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# FROM PIGS TO POMERANIANS

SEAN F. DOYLE

An Analysis of Assistance Animals Under  
Federal Law





# ASSISTANCE ANIMALS





# ROADMAP



- 1) Discuss the two major federal laws dealing with assistance animals and explain the “ins” and “outs” of each of those laws, with a specific focus on multifamily properties.
- 2) To put this in context, we are going to drill down on the Fair Housing Amendments Act (FHAA) and walk through and explain the process behind reasonable accommodation requests for assistance animals; and
- 3) For practical application, we are going to briefly summarize the differences between the FHAA and the Americans with Disabilities Act (ADA) with regard to assistance animals.



## LAWS PERTAINING TO DISABILITY DISCRIMINATION

- 1) Americans With Disabilities Act (ADA): prohibits discrimination against individuals with disabilities in all areas of public life (including private places that are open to the general public, such as the leasing office at a multifamily property).
- 2) Fair Housing Act (FHA): protects the buyer or renter of a dwelling from seller or landlord discrimination, and as amended includes a requirement to make an accommodation to policies and procedures for individuals with disabilities.

# AMERICANS WITH DISABILITIES ACT



## Americans with Disabilities Act

### An Overview of the Americans with Disabilities Act

The Americans with Disabilities Act (ADA), enacted in 1990, is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The ADA is divided

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- Defines disability, establishes guidelines for the reasonable accommodation process, addresses medical examinations and inquiries, and defines "direct threat" when there is risk of substantial harm to the health or safety of the individual employee with a disability or others.

- Regulated and enforced by the U.S. Equal Employment Opportunity Commission. <http://www.eeoc.gov/laws/types/disability.cfm>

#### Title II - Public Services: State and Local Government

- Prohibits discrimination on the basis of disability by "public entities," which are programs, services and activities operated by state and local governments.
- Requires public entities (programs, services and activities operated by state and local governments) to be accessible to individuals with disabilities.
- Outlines requirements for self-evaluation and planning; making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination; identifying architectural barriers; and communicating effectively with people with hearing, vision and speech disabilities.
- Regulated and enforced by the U.S. Department of Justice. <http://www.ada.gov>

#### Title III - Public Accommodations and Services Operated by Private Entities

- Prohibits places of public accommodation from discriminating against individuals with disabilities. Public accommodations include privately-owned, leased or operated facilities like hotels, restaurants, retail merchants, doctors' offices, golf courses, private schools, sports stadiums, theaters, and so on.
- Sets the minimum standards for accessibility for alterations, new construction and barrier removal.

# AMERICANS WITH DISABILITIES ACT

**Requires places of public accommodation, including businesses and nonprofit service providers, to comply with basic nondiscrimination requirements.**

# AMERICANS WITH DISABILITIES ACT

## ADA Specific Requirements for Service Animals

- Privately owned businesses that serve the public must allow people with disabilities to bring their service animal onto the business premises.
- This includes areas of an apartment community that are open to the public, such as the leasing office.

# AMERICANS WITH DISABILITIES ACT



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# AMERICANS WITH DISABILITIES ACT

## ADA Legal Definition of Service Animal

- Narrow definition.
- Any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability.
  - ✓ Including a physical, sensory, psychiatric, intellectual or other mental disability.

# AMERICANS WITH DISABILITIES ACT

## What does that mean?

It means in order to qualify as a service animal under the ADA, the animal must be a:

1. Trained
2. Dog



# AMERICANS WITH DISABILITIES ACT

So what about an emotional support or therapy dog?

- **No!** The DOJ has made clear that the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of the ADA's definition of service animal.
  - ✓ Emotional support animals are expressly precluded from qualifying as service animals under the ADA.



# AMERICANS WITH DISABILITIES ACT



## HYPO #1:

- If your leasing office has a “no pets” policy and a prospect comes in with an apparent disability and an obvious service dog, do you have to let the service dog into the leasing office?

- ✓ **Yes! Under the ADA (since the leasing office is covered), you will likely need to let the service dog into the leasing office.**



# AMERICANS WITH DISABILITIES ACT

## HYPO #2:

- How about if somebody comes into the leasing office with a monkey in a purse and tells you it's a service animal. Do you have to let the monkey in?

✓ **NO! Only dogs!**



# AMERICANS WITH DISABILITIES ACT

## Permissible Questions:

- Let's say someone comes into the leasing office with a dog – what can you ask?
  - ✓ First ask yourself – is it obvious that this person has a disability, and that the dog is assisting the person with that disability?



