



At Your Service

Getting Around “No Pets” Rules for Service Animals

By Emily Gardner, Esq.

Finding housing in Hawaii can be challenging. Finding housing when you have a pet can be even more so. When your pet is a service animal and is essential for your day to day living, it is important to know your rights when and if your landlord or property manager pulls the “no pets” card.

Under the Fair Housing Act (a federal law), it is unlawful to discriminate against any person in the provision of services or facilities in connection with the person’s dwelling because of their handicap. Discrimination under the Act, includes a refusal to make “reasonable accommodations” in the rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person an equal opportunity to use and enjoy their dwelling.

As a renter or property owner with a service animal, it is important to understand, that the law does not extend a preference to handicapped residents, but merely an equal opportunity to use and enjoy a dwelling. The first thing the owner of a service animal should do, if confronted with a “no pets” rule, is to request a “reasonable accommodation” for his or her service animal under the Fair Housing Act.

In order to properly request a “reasonable accommodation,” a resident must establish four things: 1) that they or an associate of theirs who resides at the dwelling is handicapped or disabled; 2) that the landlord or property owner is provided with notice of the person’s particular handicap or disability; 3) that an accommodation for the service animal is necessary to afford the handicapped person with an equal opportunity to use and enjoy the dwelling; and, 4) that the accommodation is reasonable under the specific circumstances of the case.

Discrimination under the Act does not occur until a reasonable accommodation has been properly requested and denied. It is not until after a reasonable accommodation has been denied that the owner of a service animal can file a legal claim against their property manager for the right to keep their animal.

This all sounds well and good, but how does one know if they or their pet fall under the Act, and whether they are entitled to request a reasonable accommodation in the first place?

Under the Fair Housing Act, the term “handicap” is defined as “a physical or mental impairment which substantially limits one or more of a person’s major life activities.” The individual must either have a record of having such an impairment (as documented in their medical records and/or history) or be perceived as having such an impairment. Accompanying regulations interpret the term “physical or mental impairment” rather broadly to include any mental or psychological disorder, such as emotional illnesses, including depression and anxiety.

The Act does not define “service animal,” but it has been understood for purposes of the Americans with Disabilities Act (ADA) to include any guide dog, or other animal *individually trained* to do work or perform tasks for the benefit of an individual with a disability. The ADA defines disability the same way the Fair Housing Act defines “handicap”.

In interpreting the term “service animal,” courts recognize that most animals are not equipped to do work or perform tasks for the benefit of an individual with a disability. They typically require something more—evidence of individual training—that sets the service animal apart from an ordinary pet.

This is not necessarily a taxing requirement, as there are no federally mandated animal training standards, but the owner of a service animal must be able to establish that their animal has had special training or possesses unique characteristics that somehow assist the disabled person with their particular disability. Under Hawaii law, the owner of a service animal must be able to show that their animal is specially suited to ameliorate the unique problems or symptoms associated with their disability. Merely stating that the animal “helps” someone or provides a service is not enough under the law.

The bottom line is that the owner of a service animal must be able to show that the animal at issue is necessary to afford them with an equal opportunity to use and enjoy their dwelling. A landlord or property manager is not obligated to do everything humanly possible to accommodate a disabled person. He must only do what is reasonable and necessary.

In many circumstances, waiving a no-pet rule to allow a disabled resident the assistance of a service animal would be a reasonable accommodation under the Fair Housing Act. Achieving this outcome, however, may require that both the disabled resident and the property manager maintain some flexibility. For instance, requesting an accommodation for more than one service animal may not be reasonable. Or, the particular type of animal requested may not be reasonable under the unique circumstances of the case. This could occur for example if a smaller, possibly frail person seeks an accommodation for a large, powerful breed of dog, which they are unable to effectively control.

In summary, individuals seeking a waiver of a no pets rule to accommodate a service animal should do the following to improve their chances of success:

1. Notify their landlord or property owner of their disability and their *need* to have a service animal (remember, it must be necessary).
2. Provide the landlord or property manager with a letter from a physician that states the nature of the individual’s disability and how a service animal would help alleviate the effects of their disability.
3. Make a request, in writing, for a “reasonable accommodation” under the Fair Housing Act.
4. Make sure the animal is individually trained to assist the disabled person with the specific effects of their disability. Be able to provide written proof of training.
5. Remain courteous and flexible. Remember, a property manager is only required to do what is reasonable and necessary. An individual has no right to bring a claim until after a property manager denies a request for a reasonable accommodation.

Emily Gardner, Tel: (808) 540-0200