasonable Accommodation requirements do not apply in limited cases
  - Owner-occupied buildings with 4 or less units.
  - Single family housing when individual owner: 1) does not own more than three single family homes at any one time; 2) does not use a real estate agent and does not employ any discriminatory advertising; 3) has not engaged in a similar sale of a home within 24-month period and 4)not is not in the business of selling or renting dwellings.
  - Hotels and Motels are not considered dwellings under the FHA.
  - Private Clubs.



# REASONABLE ACCOMMODATION REQUEST

- A request may be made orally or in writing.
- Once request received, housing provider should ask:
  - 1) Does the person seeking to use and live with the assistance animal have a disability?
    - Does the person have a physical or mental impairment substantially limiting one or more major life functions.
  - 2) Does the person making the request have a disability-related need for an assistance animal?
    - Does the animal work, perform tasks, etc. for the benefit of the disabled individual?

# WHAT CAN HOUSING PROVIDERS ASK FOR?

- Housing provider MAY NOT ask for documentation if disability or disability-related need for an assistance animal is readily apparent or already known to the housing provider.
- Housing provider MAY ask for reliable documentation if disability or disability-related need for an assistance animal is not readily apparent or already known to the housing provider.
- Housing provider MAY not ask for access to medical records or medical providers or to provide detailed or extensive information or documentation regarding the individuals disability.
- Interactive process - a housing provider can not deny a request because they are uncertain whether a person has a disability or disability-related need for an assistance animal.

# ARE THERE ANY EXCEPTIONS?

- Housing provider not required to make reasonable accommodations if:
  - Imposes an undue financial burden and administrative burden.
  - Would fundamentally alter the nature of the housing provider's services.
  - SPECIFIC assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by reasonable accommodation.
  - SPECIFIC assistance animal in question poses a direct threat to the health and safety of others that can not be reduced or eliminated by reasonable accommodation.

## WHAT CAN A HOUSING PROVIDER REQUIRE?

- Disabled person properly manage assistance animal.
- Hold disabled person liable for damages caused to the premises by the assistance animal.

## WHAT HOUSING PROVIDER CAN NOT DO:

- Unreasonably delay, condition or deny request.
- Can not require an emotional support animal have any specific training.
- Apply a blanket weight or breed restriction.
- Require pet insurance.
- Charge a pet deposit.

# INSURANCE ISSUES:

- Landlord still subject to the law.
- HUD memo June 12, 2006

# WARREN V. DELVISTA TOWERS CONDOMINIUM

- Resident sued condominium association when refused to modify the “no pet” policy to allow resident to live with his emotional assistance animal.
- Court held:
  - Change to “no pet” policy was a reasonable accommodation.
  - Fair Housing Act preempted local ordinance banning a particular dog breed.

# AMERICANS WITH DISABILITIES ACT

- Housing providers may have separate obligations under the ADA.
- ADA defines “Service Animal” narrowly.
  - As of March 2011 only dogs are recognized as service animals under Titles II and III of the Americans with Disabilities Act.
  - Specify that emotional support animals do not qualify as service animals under the ADA.



# AMERICANS WITH DISABILITIES ACT (cont.)

- Applies to state and local governments and places of public accommodations.
  - Examples include leasing offices, association offices, hotels, etc.
- May not ask about the nature or extent of a person's disability.
- May ask:
  - Is this a service animal that is required because of a disability?
  - What work or tasks has the animal been trained to perform?

# AMERICANS WITH DISABILITIES ACT (cont.)

- May not require documentation, such as proof of a service animal's training.
- May not make inquiry when readily apparent that the animal is trained to do work/perform tasks for disabled individual.
- May deny access if animal out of control, poses threat to safety or property.
  - Must be an individualized assessment.
- Certain entities subject to both FHA and ADA:
  - Must meet reasonable accommodation standards of both.
  - Apply ADA first.

# QUESTIONS