# AMERICANS WITH DISABILITIES ACT

## Permissible Questions:

- Let's say the disability or the task the dog is performing is not apparent – what can you ask then?
  - ✓ Two questions:
    - 1) Is this a service animal that is required because of a disability?
    - 2) What work or tasks has the animal been trained to perform?
  - ✓ You cannot ask for proof of training and you cannot ask about the nature or extent of a person's disability.

# AMERICANS WITH DISABILITIES ACT

## Cannot Deny Access unless:

- 1) The animal is out of control and the person does not take effective action to control it;
- 2) The animal is not housebroken; or
- 3) The animal poses a direct threat to the health or safety of others.





# FAIR HOUSING ACT

Near And Dear To Our Heart





# FAIR HOUSING ACT

## Definition

The Fair Housing Act is a law enacted as part of civil rights legislation that prohibits discrimination of home sale, rentals and financing based on race, color, national origin, religion, sex, familial status or those with disabilities.



## FAIR HOUSING AMENDMENTS ACT OF 1988

- This amendment protects persons with disabilities.
- Under the Act, disability is defined as a physical or mental impairment that substantially limits one or more major life activities.
- Also includes individuals who are regarded as having such an impairment, or who have a record of such an impairment.



## FAIR HOUSING AMENDMENTS ACT OF 1988

- Under the Act, it is unlawful *not* to make a reasonable accommodation or modification where necessary to afford an individual the equal use and enjoyment of the property.



## FHAA: REASONABLE ACCOMMODATION

- A reasonable accommodation is a change in rules, policies, practices or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling, unit or common space.
- The landlord is responsible for any expense associated with providing a reasonable accommodation.



## FHAA: ASSISTANCE ANIMALS

- The most common accommodation request that I see is for an assistance animal.
  - An assistance animal is an 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 identifies symptoms or effects of a person's disability.
  - Under the FHAA, an assistance animal does not have to be individually trained or certified.



## FHAA: ASSISTANCE ANIMALS

- Once an assistance animal is approved, the landlord is not permitted to charge any associated pet fees or deposits.
- In addition, a landlord is not permitted to place weight or breed restrictions on an assistance animal.



## FHAA: WHAT CAN YOU REQUIRE FOR APPROVAL?

- The prospect or resident must have a disability within the meaning of the Fair Housing Act.
- There must be a disability-related need for the animal (a nexus between the disability and the animal).





## FHAA: WHAT QUESTIONS ARE PERMISSIBLE?

- Is the disability apparent or known?
- Is the disability-related need for the animal apparent or known?
- If both the disability and the disability-related need for the animal are apparent or known, you may not ask any further questions, and you may not require any additional verification or documentation.



## IF THE DISABILITY OR THE DISABILITY-RELATED NEED IS NOT APPARENT

- If the disability is not apparent or known, you may request that the resident or prospect submit reliable documentation of the disability and the disability-related need for the animal.
- If the disability is apparent but the need for the animal is not, you may request documentation of the disability-related need for the assistance animal.



## NON-APPARENT DISABILITY VERIFICATION: EMOTIONAL SUPPORT ANIMALS

For emotional support animals, you may request documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.



## WHEN CAN YOU DENY AN ACCOMMODATION REQUEST?

- Undue financial hardship on the property;
- Administrative burden on the property;
- The specific animal at issue would be a direct threat to the property, or would cause substantial physical damage to the property; or
- For non-apparent disabilities, insufficient verification.

# FHAA ACCOMMODATION REQUEST

## REQUEST FOR REASONABLE ACCOMMODATION

If you, a member that there is a need to use and enjoy

NAME OF RESIDENT  
SIGNATURE OF RESIDENT  
DATE: 10/1/17

The person who has the disability is:

Me  A

NAME OF PERSON  
TELEPHONE No.:  
ADDRESS: 284

I or the person associated or living with me who has a disability request the following:

I request ferret, Frankie, to reside with me in my apartment.

Reason for the Request:

Frankie helps me

SIGNATURE OF THE REQUESTER:

DATE: 10/1/17

FOR OWNER'S USE

DATE RECEIVED IN

OWNER'S STAFF ROOM

Please be aware that this statement or representation is made under penalty of perjury and is subject to the provisions of the Fair Housing Act, 42 U.S.C. §§ 12101 et seq.

NAME OF PERSON WITH DISABILITY: Sean Doyle  
TELEPHONE No.: 919.256.4295  
ADDRESS: 2840 Plaza Place, Suite 300, Raleigh, NC 27612

I or the person associated or living with me who has a disability request the following:

I request that you allow my emotional support ferret, Frankie, to reside with me in my apartment.

