

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

## Services Animals in Housing

### **What are the laws that apply to a business or public accommodation?**

The Fair Housing Amendments Act (FHAA) prohibits discrimination because of disability in the sale, rental, or advertising of a dwelling. It requires public and private housing providers to modify policies and practices that deprive individuals with disabilities of their rights to enjoy and use their dwellings.

Although this Act was specific towards housing issues, other laws including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) prohibit discrimination on the basis of disability. The concept of “reasonable accommodation” in Section 504 served as the model for the Fair Housing Act.

The Americans with Disabilities Act (ADA) prohibits state and local governments from discriminating against individuals with disabilities in places of public accommodation. The ADA covers certain types of nontraditional housing, such as temporary shelters.

### **How does the Fair Housing Act protect individuals with disabilities regarding service animals?**

Service animals are a healthcare option that many individuals with disabilities choose to help them. In order to be protected by the Fair Housing Act with regard to service animals, three (3) tests must be met:

1. The person must have a disability. The Fair Housing Act defines a person with a disability as an individual who has a physical or mental impairment that substantially limits one or more life activities, or has a record of an impairment, or is regarded as having an impairment (regardless of whether that perception is accurate). It is not necessary that the disability be obvious. Disability has been defined broadly and has been found to include such conditions as alcoholism and drug addiction, but exempts current users.
2. The animal must serve a function directly related to the person’s disability.
3. The request to have the service animal must be reasonable.

## **What is a “service animal” under the Fair Housing Act?**

The Fair Housing Act does not define “service animal”, per se, and does not make a distinction among certified service animals, non-certified service animals, animals that provide psychological support (Emotional Support Animals), and service animals in training that live with the individual with a disability for whom they will work. The Act does not have restrictions about who may train the animal. However, the Act recognizes that service animals are necessary for the individuals with disabilities who have them, and as such, does not categorize service animals as “pets”.

Service animals, then, cannot be subjected to “pet rules” that may be applied by housing providers to companion animals. Housing providers can’t, for example, impose upon service animals the size or weight restrictions of a pet rule, exclusion from areas where people are generally welcome, or access restrictions to only a particular door or elevator. Further, special tags, equipment, “certification” or special identification of service animals cannot be required. In addition, no deposit may be charged for the service animal.

The Act does not specifically limit the number of service animals an individual with a disability may have. Requests for multiple service animals may be reviewed on a case-by-case basis. It is possible that housing providers may impose limitations if it can be demonstrated that an individual’s request for reasonable accommodation exceeds what is necessary for that person to have a full use and enjoyment of the premises.

Individuals with disabilities may request other reasonable accommodations regarding their service animals. For example, a person with a mobility impairment may find it difficult to walk a service animal. He and the landlord might work together to identify a mutually agreeable, and accessible, area of the property on which the animal can relieve itself.

## **What types of housing are covered and what types are exempted?**

The Fair Housing Act covers most housing types, with limited exceptions. The Act generally does not cover single family residences sold or rented by a private, individual owner provided that:

- the individual owner does not own any interest in, or have owned by someone else on his/her behalf, more than three (3) such single-family houses at any one time;
- the private individual owner has not sold more than one non-owner occupied single-family house within a 24-hour period;
- with regards to the sale or rental of a dwelling, it is sold or rented without advertising or the assistance of a person or entity that is in the business of selling or renting dwellings;
- the owner occupies and maintains one of no more than 4 rooms or units in dwellings containing living quarters occupied or intended for occupancy by no more than 4 families living independently of each other; or

- the housing owned by religious organization and private clubs for other than commercial purposes limit occupancy to their members.

### **What is considered a “dwelling”?**

According to the Fair Housing Act, a dwelling is defined as any building, structure, or part thereof which is intended for occupancy as a residence by one or more families. The term has been broadly interpreted. Types of dwellings include:

- nursing homes;
- group homes for recovering addicts and alcoholics;
- seasonal facilities (i.e., for migrant workers);
- residential facilities;
- mobile homes; and
- trailer parks.

Condominiums and cooperatives are also considered dwellings and are subject to the prohibitions against discrimination except when a particular unit is sold by an individual owner who is accorded exempt status. In such cases, the Fair Housing Act may not apply to the individual unit owner, but would still apply to the condominium or cooperative association. So, with regard to access by individuals with service animals, the result is the same: restrictive policies must be modified to allow a person with a disability to be accompanied by his or her service animal.

Lodging for transient guests, such as hotels and motels are not considered dwellings under the Fair Housing Act. However, hotels, motels, inns, shelters for people who are homeless and similar places of lodging are considered to be public accommodations under the Americans with Disabilities Act (ADA) and likewise may not discriminate against people on the basis of disability.

