

## Q&A - Service Animals and Emotional Support Animals in Single Family Homes Used as Vacation Rentals:

### ADA and FHA Implications

**1. Q: Does the Americans with Disabilities Act (ADA) apply to single family homes that rent their property on a weekly basis (e.g. beach house)?**

**1. A:** The ADA does not typically apply. On the other hand, if a property management company rents out units or houses and the tenant does not rent a specific unit (they take whatever is available when they show up – like a hotel) the ADA may apply – see 36.104 from the Department of Justice 2010 Title III ADA Regulation- Definition of place of public accommodation – Place of Lodging. The ADA would apply if factors 1-4 are present:

- (1) On- or off-site management and reservations service;
- (2) Rooms available on a walk-up or call-in basis;
- (3) Availability of housekeeping or linen service; and
- (4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.

If the ADA applies, then service animals must be allowed. Emotional Support Animals are not required to be accommodated in this scenario. It is important to note that this can apply to condo units used as short term rentals as well.

**2. Q: Does the Federal Fair Housing Act (FFHA) apply to single family homes when owners rent their property on a weekly basis (e.g. beach house)?**

**2. A:** Under the FFHA single family homes that are rented on a weekly basis or longer term are exempt and FFHA regulations do not apply.

However, it is important to note that the exception only applies “if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in

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*The Northeast ADA Center is a member of the [ADA National Network](http://www.adata.org) funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0088). We provide information, guidance, and training on implementation of all aspects of the ADA. Our center is located at the Yang-Tan Institute at Cornell University. Our staff consists of individuals with and without disabilities who have extensive experience in the disability field.*

the business or selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person . . . “42 U.S.C. 3603(b) (1). Ultimately, if the homeowner is going through a rental agency or management company, the single family exception would not apply and the property would be covered under the FFHA.

If the FFHA applies, the housing provider would have to allow both service and emotional support animals as reasonable accommodations to a “No Pets” policy.

### **3. Q: What is considered a “dwelling” under the FFHA?**

**3. A:** The FFHA defines a “dwelling” as: *any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.*

The U.S. Department of Housing and Urban Development (HUD) enforces the provisions of the FFHA. HUD has not articulated a bright-line definition of a “dwelling”, stating instead that “on balance, the need to leave open the extent and scope of the terms defined in the Fair Housing Act outweighs the need to provide comprehensive examples in connection with this rule making.” While some people might feel that a month or more rental is more likely to meet the definition of a “dwelling”, because this question is so fact intensive on a case by case basis, the specific details of each rental must be taken into consideration.

The Third Circuit has addressed this issue in a few cases. In *United States v. Columbus Country Club*, 915 F.2d 877, 881 (3d Cir.1990), it held that a summer bungalow was a dwelling. *Id.* (“[T]here is no indication in the statutory language that Congress intended to limit coverage of the Act to year-round places of abode and exempt seasonal dwellings. To recognize a distinction based on seasonal residency would, as the government contends, create a broad exception to the Act that would permit, for example, residents in a private development of summer homes to lawfully exclude blacks from owning, renting or occupying the homes.”). The answer turns on whether the residents “intend to remain in the bungalows for any significant period of time and whether they view their bungalows as a place to return to.” *Id.*; see also *Lakeside Resort Enterprises, LP v. Bd. of Sup'rs of Palmyra Twp.*, 455 F.3d 154, 158 (3d Cir. 2006), as amended (Aug. 31, 2006) (“two factors determine whether a specific facility is a dwelling under the Fair Housing Act. First, we must decide whether the facility is intended or



designed for occupants who “intend to remain in the [facility] for any significant period of time.” Second, we must determine whether those occupants would “view [the facility] as a place to return to” during that period.”).

**4. Q: What is the definition of a service animal under the ADA?**

**4. A:** A 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 disability. Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals, whether wild or domestic, trained or untrained, are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual’s disability. It does not matter if a person has a note from a doctor that states that the person has a disability and needs to have the animal for emotional support. A doctor’s letter does not turn an animal into a service animal.

**5. Q: What is the definition of emotional support or therapy animals under the FFHA?**

**5. A:** While emotional support animals or comfort animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities. Even though some states have laws defining therapy animals, these animals are not limited to working with people with disabilities and therefore are not covered by federal laws protecting the use of service animals. However they are covered under the FFHA and must be part of a reasonable accommodation where the FFHA applies. In those cases a no-pets policy must be waived to accommodate the individual.

**6. Q: If the ADA applies am I allowed to ask for documentation regarding an individual’s disability status and/or verification that the animal is actually a service animal?**

**6. A:** Titles II and III of the ADA makes it clear that service animals are allowed in public facilities and accommodations. A service animal must be allowed to accompany the handler to any place in the building or facility where members of the public, program participants, customers, or



clients are allowed. Even if the business or public program has a “no pets” policy, it may not deny entry to a person with a service animal. Service animals are not pets. So, although a “no pets” policy is perfectly legal, it does not allow a business to exclude service animals.

When a person with a service animal enters a public facility or place of public accommodation, the person cannot be asked about the nature or extent of his disability. Only two questions may be asked:

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

These questions should not be asked, however, if the animal’s service tasks are obvious. For example, the questions may not be asked if the dog is observed guiding an individual who is blind or has low vision, pulling a person’s wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability.

A public accommodation or facility is not allowed to ask for documentation or proof that the animal has been certified, trained, or licensed as a service animal. Local laws that prohibit specific breeds of dogs do not apply to service animals.

A place of public accommodation or public entity may not ask an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees. Entities cannot require anything of people with service animals that they do not require of individuals in general, with or without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal

**7. Q: If the FFHA applies, am I allowed to ask for documentation regarding an individual’s disability status and/or verification that the animal is actually a service animal or emotional support/therapy animal?**

**7. A:** A landlord or homeowner’s association may not ask a housing applicant about the existence, nature, and extent of his or her disability. However, an individual with a disability who requests a reasonable accommodation can be asked to provide documentation from a professional so that the landlord or homeowner’s association can properly review the accommodation request. They can ask a person to certify, in writing, (1) that the tenant or a member of his or her family is a person with a disability; (2) the need for the animal to assist



the person with that specific disability; and (3) that the animal actually assists the person with a disability.

**8. Q: What if a service animal or emotional support/therapy animal causes damage to the rented home?**

**8. A:** If a service animal or emotional support/therapy animal causes damage to the rented home, the owner has the right to withhold from the security deposit the amount of those damages. It is important to note that additional fees above and beyond the standard security deposit cannot be charged for the service animal or emotional support/therapy animal. Additionally, the homeowner has the right to restrict animals from sitting or lying on furniture or bedding that is typically designed for human use unless a service animal specifically has need of proximity to perform its task such in the case of a seizure or diabetic alert animal.