Reason for the Request:

Frankie is my emotional support animal and helps me with my anxiety.

SIGNATURE OF THE REQUESTER: 

DATE: 10/1/17

# FHAA ACCOMMODATION REQUEST

**REQUEST FOR REASONABLE ACCOMMODATION**

If you, a member of your household, or someone associated with you has a disability, and believes that there is a need for a reasonable accommodation that will provide you with an equal opportunity to use and enjoy your dwelling, please complete this form and return it to:

NAME OF RESIDENT OR APPLICANT (PRINT): Sean Doyle  
SIGNATURE OF RESIDENT OR APPLICANT: [Signature]  
DATE: 10/1/17

The person who has a disability requiring a reasonable accommodation is:

Me     A person associated or living with me.

NAME OF PERSON WITH DISABILITY: Sean Doyle  
TELEPHONE No.: 919.256.4295  
ADDRESS: 2840 Plaza Place, Suite 300, Raleigh, NC 27612

I or the person associated or living with me who has a disability request the following:  
I request that you allow my emotional support  
frankie to reside with me in my  
apartment.

Reason for the Request:  
Frankie is my emotional support animal and  
helps me with my anxiety.

SIGNATURE OF THE REQUESTER: [Signature]  
DATE: 10/1/17

**FOR OWNER'S USE ONLY**

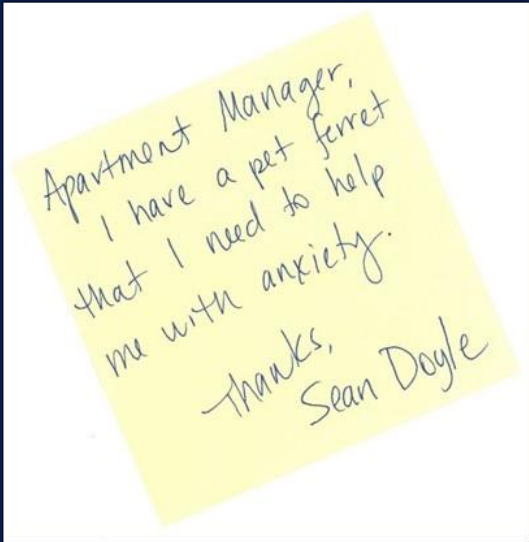
DATE RECEIVED IN OFFICE: \_\_\_\_\_  
OWNER'S STAFF RECEIVING REQUEST: \_\_\_\_\_

Please be aware that pursuant to 18 U.S.C. § 1001, it is unlawful to knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, including the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. Any person who violates the foregoing shall be subject to a fine and imprisonment of up to five years.

Now this is a standard form we have put together.

- Can you make the resident use this?
- ✓ **No!** You cannot make them use your standard form.

# FHAA ACCOMMODATION REQUEST



This is also an acceptable form of request.

# FHAA ACCOMMODATION REQUEST

- The next step is to ask for verification – either have a standard form completed or provide a letter from your doctor.

**REASONABLE ACCOMMODATION/MODIFICATION VERIFICATION FORM**

Owner permits reasonable modifications to the premises and provides reasonable accommodations to Applicants and Residents with disabilities who have a verifiable need for the requested modification or accommodation. A reasonable modification is an alteration to the interior of a dwelling, or common or public use areas, made necessary because of disability and the Resident's inability to fully enjoy the community. A reasonable accommodation is an exception made to the usual rules or policies made necessary because of a disability and the Resident's inability to use and enjoy an apartment or the community.

The Applicant or Resident has authorized you to provide the information requested on this form. Please answer the following questions:

NAME OF APPLICANT/RESIDENT (PRINT): \_\_\_\_\_

Request for Reasonable Accommodation/Modification:  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNATURE OF APPLICANT/RESIDENT: \_\_\_\_\_

This signature authorizes the verifier to provide answers to the questions below to the best of his/her knowledge.

1. Is this Applicant/Resident disabled?  Yes  No

The Fair Housing Act defines "disability" as a physical or mental impairment that substantially limits one or more major life activities. The Supreme Court has determined that to meet this definition a person must have an impairment that prevents or severely restricts the person from doing activities that are of central importance in most peoples' daily lives.

2. Please describe in what manner this disability restricts the Applicant/Resident in activities that are of central importance to his or her daily life:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. Does this Applicant/Resident need the accommodation/modification requested above to be able to live in this apartment community?  Yes  No

4. If yes, please describe how this accommodation/modification will enable the Applicant/Resident to use or enjoy this apartment community.  
 \_\_\_\_\_  
 \_\_\_\_\_

I hereby certify that to the best of my knowledge and under penalty of perjury the information herein is true and accurate.

