DISABILITY LAWS AND ANIMALS
“WILL MY COMPLEX BECOME A PETTING ZOO?”

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Learning Outcomes

• Develop a basic understanding of the laws pertaining to disability and housing in the postsecondary setting.

• Understand the role of animals in the therapeutic process.

• Understand the distinctions between pets, assistance animals, and service animals.

• Understand a best-practice model of addressing these requests.

• Disclaimer: the following is not intended as legal advice.
Some Legal Background

- BYU must comply with laws pertaining to disability discrimination because we receive federal funds

- 2 main laws
  - Rehabilitation Act of 1973
  - Americans with Disabilities Act (ADA)

- Another law that comes into play with housing is the Fair Housing Act (FHA)
  - FHA states that tenants with disabilities are entitled to ‘equal enjoyment’ of the property when compared to non-disabled tenants. FHA would cover most landlords.

  - Some exceptions:
    - rooms/units in a building with maximum of four units where the owner lives in one of the units
    - Single family homes, as longs as home is rented by owner and owner does not own more than three such homes at a time
FHA

• The FHA added disability protection in 1988, initially intended to make sure that individuals with disabilities could access various physical areas of the rental space.

• It has been used recently as a legal basis for arguments on behalf of emotional support animals.

• HUD is the enforcement agency for the FHA.

• A key to understanding how to handle animal requests is to know which of these three laws apply to your complex (it could be all of them).
Rehab Act, ADA, and the FHA

- Rehabilitation Act (Section 504) would apply to housing providers that receive federal assistance from the US Department of Housing and Urban Development (HUD).

- ADA (Title II): applies to public entities that provide housing

- ADA (Title III): applies to housing at places of public education, assisted living facilities, other privately owned entities opened to the public.

- FHA covers virtually all types of housing
Animal Definitions

• **Pet.** this is an animal kept for ordinary use and companionship

• **Service Animal (ADA Definition).** an animal individually-trained that works or performs tasks for an individual with a disability. These must be dogs, or in rare circumstances, a miniature horse. (But almost always dogs).
  - Guiding blind individuals
  - Alerting deaf individuals to sounds

• **Assistance Animal (FHA and 504).** animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more symptoms of a person’s disability.
  - does not need to be individually trained
  - most common type is dogs, but other animals can be assistance animals
  - these animals have rights of access to all areas where persons are normally allowed to go
  - breed, size, and weight restrictions may not be applied to an assistance animal

• **Emotional Support Animal.** this is an animal that plays an integral part in a person’s treatment progress. They are not trained and do not perform specific tasks.
  - studies have shown the therapeutic benefits of this intervention – lower blood pressure, lower cortisol levels – benefits from touching/viewing animals
In Utah, service animals in training have the same rights of access as do trained service animals. The trainer rarely has a disability.

Does the service animal have to be “certified” by a training organization?
Answer: No.

Can the individual using the dog be the one who trains it?
Answer: Yes.

Does the dog need to be on a leash?
Answer: Yes and No. Generally ‘yes’ unless the leash interferes with the dog’s service. It needs to be under control of the owner – could be done via voice commands.

Does the dog need to wear a vest or be ID’d as a service animal?
Answer: No.

Does the person using the service animal need to carry verification of the need for the animal?
Answer: No.

Can I get an increased security deposit for service or assistance animals to offset any damage they cause?
Answer: No – but you can charge for actual damage
Service Animal (ADA covered entities)

- Generally, when service animals are encountered where pets are not allowed, only two questions are permitted:

1. Is the dog a service animal required because of a disability?

2. What work or task has the dog been trained to perform?

- In these situations you CANNOT ask anything else about person’s medical history, ask for a demonstration of the training, ask for documentation of a disability, etc.

- You CAN’T ask these questions if the disability is readily apparent

- Remember, emotional support animals do not count as service animals.
Assistance Animals (FHA and 504)

- If a prospective tenant presents with a request for an assistance animal:
  - You can ask for reliable documentation of the disability and their disability-related need for the animal if the disability is NOT READILY APPARENT or known.
  - So, you wouldn’t ask for such documentation from a blind individual with a guidance dog, but you probably would from someone requiring an emotional support animal.
  - You also can’t make burdensome or needlessly intensive inquiries.
So….?

- How do you analyze all this?

- First, determine what law(s) apply

- If that analysis is ‘cloudy’ or all three laws apply, HUD recommends:
  - Apply the ADA service animal test first
  - If the animal does not meet the ADA service animal test (or your complex is not bound by the ADA), then can ask for reasonable documentation supporting the request.
To: Landlord

I am the physician, psychiatrist, psychologist (etc.) for NAME. (S)he has a disability that causes certain functional limitations. These limitations include [list functional limitations here].

I have recommended an assistance/emotional support animal to help with these issues. I believe the animal will enhance NAME’s ability to live in the community and use and enjoy his/her dwelling.

I am familiar with the literature on the benefit of assistance/emotional support animals for people with disabilities. Should you have any additional questions…