



UNDERSTANDING ADA TITLE III

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HOW PUBLIC ACCOMMODATION PROVIDERS CAN AVOID HAIRY SITUATIONS WITH SERVICE ANIMALS

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As a commercial landlord or building owner, you may be constantly juggling concerns over building maintenance and repairs, operating expenses, and occupancy. What may not immediately jump out at you – but should certainly be on your radar – is how to properly handle the ever-increasing requests for use of a trained service animal on your premises.

Title III of the Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of disability in the activities of places of public accommodations. Such places are generally open to the public and may include offices, shelters and other privately-owned, non-residential commercial facilities.

In a further attempt to limit discrimination against those with disabilities, the Department of Justice (“DOJ”) addressed a recurrent issue regarding the term “service animal.” Under Title III of the ADA, a “service animal” is defined as any *dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability. A disability may include a wide range of matters, including physical and mental impairment, as well as PTSD, heart disease, and addiction. While dogs are generally the only species of animal considered “service animals” under Title III, the DOJ has since revised its regulations to incorporate a new, separate provision regarding miniature horses. Under this new provision, a miniature horse service animal is one that generally ranges from 24 to 34 inches in height, weighs between 70 and 100 pounds, and has been individually trained to do work or perform tasks for people with disabilities.

It is imperative that public accommodation providers understand that an assistance animal is not a pet, nor is it an emotional support animal. Service animals perform disability-related functions, including but not limited to: guiding individuals who are blind, alerting individuals who are deaf to sounds, providing



rescue assistance, and alerting persons to an impending seizure. Emotional support and therapy animals are untrained animals whose presence merely provides comfort, thereby disqualifying these animals from being considered service animals under the ADA.

As an owner or operator of an ADA-covered facility, it is important to note that a dog need only meet the definition of a service animal to be allowed onto the property. As such, when presented with an individual requesting the use of a service dog, public accommodation providers may only inquire as to 1) whether the dog is a service animal that is required because of a disability, and 2) what work or tasks the dog has been trained to perform. A covered entity may not make such inquiries where these facts are readily apparent and may not further require that the dog be professionally trained nor demand any certification or documentation from individuals regarding their disabilities.

The DOJ clarified that a service dog should generally be allowed unless admitting service animals would fundamentally alter the nature of a service or program. In most instances, the presence of a service animal will not result in a fundamental change; however, a person with a disability may be asked to remove his service animal where the dog is out of control or where the dog is not housebroken. Even where there is a legitimate reason to request that a service animal be removed, providers must still offer the person with the disability the opportunity to obtain goods or services without the animal's presence. Additionally, allergies or phobias of dogs are not valid justifications for denying access or use of a service animal.

Covered entities should note that the assessment factors for determining whether a miniature horse can be accommodated in their facility is distinct from the test for service dogs in that providers may consider 1) whether the miniature horse is housebroken, 2) whether it is under the owner's control, 3) whether the facility can accommodate the miniature horse's type, size, and weight, and 4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

Understanding the nuances of Title III and ensuring that public accommodation providers remain compliant is often a difficult undertaking. Given the limited inquiries permitted regarding the use of service animals by individuals with disabilities, a public accommodation provider's analysis of such matters should take into consideration all the facts of each unique situation.

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