

The Backus Bulletin

"Your Management, Your Way"

Fair Housing and Assistance Animals

April 2021

The Federal Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act (Section 504) protect persons with physical and/or mental disabilities. These same laws prohibit discrimination against tenants with service or support animals. The courts take this seriously and it is a huge liability to refuse to rent to a *qualified* handicapped person with a legitimate service or support animal. Fair Housing laws are very definitive regarding *service animals*. There are now other terminologies such as emotional support animals, companion animals, and psychiatric service animals. This can lead to a lot of confusion and misinformation for property owners when it comes to the various support animals and rental housing.

A **service animal** is one 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. Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button. The Federal Fair Housing laws are specific regarding service animals. People also refer to service animals as assistance or assist animals, support animals, guide animals, and hearing animals.

An **emotional support animal** is a **companion animal** that provides therapeutic benefit to an individual with a mental or psychiatric disability. The person seeking the emotional support animal must have a verifiable disability (the reason cannot just be a need for companionship). Fair Housing views these animals as a "reasonable accommodation" and a "no pets" rule does not apply.

To qualify, a person must meet the federal definition of disability and must have a note from a physician or other medical professional stating that a person has a disability and that the reasonable accommodation (here, the emotional support animal) provides benefit for the individual with the disability. The emotional support animal alleviates or mitigates some of the symptoms of the disability. Companion or emotional support animals differ from service animals because no specific training of the animal is required.

A **psychiatric service dog** is one that assists people with psychiatric disabilities, such as severe depression, anxiety disorders, and post-traumatic stress disorder (PTSD). The key distinction to remember is that a psychiatric service animal trained to perform certain tasks directly related to an

individual's psychiatric disability. The dog's primary role is not to provide emotional support but to assist the owner with the accomplishment of vital tasks they otherwise would not be able to perform independently.

Under the Fair Housing Acts, here are some of the rules that apply to service or support animals:

- Any type of legitimate support or service animal is legally NOT a "pet."
- Property owners and property managers cannot require or take additional deposits or pet deposits because of a support or service animal.
- Property owners and/or managers can require *any* tenant, including the disabled, to qualify for properties based on income, rental history, and credit. They do not have to

(Continued on pg. 2)

Backus Properties

P.O. Box 1089
Salinas, CA 93902
(831) 455-2052
Fax: (831) 455-2087
info@backuspm.com

backuspm.com



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 P.O. Box 1089
 Salinas, CA 93902
 (831) 455-2052
 Fax: (831) 455-2087

Contact us:

Sally Backus, MPM
 Broker

Bill Backus
 Associate Broker
 Sales

Michele Backus
 Property Manager

Cindy Vargas
 Property Manager

Molly Scott
 Asst. Property Manager

Daisy Puente
 Asst. Property Manager

Celeste Serrano
 Admin. Asst.

Cyndie Scott
 Admin. Asst.

Daniel Pinto
 Admin. Asst.

Sally Ann Mejia
 Bookkeeper

Will Backus– Admin. Asst.

Office Hours: Mon-Fri 9am-4:30pm
 Saturday - by appointment
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accept poor tenancy because an applicant is handicapped or has a service animal or companion animal.

- If a tenant compromises the safety of other tenants or their property, if the animal poses a danger to other tenants, or the tenant does not qualify under the statutes, property owners and/or managers do not have to allow the tenant in their rental units.
- Property owners and/or managers must be very careful not to apply their own standard on determining whether a companion animal is justified.
- Depending on the classification of the disability and specific law, an animal does not necessarily have to be a dog.
- Property owners and/or managers can ask for simple verification of the disability and the need for the animal as treatment if the disability is not obvious.

There is so much more to service or support animals than can be covered in this article and do not take this as legal advice. If questions or problems arise, consult legal counsel versed in Fair Housing law. What is important is that investors or managers who ignore or violate Fair Housing laws regarding any assistance animal are at very high risk. We use a third party company (petscreening.com) to screen the animal information to verify it is true and accurate. As your property management company, we take this subject seriously and work to follow all Fair Housing legislation and developments.