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Legal Alert

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Clearing Up the Confusion about Recent ADA Changes Regarding Animals for the Disabled

A September, 2010 publication in the Federal Register addressed, among other issues, the expected application of the Americans with Disabilities Act (ADA) to animals used by disabled persons. The document seems to have caused confusion in the residential rental housing industry. The purpose of this article is to clarify the difference in the application of the ADA and the Federal Fair Housing Act (FHA) to residential properties.

The publication is cited as the ADA's Title III: Final Rule amending 28 CFR part 36: Nondiscrimination on the Basis of Disability by Public Accommodations in Commercial Facilities. It included a definition of "service animal" which focused on dogs trained to do work or perform tasks for disabled persons. In section 36.302(c), paragraph 9, it specified for the first time that trained miniature horses would also be expected to be treated as service animals under the ADA. Finally, it gave examples of work or tasks service animals would assist with. It also stated that: "*The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.*"

The last sentence of the rule caused many residential landlords to think that they no longer had to allow companion or emotional support animals to reside with disabled tenants. It is important to understand that the FHA, which allows disabled residential tenants to house service, assistive, or support animals on-site has not changed. The final ADA rule cited above, relates only to the *public* and their access to the *public areas* of an otherwise private property - for instance, the rental office. Residential landlords should continue to provide reasonable accommodations for their disabled residents and guests, upon request, including but not limited to, allowing a disabled resident to have a companion or emotional support animal when needed.

For more information on this topic, please contact our Fair Housing Department at 800.338.6039.

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