NAME AND POSITION OF VERIFIER\* (PRINT): \_\_\_\_\_

SIGNATURE OF VERIFIER: \_\_\_\_\_

DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_

Please return completed verification form to:  
 (NAME OF APARTMENT COMMUNITY)  
 \_\_\_\_\_  
 \_\_\_\_\_

\* Verifier must be a physician, psychiatrist, social worker, or other mental health professional. April 25, 2013 Circular from HUD (FHEO Notice 2013-01)

Please be aware that pursuant to 18 U.S.C. § 1001, it is unlawful to knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, including the Fair Housing Act. 42 U.S.C. §§ 3601 et seq. and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. Any person who violates the foregoing shall be subject to a fine and imprisonment of up to five years.

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# FHAA ACCOMMODATION REQUEST

- The next step is to ask for verification – either have a standard form completed or provide a letter from your doctor.

This signature authorizes the verifier to provide answers to the questions below to the best of his/her knowledge:

1. Is this Applicant/Resident disabled?  YES  NO

The Fair Housing Act defines "disability" as a physical or mental impairment that substantially limits one or more major life activities. The Supreme Court has determined that to meet this definition a person must have an impairment that prevents or severely restricts the person from doing activities that are of central importance in most peoples' daily lives.

2. Please describe in what manner this disability restricts the Applicant/Resident in activities that are of central importance to his or her daily life:

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# FHAA ACCOMMODATION REQUEST

- The next step is to ask for verification – either have a standard form completed or provide a letter from your doctor.

3. Does this Applicant/Resident need the accommodation/modification requested above to be able to live in this apartment community?  YES  NO

4. If yes, please describe how this accommodation/modification will enable the Applicant/Resident to use or enjoy this apartment community.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that to the best of my knowledge and under penalty of perjury the information herein is true and accurate.

NAME AND POSITION OF VERIFIER \* (PRINT): \_\_\_\_\_

SIGNATURE OF VERIFIER: \_\_\_\_\_

DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NO.: \_\_\_\_\_

# FHAA ACCOMMODATION REQUEST

- So, once again, can you make the resident use your form?
- ✓ **No!** You also have to accept verification from a reliable third party that:
  - ✓ Confirms that the resident has a disability within the meaning of the Fair Housing Act; and confirms that there is a disability-related need for the accommodation.



## INSUFFICIENT DOCUMENTATION

- There are many online sites that provide “certifications.”
- The majority of online certification companies do not require any verification of a disability before issuing a certificate.
- Accordingly, I do not accept certificates from the vast majority of these agencies as sufficient verification of a disability by themselves.

# FRANKIE'S CERTIFICATION



## National Service Animal Registry

5040 Corporate Plaza Drive · Colorado Springs · Colorado · 80919

Phone · (719) 594-2093

Fax · (719) 531-7719

### NSAR EMOTIONAL SUPPORT ANIMAL

This document affirms that "**FRANKIE**" (NSAR database ID **F879037**, see adjacent photo) is certified as an emotional support animal (ESA) and registered with National Service Animal Registry (NSAR) on the date listed below. This emotional support animal is deemed necessary to assist **S. DOYLE**, the confirmed disabled handler. The handler and service animal are listed in the National Service Animal Registry (NSAR) database and may be found on the following website: [www.nsarco.com/database.html](http://www.nsarco.com/database.html). For more information, please call the U.S. Justice Department ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY) or visit the ADA Business Connection at [www.ada.gov](http://www.ada.gov)



**FRANKIE**



# DENIAL

- Not sufficient verification – we deny!

## DISTINCTIONS BETWEEN ADA AND FHAA: COVERED AREAS

- The ADA applies to areas of public accommodation, such as the leasing office—it does not apply to areas of the property not open to the general public;
- The FHAA applies to the entire property, including the leasing office.

## DISTINCTIONS BETWEEN ADA AND FHAA: DEFINITION OF ASSISTANCE ANIMAL

- Under the ADA, service animal is defined narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability;
- Under the FHAA, an assistance animal can be any 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 identified symptoms or effects of a person's disability.



## PRACTICAL APPLICATION: ADA VS. FHAA

- In a nutshell, the ADA does not apply to the vast majority of a multifamily property (only the leasing office, or any area that is open to the public);
- The overwhelming majority of your assistance animal requests are going to be handled using the FHAA analysis;
- How do you handle areas of overlap, such as the leasing office? Apply ADA (more restrictive) first.



Questions?



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