

Animals & the Law

Service animals, emotional support animals, therapy animals, and companion animals

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“Service Animals”

- ❖ Service Animals
- ❖ Emotional Support Animals
- ❖ Therapy Animals
- ❖ Companion Animals



Service Animals

Service animal means any dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. (Title II, Americans With Disabilities Act, 28 C.F.R. §§ 35.104)

- ❖ Assisting individual who are blind or low vision
- ❖ Assisting or alerting to seizures or allergens
- ❖ Assisting retrieving items, assisting with balance or support
- ❖ Helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors

* In 2010, the ADA limited service animals to mean only dogs. However, in 28 C.F.R. § 35.136(i) (Title II) and 28 C.F.R. § 36.302(c)(9) (Title III) miniature horses are also accepted.



Invisible Disabilities

Psychiatric and neurological disabilities

Unless the animal is individually trained to do something that qualifies as work or a task, the animal is a pet or support animal and does not qualify for coverage as a service animal.

A pet or support animal may be able to discern that the individual is in distress, but it is what the animal is trained to do in response to this awareness that distinguishes a service animal from an observant pet or support animal. (28 C.F.R. § 35.136 Supp. 78 (2010))



Does the ADA apply to private businesses or housing?

A “public accommodation” under Title II is a private entity that owns, operates, leases, or leases to, a place of public accommodation.

- Restaurants
- Hotel
- Doctor’s office, pharmacy
- Retail store
- Library
- Park
- Private clubs and religious organizations are exempt from the ADA's requirements for public accommodations.

The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements. (*but see* FHA)

How do I know it is really a service animal?

“Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability . . .”

May make two inquiries to determine whether an animal qualifies as a service animal:

1. A public entity may ask if the animal is required because of a disability and
2. What work or task the animal has been trained to perform.

Adopted dog helps predict owner's seizures

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When Danielle Zuckerman and her 6-year-old son Nick adopted their dog from Grass Valley animal shelter Sammie's Friends in January, they were looking for a companion.

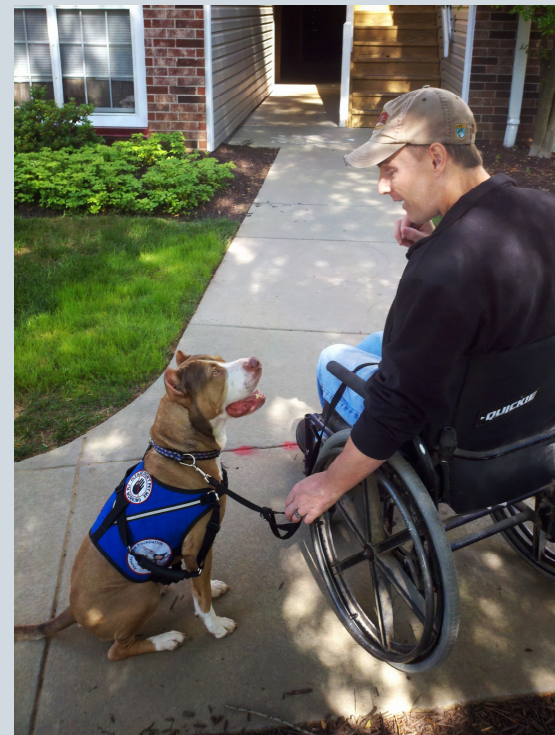
They chose the 3-year-old pit bull — whom they named Thor — specifically for his mellow personality. When they surveyed dogs, Thor was the only dog that wasn't barking; when they started playing with him, he immediately rolled over and waited for Nick to pet him.

John Hart/jhart@theunion.com | The Union
Danielle Zuckerman, and son Nicholas Haugh 6 years,

Pit Bull Service Dogs?

The Department of Justice found it is neither appropriate nor consistent with the ADA to defer to local laws that prohibit certain breeds of dogs.

