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Service Animal and Emotional Support Animal Guide for Associations

While much has been written on Service Animals and Emotional Support Animals, our office routinely answers questions from associations seeking to enforce pet restrictions against owners and tenants requesting exceptions to pet prohibitions. The following is a refresher on the Fair Housing Act (FHA) as it relates to pet restrictions in homeowner and condominium associations. Additionally, this article acts as a guide to assist associations when a request for a pet restriction exemption is made.

The FHA is a Federal law that prohibits discrimination based on disability, race, color, national origin, religion, sex, and familial status. This law covers housing accommodations, and therefore it applies to associations. The FHA defines a disability as a physical or mental impairment which significantly limits a person's major life activities. Both Service Animals and Emotional Support Animals are covered by the FHA.

A Service Animal is narrowly defined by the Americans with Disabilities Act as a dog that is individually trained to do work or perform tasks for a person with a disability. Emotional Support Animals and Assistance Animals perform work, provide assistance, or perform tasks for the benefit of the person with a disability, or offer therapeutic benefits that alleviate symptoms of a disability. While a Service Animal requires specialized training, an Emotional Support Animal requires no training, which is why animals are so often claimed under "emotional support."

Service Animals and Emotional Support Animals are not considered pets under the FHA. This is why an association's pet restriction will not apply. An exception to a pet restriction for a Service or Emotional Support animal must be made regardless of an association's rules on breed, weight, or type of animal.

Regardless of whether an animal is claimed as a Service Animal or Emotional Support Animal, there is **NO** Federally recognized certification evidencing an animal as a Service Animal or Emotional Support Animal. Such certifications may be purchased online and have zero legal significance. An online certification alone will do nothing to qualify an animal as a Service Animal

or Emotional Support Animal. Such a certificate may also be a red flag suggesting the animal is not legitimate.

When faced with an owner or tenant's request for a Service Animal or Emotional Support Animal, associations are limited in the questions and documentation they may request. The U.S. Department of Housing and Urban Development (HUD) provided instruction on how to respond to such requests. **After receiving a pet restriction exemption request, an association must consider, 1)** whether the person seeking the pet restriction exemption has a disability, defined as a physical or mental impairment that substantially limits one or more major life activities, and **2)** whether the person making the request has a disability-related need for the animal. In other words, HUD recommends associations consider if the animal will work, provide assistance, perform tasks, or provide emotional support that alleviates one or more symptoms of the individual's disability.

If the answer to either question is "no," the association may deny the request for Service Animal or Emotional Support Animal. If the answers to these considerations are "yes," the animal must be exempted from pet restrictions. If the individual's disability is not readily apparent or known, an association may ask the individual to provide "reliable" documentation of the disability and the individual's disability-related need for the assistance animal. Additionally, if the disability *is* readily apparent but the need for the animal is not, the association may request additional information as to what the animal will do to address the disability. Documentation is "reliable" if it comes from a physician, psychiatrist, social worker, or other mental health professional. In no circumstance may access to an individual's medical records be demanded.

There are exceptions to exceptions, and it may be possible to deny a Service Animal or Emotional Support Animal despite a disability. HUD states that a request may be denied if, 1) the specific assistance animal poses a direct threat to the health and safety of others that cannot be eliminated through reasonable accommodations, or 2) the animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated through reasonable means. Such a determination must rely on objective evidence rather than mere speculation.

These requests may not be unreasonably denied, or conditioned on a fee or deposit, even if others with pets are required to pay such fees. A request for a Service Animal or Emotional Support Animal must be analyzed on a case by case basis. The Tankel Law Group cautions our clients to never deny a request without consulting with our office or a member of the Florida Bar.



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