

## WHEN DINING WITH A MINIATURE HORSE...

### UNDERSTANDING THE LAW REGARDING SERVICE AND ASSISTANCE ANIMALS

By M. Francesca Passeri, Esq,  
July, 2016

It is a generally accepted rule that animals are prohibited from being in many public areas. Similarly, most condominium and homeowner associations in Florida restrict housing occupancy to eliminate some or all pets. However, state and federal laws do allow persons with a disability to reside with and bring their service and assistance animals into their homes and to places of public accommodation. These animals are not considered pets and are exempt from being excluded from housing and public accommodations. Service animals, while working and often when in training, are allowed in the workplace, public schools, and on public and private modes of transportation. Emotional support animals, comfort animals and therapy dogs are not considered service animals as they do not have special training to perform tasks designed to assist or support a person with their disability. Service animals and emotional support animals are referred to collectively in this article as “working animals”.

#### AMERICANS WITH DISABILITIES ACT

The two federal statutes that apply to working animals are the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA). Under the ADA, a service animal means any dog or miniature horse that is 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. Examples of the types of work and tasks performed by these animals for a disabled person would include: guiding people with low or no vision; alerting people who are deaf or hearing impaired; pulling a wheelchair; retrieving objects; assisting a person during a seizure or other medical event; reminding a person with mental illness to take their medications; and calming a person with a neurological or psychiatric condition.

The law prohibits a person from being asked about the nature or extent of his or her disability if it is readily apparent. There are only two questions which are permitted to be asked: 1) is the animal required because of a disability? 2) what work or task has the animal been trained to perform? The public accommodation may not ask for documentation that the animal is certified to perform service work or impose any fee or deposit upon a service animal that is not applied to other individuals, with or without pets. Violations of Titles II and III of the ADA can be filed as private lawsuits in federal court or directed to the U.S. Department of Justice.

Service animals must be housebroken and their handler must be able to control their behavior so that it doesn't disrupt or pose a threat to the health or safety of others. Properly trained service animals should focus on their handler, possess an even temperament, remain quietly at their handler's side when not performing a task, ignore distractions, respond to their handler's commands, walk on a leash, and not exhibit aggression toward other people and animals. If the handler is unable to control a service animal, it may be rightfully removed from the environment. Examples of unacceptable behavior by a service animal would be uncontrollable barking or growling, jumping on people, or running away from its handler. An

animal that regularly displays these behaviors may be permanently excluded from the public or housing accommodation. Service animals may also be excluded from a public accommodation if the entity would be required to fundamentally alter the nature of its services, goods, programs or activities. However, this situation rarely occurs and the entity is usually able to make a reasonable accommodation which would allow the disabled person to participate in its offerings through the use of a service animal.

The Air Carrier Access Act (ACAA) is a federal law which allows service animals and some emotional support animals to travel in the cabin of commercial air carriers. In the case of service animals, the air carrier may ask the passenger what functions or tasks the animal performs for the passenger. Dogs, miniature horses, pigs and moneys all qualify as service animal breeds under the ACAA. The airline may regulate the presence of these service animals in the cabin depending on the animal's size and weight, country of origin, and whether the presence of the animal would pose a direct threat to the health and safety of others or cause the cabin service to be fundamentally altered. It is the duty of the air carrier to make arrangements within the cabin to accommodate the concern of other passengers for their safety or risk of an allergic reaction to the animal. If the animal is an emotional support animal, the traveler must provide the air carrier with documentation of the passenger's mental health-related disability in the form of a letter from their treating licensed health professional in advance of their travel date.

#### FAIR HOUSING ACT

The federal Fair Housing Act (FHA) applies to discrimination in housing, including privately-owned housing and federally assisted housing, with a few limited exceptions. A person is handicapped for the purposes of the FHA if he has a physical or mental impairment which substantially limits one of more major life activities, a record of such impairment, or is regarded as having such impairment. The FHA covers "assistance animals" which includes both service animals under the ADA and emotional comfort or therapy animals. The FHA does not require assistance animals to be individually trained or certified. To prevail in a claim that the FHA has been violated, the aggrieved individual must: 1) establish the existence of a disability or handicap; 2) request a reasonable accommodation; 3) that the accommodation is necessary for him to have the opportunity to use and enjoy his dwelling; and 4) have the housing provider deny the requested accommodation. There must be a nexus between the requested accommodation and the person's disability. A delay in making a decision concerning the requested accommodation can be a constructive denial. The housing provider's request for additional information regarding the person's disability, proof of certification of the animal as a service animal, or other information which is not required by law, can result in a judicial finding of a constructive denial of the accommodation and a violation of the FHA. The housing provider is allowed to refuse to allow service or assistance animals if making such an accommodation would pose an undue administrative or financial burden or fundamentally alter the nature of the provider's operations.