28 C.F.R. § 35.136 Supp. 81 (2010). See also *Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1033 (ND Iowa 2011).



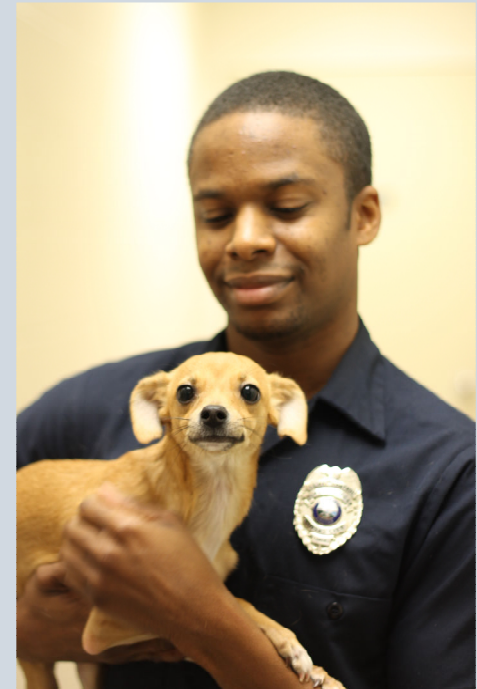
Nuisances or Dangerous Dogs

“State and local government entities have the ability to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal’s actual behavior or history not based on fears or generalizations about how an animal or breed might behave. This ability to exclude an animal whose behavior or history evidences a direct threat is sufficient to protect health and safety.” (DOJ Final Rule 2010)

Law enforcement or the business may ask an individual with a disability to remove a service animal from the premises if:

- (1) The animal is out of control and the animal’s handler does not take effective action to control it; or
- (2) The animal is not housebroken.

28 C.F.R. § 35.136 Supp. 36 (2010).



Emotional Support Animals/ Assistance Animals

Emotional Support Animals provide a therapeutic benefit for someone with a mental disability.

- ❖ Not service animals, not under ADA, but covered as assistance animals under FHA (FHEO Notice-2013-01)
- ❖ Not limited to dogs.
- ❖ ESA's do not need to be individually trained or certified.
- ❖ The request for a note from a health professional is generally OK (see FHA and Kristy's presentation).
- ❖ Breed, weight, or size limitations may not be used against assistance animals under the FHA.

Nexus – owner must demonstrate a relationship between his or her ability to function and the companionship of the animal.



Emotional Support Animals/Assistance Animals

Fair Housing Amendments Act (1988) - a landlord cannot discriminate against disabled persons in housing, and if a reasonable accommodation will enable a disabled person to equally enjoy and use the rental unit, the landlord must provide the accommodation.

Except:

1. Rental dwellings of four or less units, when one unit is occupied by the owner;
2. Single family homes sold or rented by the owner without the use of a broker;
3. Housing owned by private clubs or religious organizations that restrict occupancy in housing units to their members.

Questions? Kristy McTighe after lunch!



Therapy Animals



Pet Partners

Therapy animals are trained to provide affection and comfort to people in hospitals, retirement homes, nursing homes, and hospices.

- ❖ Not limited to dogs.
- ❖ Must be trained and usually “registered,” not “certified.” Insured.
- ❖ Not protected by any federal, state, or local law. But, if visiting as part of a program for someone in need of an assistance animal under FHA, could be covered.
- ❖ Animal-assisted therapy - a therapy animal team is overseen by a professional health provider and incorporated as part of a goal oriented and structured therapeutic intervention.
- ❖ Also schools, disaster relief, airports, court . . .



Therapy Animals

But see Court/Comfort Dogs

- ❖ Vulnerable witnesses or victims (children)
- ❖ Court decides:
 - ❖ What must be shown by the prosecution in order for a court to grant a motion to allow such a dog to accompany a witness (including where the burden lies), and
 - ❖ what efforts must be made to limit possible prejudice from the jury's awareness of the dog's accompaniment of a witness.
- ❖ AZ, AR, FL, IL, OK
- ❖ Connecticut v. Devon D., SC 19378, 2016 WL 3194779 (June 14, 2016).

