

# **DISCUSSION OF REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES WHO UTILIZE ASSISTANCE ANIMALS**

## **I. ASSISTANCE ANIMALS**

The Rhode Island Fair Housing Practices Act (“FHPA”) requires a housing provider to grant reasonable accommodations to “assistance animals” (which include emotional support animals) when such animals are necessary for an applicant or occupant with a disability to equally use and enjoy a dwelling.

In 2022, the Rhode Island Supreme Court examined a request for an assistance animal as a reasonable accommodation in *Andrade v. Westlo Management LLC*, 276 A.3d 393 (R.I. 2022). Referring to federal case law interpreting the federal Fair Housing Act, the Court confirmed that under the FHPA and the Civil Rights of People with Disabilities Act (“CRPDA”), requests for assistance animals are to be considered under the same standards that apply to other reasonable accommodation requests. *Id.* at 401. Further, the Court recognized that a provider may not deny a disabled person’s accommodation request for an assistance animal provided the proposed assistance animal ameliorates the effects of the person’s disability, does not fundamentally change the nature of the housing provider’s services or cause undue financial and administrative burdens, and does not pose a direct threat. *Id.* at 402-04.

As demonstrated by the *Andrade* case, Rhode Island courts generally rely on federal case law interpreting federal civil rights laws when interpreting similar language in Rhode Island civil rights laws. *Id.* at 401. The U.S. Department of Housing and Urban Development (HUD) articulated its position on assistance animals as reasonable accommodations as follows:

Under both the Fair Housing Act and Section 504, in order for a requested accommodation to qualify as a reasonable accommodation, the requester must have a disability, and the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person’s disability. Thus, in the case of assistance/service animals, an individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. The Department’s position has been that animals necessary as a reasonable accommodation do not

necessarily need to have specialized training. Some animals perform tasks that require training, and others provide assistance that does not require training. This position is also articulated in the Public Housing Occupancy Guidebook and the Multifamily Occupancy Handbook. Housing providers are entitled to verify the existence of the disability, and the need for the accommodation—if either is not readily apparent. Accordingly, persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability. In addition, housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, the housing provider does not have to accept the animal into the housing. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations.

Discussion of public comments on the October 15, 2007 Proposed Rule, Federal Register, Vol. 73, No. 208, October 27, 2008, p. 63835.

HUD further discusses public concerns as follows:

The existing law on reasonable accommodation also addresses health and safety concerns. Under the Fair Housing Act, a housing provider need not make a dwelling available to any person whose tenancy constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Consistent with that provision of the Fair Housing Act, a housing provider may exclude an assistance animal from a housing complex when that animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated. The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question, such as the animal's current conduct or a recent history of overt acts. The assessment must consider the nature, duration, and severity of the risk of injury; the probability that the potential injury will actually occur; and whether reasonable modifications of rules, policies,

practices, procedures, or services will reduce the risk. In evaluating a recent history of overt acts, a provider must take into account whether the assistance animal's owner has taken any action that has reduced or eliminated the risk. Examples would include obtaining specific training, medication, or equipment for the animal. This direct threat provision of the Fair Housing Act requires the existence of a significant risk—not a remote or speculative risk. Accordingly, the determination cannot be the result of fear or speculation about the types of harm or damage an animal may cause, or evidence about harm or damage caused by other animals (See HUD/DOJ Joint Statement).

Discussion, p. 63837.

The comments further note at page 63837 that:

In addition, the Department's position is consistent with federal case law that has recognized, in cases involving emotional support animals in the housing context that whether a particular accommodation is reasonable is a fact-intensive, case-specific determination (*Janush v. Charities Hous. Dev. Corp.*, 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors v. Hous. Auth. of the County of DeKalb, Ga.*, 652 F.2d 454, 457–58 (5th Cir. 1981) (remanding the case for trial on whether the plaintiff's disability required the companionship of a dog).

## **II. PERSONAL ASSISTIVE ANIMALS**

The Rhode Island Fair Housing Practices Act (FHPA) also contains provisions governing a housing provider's responsibilities with respect to *personal assistive animals*. A personal assistive animal is an animal specifically trained by a certified animal training program to assist that person with independent living tasks. Under the FHPA provisions, an owner or manager of a housing accommodation must allow a person with a disability who has a personal assistive animal full and equal access to all housing facilities and services. If the person has a disability and such an animal, the owner or manager must allow the animal on the premises. Note that personal assistive animals in almost every instance also qualify as assistance animals.