

## Assistance Animals in Real Estate

### Assistance Animals are not Pets

#### Objective:

Civil Rights laws cover disability, which includes the use of assistance animals. This course intends to review the legal requirements when it comes to the need for accommodation for assistance animals, address the various situations a real estate licensee may encounter and create a process to systematically review requests for accommodation.

#### 1. What is an assistance animal?

##### a. Definitions:

##### i. ADA definition of disability:

(a) a physical or mental impairment which substantially limits one or more major life activities of a person (visible or not); (b) a record of having such impairment; or (c) being regarded as having such impairment

##### ii. Assistance animal is the general term for any animal needed for assistance with any disability. There are 2 groups of assistance animals:

##### 1. Service animals

- Specifically trained for a particular task to assist the person with a disability
- Considered working animals, not pets
- Primarily dogs
- Examples: guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack

##### 2. Support animals

- Provides general support and/ or assistance to a person with a disability
- Includes emotional support animals (ESA), also referred to as comfort or companion animals
- Animal commonly kept in a household, no specific training required

##### iii. An assistance animal is not a pet

##### iv. Application forms / questionnaires can ask about pets, but not assistance animals/disability

##### b. Acceptable documentation for an assistance animal (only when it is not a service animal) –

- i. “Certificate” discussion: no official certification for any category of animals, nor official registry (MA town/city animal registration requirement is not an official registry for assistance animals)
- ii. Letter of support from a medical provider – Review HUD Guidance (Jan 2020 letter to discuss the detail of the content of an acceptable letter)

2. Key Regulations applying to assistance animals under the disability protected class(focusing on the real estate business)
  - a. American with Disability Act - primarily Title III – public accommodations and commercial facilities, as well as transportation- Title II applies to local and state government, Title I applies to employment
    - i. Anyone with a disability has access to public spaces and services
    - ii. The ADA only applies to service animals
      1. dogs individually trained
      2. limited provisions for a miniature horse (but not in residential real estate)
      3. Comfort or emotional support animals specifically excluded
    - iii. General requirements:
      1. Service animal has to be allowed to accompany the individual (including when health code may prohibit animals on the premise)
      2. Always under the control of the handler (cannot pose a threat to health or safety)
      3. Only 2 questions are permitted to assess if the animal is a service animal (and only if not obvious!)
        - Is the dog a service animal required because of a disability
        - What work or task has the dog been trained to provide/perform?
      4. Cannot isolate individual from other people, treat differently, charge different fees
    - iv. Limitations for service animals
      1. Housebroken
      2. In public places, do not have to be allowed to sit on furniture meant for patrons, eat from plates provided by restaurant, ride in shopping carts
  - b. Air Carrier Access Act – defines airlines right to limit cabin animals
    - i. Service animals are defined as dogs performing a task for a person with a disability
    - ii. Includes psychiatric service dogs
    - iii. Support animals are not covered anymore
    - iv. Airlines can require DOT created service animal form to be submitted before boarding
  - c. Federal Fair Housing Laws –
    - i. Obligation of reasonable accommodation through an interactive process
    - ii. Includes all categories of assistance animals
    - iii. Applies to any entity involved in the provision of housing
      1. Property owners/ housing managers
      2. Condominium associations – HOA pet restrictions do not apply to assistance animals
      3. Real estate professionals
      4. State and local government (zoning and land-use rules)
    - iv. Request has to be made by the person or on behalf of a person with a disability
  - d. MA Civil Rights Laws (MGL 151B) and MA Service Animal Law (MGL 98A)
    - i. Same obligation of reasonable accommodation through an interactive process
    - ii. Covers residential (Section 4, 6. &7.) and commercial (Section 4, 8.) real estate, including short term rentals

- iii. MA service animals definition limited to dogs assisting individuals with sensory and/or physical disabilities
  - iv. Dogs in training are also covered when it comes to ADA accommodations (public places, state and government programs)
- 3. Defining “Reasonable accommodation through an interactive process”
  - a. What does reasonable accommodation mean?
    - i. Accommodation to services, such as living in a “no pet policy” unit
    - ii. Rules review (example: no pet rule, cannot charge a pet deposit, or any fee or rent for an assistance animal)
  - b. Define the concept of “interactive process”
  - c. When would it be not reasonable?
 

Any assessment of not reasonable has to be made on a case by case basis, after having explored potential alternatives

    - i. Undue financial burden
    - ii. Alter the essential nature of the housing provider’s operation
    - iii. The animal poses a threat to the health and safety of others, which cannot be eliminated
- 4. Addressing a request for accommodation – Note that the request for accommodation needs to be made by the person or on behalf of the person with a disability
  - a. What are the circumstances – housing, public space, employment?
  - b. Is the animal a service animal?
    - i. If the dog is visibly assisting a person with a disability? No questions, accommodation required
    - ii. It is a dog, but not clearly assisting the person with a disability, then 2 questions are permitted:
      - 1. Is the dog required for a disability (cannot ask for documentation of the disability or what type of disability)
      - 2. What task has the dog been trained for?
      - 3. Note that in this case, no supporting documentation for the service animal can be required
  - c. Is the animal a support animal? (only applicable for housing situations)
    - i. Request supported by the requested documentation, reasonable accommodation required
    - ii. When request is not supported by the requested documentation, provide specific guidance as to the details of the documentation required.
  - d. Cannot use as a criteria, in an arbitrary fashion (interactive process):
    - i. Fear or allergies
    - ii. Cannot insure the property because of a specific breed (requirement to reach out to insurance carrier and get a waiver for the assistance animal if necessary)
  - e. When is it not reasonable anymore?
    - i. Animal is out of control/ disruptive
    - ii. Modification would create an undue financial or administrative burden

5. Best business practices
  - a. All areas of real estate are impacted by assistance animals
    - i. Working with residential landlords and tenants, sellers and buyers: equal service, equal access, reasonable accommodation
    - ii. Managing a real estate office (sales or property management): office/ services accessibility, employment questions, education of licensees regarding their obligations
  - b. Educate/ discuss with your clients when listing a property for rent/sale
    - i. Limitations/ obligations of a landlord
    - ii. Access to a property for sale by someone with an assistance animal, including Open House discussion
  - c. Review all your questionnaires –
    - i. it is illegal to inquire about any disability or use of an assistance animal on any questionnaire/application forms
    - ii. Difference between a lease application (no pets does not mean not assistance animal) and the actual lease agreement (which can list the acceptable assistance animal(s) )
  - d. Set a systematic process to address the request for accommodation – Example/ decision tree
  - e. Assist the client in defending their rights

Resources:

- FHEO Notice: FHEO-2020-01, Issued: January 28, 2020: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act
- Fair Housing Institute: various videos
- [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opportunity/assistance\\_animals](https://www.hud.gov/program_offices/fair_housing_equal_opportunity/assistance_animals)
- [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opportunity/reasonable\\_accommodations\\_and\\_modifications#information-about-assistance-animals](https://www.hud.gov/program_offices/fair_housing_equal_opportunity/reasonable_accommodations_and_modifications#information-about-assistance-animals)
- <https://www.mass.gov/info-details/assistance-animals-in-housing>
- <https://www.mass.gov/info-details/disability-rights-for-users-of-assistance-animals>
- <https://www.ada.gov/topics/service-animals/>
- <https://www.ada.gov/resources/service-animals-2010-requirements/>

Other existing courses:

- RE19RC20: Fair Housing
- RE111RC20: Protecting the Protected Classes
- RE21RC01: ADA