

Is Freddie the Frog an assistive animal for residents with disabilities?

In September 2010 the United States Department of Justice issued new regulations for Title II and Title III of the Americans with Disabilities Act (ADA). Those regulations clarify when and what kind of animals can be considered support animals under those laws. Since the publication of these regulations there have been numerous questions as to whether those standards apply to situations involving housing.

The simple answer is no.

Non-discrimination in housing is directly governed by federal, state and local Fair Housing laws. While the ADA may impose some additional non-discrimination requirements for certain kinds of housing, such as public housing and federally subsidized housing, the fundamental non-discrimination obligations are still set out in the Fair Housing Act. The authors of the Title II and Title III rules clearly recognized that the primary obligation of housing providers is to comply with the Fair Housing Act and not the lesser requirements established by the new rules. Specifically, the commentary to the rules state:

*Although in many cases similar provisions of different statutes are interpreted to impose similar requirements, there are circumstances in which similar provisions are applied differently because of the nature of the covered entity or activity or because of distinctions between the statutes. For example, emotional support animals that do not qualify as service animals under the Department's title II [and title III] regulation may nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct and the ACAA. . . Public entities that operate housing facilities must ensure that they apply the reasonable accommodation requirements of the FHAct in determining whether to allow a particular animal needed by a person with a disability into housing and may not use the ADA definition as a justification for reducing their FHAct obligations.*

Following the publication of these regulations, there are now two standards for what kind of animal must be permitted, depending on what kind of entity and service is involved.

In housing, the United States Department of Housing and Urban Development (HUD) has consistently taken the position that any animal, including untrained animals needed for emotional support, may be required as a reasonable accommodation if a property has evidence that the resident may need the animal in order to have an equal opportunity to use and enjoy a dwelling. Under these standards, the issue has never been what kind of animal can be permitted, but only does the resident need that particular animal and is it reasonable to permit it?

Animals that have been considered “assistive animals” or “service animals” under the Fair Housing Act have, in some circumstances, included cats, dogs, fish, snakes, pot belly pigs, miniature horses, monkeys, iguanas and other species. Whether any of these animals will qualify in a particular case will depend upon the housing provider’s situation, the needs of the tenant with disabilities, and an individualized assessment based on the totality of the circumstances.

Under the new Title II and Title III rules, service animals will include only individually trained dogs and, in some circumstances, miniature horses, that perform tasks specifically related to the handler’s disability. *These rules do not apply to housing.* They do apply to places of public accommodation, such as rental offices and other areas of the property that are routinely made available to members of the public. They also apply to governmental services and programs, other than housing, that are required to be made available to persons with disabilities.

Properties that have doubts as to whether a particular animal must be permitted are strongly encouraged to contact legal counsel before excluding any animal requested by a person with a disability. As to Freddie the Frog – it all depends.