#### FLORIDA LAW ON PUBLIC AND HOUSING ACCOMMODATIONS

Florida Statute §413.08 pertains to the use of service animals by individuals with a disability in the realm of housing and public accommodations and mirrors the ADA. Under Florida law, a person with a disability is defined as a person who has a physical or mental

impairment that substantially limits one or more major life activities of the individual (self-care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working) or a mental or psychological disorder that meets one of the diagnostic criteria specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Mental disorders would include intellectual or developmental disability, organic brain syndrome, traumatic brain injury, post-traumatic stress disorder, or emotional or mental illness. A “service animal” is a dog or miniature horse trained to perform tasks or work for an individual with a disability which work or tasks must be directly related to the person’s disability. Service animals are permitted to accompany a disabled person to all area and places of public accommodation that the public or customers are permitted to occupy. A “public accommodation” for the purposes of Florida law means most modes of transportation, hotels and lodging places, place of public accommodation amusement or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

However, the Florida law separately defines “housing accommodation” as “any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.” A disabled person may not be required to pay extra compensation for the service animal in the form of a deposit or surcharge. The service animal must be under the control of its handler. The individual with a disability is responsible for the care of his/her service animal, providing proof of vaccination compliance, and for any damage caused by the animal. It is prohibited for a public accommodation (the statute is silent as to housing accommodations) to ask about the nature or extent of a person’s disability, but may inquire whether an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform. Any person, firm or corporation providing housing accommodations or the agent of any person, firm or corporation who discriminates against an individual with a disability, commits a second degree misdemeanor. Similarly, any person who knowingly or willfully misrepresents herself or himself as using a service animal or being a handler of a service animal commits a second degree misdemeanor.

The Florida Fair Housing Act makes it unlawful to discriminate in the rental, sale, terms, privileges, conditions or privileges in the sale or rental of a dwelling based on a person’s handicap. Specifically, F.S. §760.23 makes it unlawful to “otherwise make unavailable or deny a dwelling to any person because of . . .handicap.” Discrimination, as defined by the statute means “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” What constitutes a reasonable accommodation is a fact specific analysis which may vary from case to case. An accommodation is not reasonable if it would fundamentally alter the nature of the housing provider’s operations or would impose an undue financial and administrative burden. In the 2014 Florida case of Sabal Palms Condominiums of Pine Island Ridge Association, Inc. v. Fischer, the Court found that the condominium association’s refusal to allow a resident with multiple sclerosis to keep a service dog in her unit was unreasonable, and the board’s president was found personally liable for violation of the federal Fair Housing Act by voting against allowing the dog and initiating a lawsuit against the disabled individual to require removal of the animal. The Court reasoned that the nature of the

condominium association's role was to provide housing which it would still be able to do after allowing the service dog to remain on the property. Size, breed and weight limitations are not factors to be imposed upon working animals. In the case of Warren v. Delvista Towers Condominium Association, Inc. (2014), a resident requested a pit bull be allowed to reside in his unit as an emotional assistance animal. The association argued that since the dog breed was banned by local ordinance, the request was unreasonable. The Court held that to the extent that the Miami-Dade County breed ban came into direct conflict with federal law, the local law was preempted. The case may have been decided differently if the animal's behavior posed a direct threat to health and safety and its owner was unable to lessen or eliminate the threat.

Provisions of the Florida Fair Housing Act are enforced by the aggrieved party filing a written complaint with the Florida Commission on Human Relations within one year of the alleged discriminatory conduct. The commission will investigate the complaint and refer the issue to a local fair housing agency for action. If voluntary compliance with the law is not achieved within 180 days of filing the complaint, the commission will authorize the aggrieved party to commence a civil suit. If the commission finds that a discriminatory housing practice has occurred, the aggrieved person can consent to the Florida Attorney General filing an action in the name of the state and on behalf of the affected individual. The court may impose a fine of \$10,000 for a first violation, \$25,000 for a second violation within the preceding five years, and up to \$50,000 for two or more violations within the preceding seven years. Additionally, the commission shall be entitled to reasonable attorney fees and costs as the prevailing party. The law also provides for resolution of violation by administrative hearing.

### CONCLUSION

It may not be readily apparent that an animal unexpectedly found in a public place is actually working for its handler. If you see a dog at the workplace, or a miniature horse pulling a person in a wheelchair through a restaurant, or a cat residing in a condominium unit which has a "no pets" policy, you may be witnessing a working animal in action. Working animals provide much needed assistance to their human companions with disabilities and their presence in public accommodations or housing is legally protected so that a disabled person may enjoy the benefits of housing and public accommodations to an equal extent as non-disabled persons.