



Disability Law Center's Self-Advocacy Materials

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Housing

This document is designed for people with disabilities. The information is about your legal rights and how to advocate for yourself as a resident in Massachusetts.

Contact us to request this information in an alternative format.

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Funding

DLC receives funding from government grants, private foundations, and individual contributions. For details about our funding and programs, please visit:

<http://www.dlc-ma.org/>



Assistance Animals in Housing

You Will Learn About:

- Rights around Assistance Animals in Housing
- Steps To Take To Legally Have an Assistance Animal in your home
- Other Resources

This document includes general information about legal issues and is intended to be used for informational purposes only. These informational materials should not be taken as legal advice, and do not create an attorney-client relationship. The outcome of any particular matter will depend on a variety of factors. For specific legal problems you would need to contact an attorney.

Rights about Assistance Animals in Housing

Assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities. There are two types of assistance animals: (1) “service animals” and (2) other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (“support animals”). DLC has a separate publication explaining rights regarding Emotional Support Animals in Housing, which can be found here:

<https://www.dlc-ma.org/wp-content/uploads/2023/03/Emotional-Support-Animals-in-Housing.pdf>

A landlord’s “no pet” policy does not apply to assistance animals. An individual with a disability may request a reasonable accommodation of a waiver of any no pet policies to allow an assistance animal in their housing, including any public and common areas. Housing providers may not limit the breed or size of a dog used as assistance animals. However, landlords may deny a request for a specific animal based on that animal’s threatening conduct or if the animal is not within the care and control of the handler.

PART I: What Is a Service Animal?

A service animal is a dog that has been individually trained to do work or perform tasks for a person with a disability.

The U.S. Department of Housing and Urban Development (HUD) interprets the Fair Housing Act (FHA) to use the same definition of service animal as the Americans with Disabilities Act (ADA). Under the ADA, “*service animal* means any dog that is individually trained to do work or perform tasks directly related to the individual’s disability for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals under this definition.

Is My Dog a Service Animal?

In determining whether your dog is a service animal, there are two standard questions that your landlord may ask you if it is not readily apparent (e.g. guiding an individual who is blind; pulling a wheelchair) that the dog is trained to do work or perform tasks for the benefit of the individual with a disability:

1. **Is the dog required because of a disability?**
2. **What work or task has the dog been trained to perform?**

Your dog is a service animal if the answers indicate that your dog has been trained to perform actions (other than emotional support) that help mitigate the symptoms or limitations of a disability. Some of the tasks a service animal may be trained to perform include guiding an individual who has low vision, retrieving items for an individual who uses a wheelchair or has limitations with reach or dexterity, alerting a person who is deaf of voices and sounds, interrupting compulsive behavior, reminding an individual to take medication, or providing assistance with balance to an individual with a mobility disability. There are other tasks that a service animal may be trained to perform.

Your dog is not a service animal if you answered “no” to either of above questions. However, your dog may be a support animal. See Part II below.

NOTE: In assessing whether your dog is a service animal, your housing provider may not ask about the nature / extent of your disability or for documentation on your disability. However, you are required to provide medical support if you are requesting reasonable accommodation based on your disability.

PART II: What Is a Support Animal?

A support animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support related to an individual's disability. Examples of support animals include a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home. In some rare cases, an animal that is not commonly kept in households may be a support animal. If the individual is requesting to keep a unique type of animal that is not commonly kept in households, they should submit documentation from a health care professional confirming the need for this animal and how the animal helps with the individual's disability, as well as an explanation of any unique circumstances which justify the individual's need for the particular type of animal.

Steps To Take To Legally Have An Assistance Animal

Do You or Someone In Your Household Have A Disability?

In order to be eligible to have an assistance animal, you or someone in your household must have a disability, which is a "physical or mental impairment that substantially limits one or more major life activities." Some examples of a major life activities are breathing, walking, talking, hearing, seeing, sleeping, caring for oneself, performing manual tasks, and working. This is not an exhaustive list. Major life activities also include the operation of major bodily functions, such as the immune system, digestive, respiratory and circulatory functions, and normal cell growth.

Do You Have a Disability Related Need For An Assistance Animal?