Companion Animals



Legal Protections

PROTECTION	Service Animal	Emotional Support Animal	Therapy Animal	Companion Animal
Cities/Public Accommodation	Yes.	No.	No.	No.
Retail Stores/Restaurants	Yes.	No.	No.	No.
Housing	Yes, but under FHA as an "assistance animal."	Yes.	Not specifically covered unless part of a program for residents.	No.
Transportation	Yes.	Yes, (14 C.F.R. 382) but remember documentation.	No.	No.
Hospitals	Yes.	No.	No, but often used there.	No.
Court	Yes.	Not specifically covered.	Not specifically covered, but some jurisdictions allow "comfort animals."	No.

Animal Laws Generally

“Do property owner policies trump local laws?”

Leases and restrictive covenants can be more restrictive than city code/state statute, but they cannot infringe on any right guaranteed by federal or state law (e.g. ADA/FHA).

Federal Law/Code of Federal Regulations
(Americans with Disabilities Act/Fair Housing Act)

Kansas
Administrative
Regulations (K.A.R.)

State Statutes
(KSA, RSMo)

City Code

Nuisance Animals

➤ At-large

- Repeat Offenders (Lawrence, KS)
- Increasing Fines and Penalties (Kansas City, KS “nuisance animals”)
- Free-Ride Home (Kansas City, MO)
- Mandatory sterilization upon release (many cities in neighboring states)

➤ Tethering

- Humane Tethering (Roeland Park, KS)
- Time Limitations (Roeland Park, KS)

➤ Exotic Animals

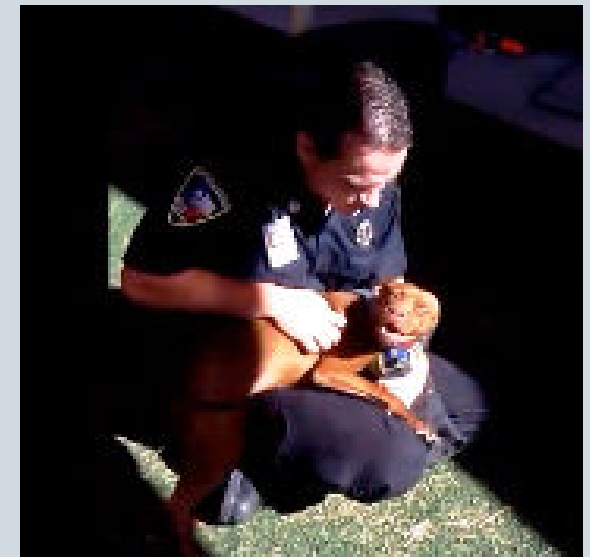
➤ Bites/Vaccinations/Zoonotic Diseases

- Duty to Report
- K.A.R. 28-1-13
- Vaccinations Required (local, not state)

➤ Dangerous/Vicious

- No state law, but see city code.

Look at
your city
code



Humane Treatment of Animals

➤ Neglect and Cruelty

- fail, refuse or neglect to provide any animal in his or her charge or custody as owner or otherwise with proper food, drink, shade, care, or shelter. Any animal kept outside shall be provided with structurally sound weatherproof enclosure, large enough to accommodate the animal. (see also K.S.A. 21-6412(a)(3), but “knowingly” failing to provide).
- Drive or overwork an animal.
- Abandon any animal (12 hours in some cities) (see also K.S.A. 21-6412(a)(2)).
- Willfully or maliciously kill, maim, disfigure, torture; beat with a stick, chain, club or other object; mutilate, poison, burn or scald with any substance; or otherwise cruelly set upon any animals. (see also K.S.A. 21-6412(a)(1) “knowingly and maliciously,” or (a)(5) “knowingly but not maliciously” and (a)(6) poisoning – felony).

➤ Tethering

➤ Hot cars

➤ Animal Fighting (see also K.S.A. 21-6414)



Neglect: Community Resources

- ❖ Talk to/notify pet owner of suspected neglect.
- ❖ Have a community resources sheet, provide to pet owner. Alternatively, contact community resource groups.
 - ❖ Spay and Neuter Kansas City 816-353-0940 (MO)
913-662-2005 (KS)
 - ❖ Friends of Kansas City Animals friendsofkcanimals.com
 - ❖ Great Plains SPCA 913-831-7722
 - ❖ Unleashed Pet Rescue 913-831-7387
- ❖ Contact Animal Control/Law Enforcement



Questions?

