

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

The Rhode Island Fair Housing Practices Act (FHPA) contains provisions governing a property owner/manager's responsibilities with respect to assistive animals which are necessary to afford a disabled applicant/occupant an equal opportunity to use and enjoy a dwelling.

Under the FHPA provisions, an owner/manager MUST allow a person with a disability full and equal access to all housing facilities and services if that person has an assistive animal specifically trained by a certified animal training program to assist that person in the performance of independent living tasks. If the person has a disability and such an assistive animal, the assistive animal must be allowed.

With respect to assistive animals that are not specifically trained as defined above, the FHPA provides that an owner/manager MUST make reasonable accommodations when those are necessary to afford an applicant or occupant with a disability equal opportunity to use and enjoy a dwelling.

The Commission knows of no published Rhode Island cases discussing this issue. However, in general, Rhode Island civil rights laws are interpreted to be consistent with federal civil rights laws. The U.S. Department of Housing and Urban Development (HUD) has recently explained its policy on reasonable accommodations relating to assistive animals in its discussion relating to adoption of a rule in HUD-assisted dwellings. The discussion is 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. For an extensive discussion of reasonable accommodation principles, see the "Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act" (HUD/DOJ Joint Statement), available at: <http://www.hud.gov/offices/fheo/disabilities/index.cfm>.

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).