

Service Animals and Dangerous Dogs

The ADA and fair housing laws require reasonable accommodations for disabled persons using service animals. The issues most often faced by community managers are how to determine whether the accommodation is necessary, if the animal is a service animal, and how to justify the presence of the animal to other residents.

First, the term “companion dog” should be avoided, and the term “service animal” emphasized. Without more, companionship is not enough to justify the rule exception (companionship is involved in the ownership of all pets). A service animal is defined by the ADA and by Florida law, section 413.081(5). The ADA definition has been relied upon by courts addressing handicap discrimination under federal fair housing law. Florida law also addresses guide dogs and makes interference with or injury to guide dogs or service animals a criminal offense. §§413.08 - 413.081 (attached).

The burden is on the person requesting the presence of a service animal to justify the need for the animal. If a person is obviously handicapped or disabled, and requests a reasonable accommodation of a “service animal” that appears appropriate, no further inquiry may be made and the animal should be allowed. If the handicap or disability is not obvious, the no pet policy may be stated. It is then up to the person to request an accommodation. Management may seek additional information in order to answer the following questions before making a decision to allow a service animal:

- 1) Is the person a qualified individual with a physical or mental impairment that substantially limits one or more major life activities?
- 2) Does the animal qualify as a service animal, that is performs some “work” or function that ameliorates the effects of the disability?
- 2) Is the animal necessary to provide an equal opportunity for the person to live in the house and/or use the community facilities?

A reasonable amount of time must be provided for the person to obtain any requested documentation.

The presence of a service animal may be explained to inquiring residents by stating the animal is a service animal (allowed by both state and federal law), not a pet. Community employees should never discuss the animal owner’s disability or any related medical (physical or mental) information with others.

Management may require that the animal not create a nuisance, the owner maintain good sanitary conditions and the owner be financially responsible for any actual damage caused by the service animal. An additional pet fee may not be

charged, however, as it would be evidence of discrimination because the disabled person was treated differently than other residents.

The specific animal may be challenged if the animal poses a risk to the safety of others--a direct threat. This cannot be based on generalities, i.e., breed, but there must be some evidence of the threat.

Closely related is the growing concern over dangerous pets, usually dogs. Florida has a dangerous dog law, Chapter 767, Florida Statutes (attached). Management can work with local animal control to have a dog so designated under the proper circumstances.

Some insurance companies are now requiring communities to have rules that limit pets by size, weight, and/or breed before providing related liability coverage.¹ This requirement can justify any necessary rule changes. Each case must be evaluated on the facts if a request for a service animal conflicts with insurance restrictions. Involving the insurance agent or carrier's risk management staff before making a decision may be useful.

¹A list of "bad breeds" blacklisted by various insurance companies can be found at www.akc.org. Select "life with dogs" and then click on "home insurance".