### **What is considered a reasonable accommodation?**

Reasonable accommodations are modifications that are practical and feasible. The Fair Housing Act requires that owners and landlords provide reasonable accommodation (that is, a change in the rules or policies) when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling. It is the responsibility of the individual with a disability to request a reasonable accommodation necessary for tenancy.

Example: One reasonable accommodation is modifying no-pet policies and practices to support the right of an individual with a disability to have a service animal in a publicly or privately owned dwelling. Refusal to permit an exception to a no-pets rule may constitute discriminatory practices when an individual with a disability is unable to use and enjoy a dwelling, including entertaining guests with disabilities who require the use of service animals.

Exception: Although inquiries into the existence, nature and extent of a disability are prohibited by the Fair Housing Act, when an application is made for housing, an individual with a

disability who requests a reasonable accommodation may be asked to provide some reliable professional documentation (but medical records may not be required) confirming that he or she has a disability and the accommodation is necessary for the person to reside in the housing. To support a discrimination claim, the person with the disability might be required to further demonstrate that the requested reasonable accommodation is necessary for his or her equal use and enjoyment of their dwelling. In investigating complaints brought under the Act, Housing and Urban Development (HUD) considers whether there is evidence that supports a finding of disability, whether the service animal performs a function directly related to the individual's disability, and whether the requested accommodation is reasonable.

### **What are housing providers' rights?**

Individuals with disabilities are solely responsible for the conduct of their service animals, and housing providers may have recourse available if the tenant fails to satisfy this obligation.

Example: A housing provider may require payment for damages (such as chewing carpeting), or insist that a service animal be prevented from repeated barking that disturbs neighbors. However, a housing provider may first be obligated to attempt resolution of the problem before eviction proceedings are initiated. Complaints about a service animal must be substantiated and not based on speculation.

Service animals that are a direct threat to others (biting, etc.) **or otherwise violate animal control laws** can be reported to the agency that enforces animal control laws. Often the agency is the animal control department or the local police department. Some local and state laws exempt service animals from some animal control laws. Nebraska law does not provide an exemption for control laws for service animals.

### **What can I do if I think I have been discriminated against due to my service animal?**

If an individual feels he or she is being discriminated against because of a disability, and efforts to resolve the matter through discussion with housing management fails, a complaint may be filed with the Secretary of Housing and Urban Development (HUD) within **one year** of the alleged discriminatory conduct. HUD provides complaint forms and instructions for filing a complaint.

In addition, if the resident's state or locality has laws pertaining to nondiscrimination in housing, a complaint may be sent to the agency that administers those laws (usually the state Human Rights Commission or office of the state attorney general). The deadlines for filing a complaint with your state or locality may be different than that of the Fair Housing Act.

Complaints are investigated by the enforcement agencies that administer that law(s) in question. If the complaint is found to have merit (a basis for a complaint), the agencies will attempt resolution through conciliation (informal resolution, not a lawsuit). If these attempts fail, the case will proceed to an administrative hearing, or if requested by either party, will proceed to

litigation (lawsuit) in federal district court. Private lawsuits may also be filed in federal court, at the individual's own expense, within two (2) years following the discriminatory act.

## Note

Service animal costs might be applicable as medical costs toward "spend downs" used to calculate rent in subsidized housing. For more information, refer to individual subsidization program guidelines or consult the local HUD office.

## Sources of Information

- Department of Housing and Urban Development  
[www.hud.gov](http://www.hud.gov)
- Disability Law Resource Project  
[www.dlrp.org](http://www.dlrp.org)
- Nebraska Revised Statute 20-131.04

## Other Resources and Educational Sources

Too often, housing discrimination results from a lack of understanding about the needs of individuals with disabilities and the requirements imposed by law. Education and communication are keys to reducing this discriminatory conduct. Additional information about service animals in housing can be obtained from:

- U. S. Department of Justice Housing Enforcement Division  
[www.hud.gov](http://www.hud.gov)
- Nebraska Attorney General's Office  
[www.ago.state.ne.us](http://www.ago.state.ne.us)
- Delta Society's National Service Dog Center. Delta Society does not provide legal services, but its web site is a resource for education.  
[www.deltasociety.org](http://www.deltasociety.org)
- ADA Business Connection  
[www.ada.gov](http://www.ada.gov)
- U.S. Department of Justice's toll-free ADA Information Line at:  
1-800-514-0301 (voice)  
1-800-514-0383 (TDD)

The information contained within this document is not legal advice, but is informal technical assistance to help answer some of the most frequently asked housing questions.

Advice about individual circumstances and about the legal interpretation of the Fair Housing Act can be obtained from your local Housing and Urban Development (HUD) office.