Besides having a disability, you, or someone in your household, must also have a 'disability-related need' for an assistance animal. Usually this means the animal helps with some kind of task related to your disability.

Request A 'Reasonable Accommodation' From Your Landlord

The Fair Housing Act (FHA) provides you with the right to ask for a reasonable accommodation from your landlord or condominium association. The FHA also makes it unlawful for a housing provider to refuse to make a reasonable accommodation that a person with a disability may need in order to have an equal opportunity to enjoy and use a dwelling. This includes public and common use areas.

You should ask your landlord in writing for a 'reasonable accommodation' to waive a "no-pet" policy and allow you to keep your service animal. If possible, submit verification from your doctor of your disability-related need for the service animal at the same time, especially if you are making a request based on having a non-observable disability, or are requesting to have an animal not commonly kept in households as an assistance animal.

You do not have to provide all of the details about your disability, such as a specific diagnosis or medications that you may take. You do not have to provide a detailed medical history, but your

landlord is allowed to confirm your disability. Usually, this happens through a medical professional, unless your disability is obvious. Also, the landlord may confirm that the assistance animal is needed to help you have equal use and enjoyment of your apartment and to alleviate the effects of your disability.

Always sign and date your request and keep a copy. You may be asked to use a special form used by your landlord's office. This is not legally required, but completing this form may speed up the approval process.

Are you Able to Care for Your Service Animal?

Your animal must not disturb or endanger other tenants or create any unsanitary conditions. You may be asked to keep your dog on a leash when you are in common areas or outside the building. You or someone helping you must always maintain control of the animal and the animal must behave appropriately. You cannot be required to pay a special deposit for your animal. However, you can be charged at the end of the tenancy for any damages that they may have caused. If you live in public or subsidized housing, you may be able to ask that the costs of food and veterinary care for the assistance animal count as a medical expense when you recertify.

You may need to vaccinate your dog, and you should obtain a dog license from your city or town if required by law. You may be asked to provide a copy of these records to your landlord.

Does Your Assistance Animal Pose a 'Direct Threat' to Other Tenants?

Even if there are rules in your town concerning your dog's breed or weight, a landlord cannot restrict your service animal based on these attributes alone. If the landlord's insurance company does not allow your dog's breed, the landlord will have to show that no other similar insurance is available.

However, the landlord may deny your assistance animal if it poses a 'direct threat' to other tenants or staff. This includes dogs that threaten, bite or attack people or other animals. The landlord must make an individualized assessment of your service animal, without making general assumptions about a type of dog or animal based on its breed or appearance.

Other Resources

Where Do You Go If You Still Need Legal Help?

If you need legal representation or advice, please call the Disability Law Center (DLC) at 1-800- 872-9992 and leave a message or complete our online intake form at <https://www.dlc-ma.org/ask-for-help/>.

Unfortunately, we cannot help everyone who contacts us. If DLC cannot provide you with either legal representation or advice, we may refer you to:

- A local fair housing program;
- A local legal service program (see <https://www.masslegalservices.org/FindLegalAid/>);
- Your local bar association referral service; or
- The National Lawyers Guild Lawyer Referral Service (<https://nlgmass.org/>)

If you would like to file a fair housing complaint against a landlord that has refused to allow an emotional support animal, you may file a discrimination complaint under both state and federal law with the Massachusetts Commission Against Discrimination (MCAD). (See <https://www.mass.gov/file-a-complaint-of-discrimination>). You may also file a discrimination complaint with the United States Department of Housing & Urban Development (HUD). (See <https://www.hud.gov/fairhousing/fileacomplaint>). You also may have the right to file a lawsuit in state court, including housing court, or in federal court.

Where Can You Get More Information About Assistance Animals and Reasonable Accommodation in Housing?

Information from the Commonwealth of Massachusetts about service animals can be found at <https://www.mass.gov/info-details/disability-rights-for-users-of-assistance-animals>

The ADA National Network provides information about service animals and emotional support animals that can be found at <https://adata.org/guide/service-animals-and-emotional-support-animals>.

The Department of Housing & Urban Development has a number of resources on assistance animals at www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals. See also:

- <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
- <https://www.hud.gov/sites/documents/huddojstatement.pdf>