



Faithful Companion vs. Service Animal – What’s the Big Deal?

BY JOHN H. PENTECOST

If your park rules and regulations do not currently address pet restrictions and pet conduct rules, amend them. Enforce your pet rules in a consistent, but nondiscriminatory manner. Why do this? If your rules are unclear, then you may leave yourself open for potential issues and lawsuits. You should also make it clear that all “animals” in the park are subject to the park’s pet conduct rules, as “service animals” are not considered “pets.” Pet problems can range from the traditional loud barking dog to the more serious issue involving dogs attacking other dogs or attacking and even biting park residents. However, even service dogs and companion animals must still comply with the pet conduct rules.

What Is A Service Animal?

There is a “gray” area when it comes to the definition of a “service animal” and a “companion animal,” and you want to proceed with caution when querying a resident about this. The U. S. Department of Justice defines “service animals” as *dogs that are individually trained to do work or perform tasks for people with disabilities*. The rules promulgated under the Federal Americans with Disabilities Act (ADA) state that a *service animal is 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*. According to the Department of Justice, you may ask if the animal, typically a dog, has received any special training and, if so, a description of that special training. You may not ask about the person’s disability. Further, access laws in the United States, including ADA, permit people who have service animals, e. g. , guide dogs, to be accompanied by their service

animals everywhere the general public is allowed - basically all areas of public accommodation. However, the ADA regulations further provide, “In the final rule, the Department has retained its position on the *exclusion of emotional support animals from the definition of ‘service animals.’*” These regulations suggest that “companion” dogs are not within the definition of service dogs—at least under the ADA.

What is An Emotional Support Animal (A.K.A. Companion Animal)?

Generally speaking, an “emotional support animal” (ESA) is a “companion animal” that provides therapeutic benefit, such as alleviating or mitigating some symptoms of the disability, to an individual with a mental or psychiatric disability. They are typically dogs or cats and the person who requires their service must have a confirmed disability as defined by a medical professional. These animals, however, **do not require specific training**.

Homeowners often argue that their “companion” dog or cat should be allowed access to the Community as a reasonable accommodation under the Federal Fair Housing Act Amendments (FHAA) for their or family member’s disability. Some residents attempt to “sidestep” size and breed restrictions by arguing that their pets qualify as either “service animals” under the Federal ADA or a “companion dog” under the Unruh Act and the Federal FHAA. This may present a real issue for the park and the park owner should proceed with caution.

Why Should A Park Owner Proceed With Caution?

Generally, any person or entity engaging in prohibited conduct – i. e. , refusing to make reasonable accommodations in rules, policies,

practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable. “A request for a reasonable accommodation may be denied if providing the accommodation is unreasonable, i. e. , if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider’s operations.” Depending on the exclusions of the park’s general liability policy, a park owner may be able to have its insurance carrier write a letter stating that the park’s insurance will be canceled, for instance, if there is an “aggressive dog breed” allowed in the park, thereby potentially creating an *undue financial burden* on the park. You must consider all requests for reasonable accommodation and each should be dealt with on a case by case basis.

You must comply with the applicable laws and regulations as they relate to reasonable accommodations for “companion animals” and “emotional support animals,” and you should address each request individually, promptly and fairly, based on its own factual scenario. When in doubt, reach out to your park attorney for counsel and advice.



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