

# Homeowner Associations and Service Animals in Common Areas Part 1: ADA Considerations

## In the Dirt: A Real Estate Legal Update

By Elizabeth Lum on February 8, 2022

Service animals or service dogs in common areas of a homeowners association or condominium association have ADA considerations.

Most residential homeowners and condominium associations have restrictive covenants or rules regulating the size, number or types of pets owners may keep in their residences.

Some associations may prohibit pets in the common areas or amenities. Associations regularly enforce these restrictions by issuing notice to owners who are in violation requiring the owners to take some kind of corrective action.

Sometimes owners respond that the animal is a service animal and therefore the owners are not required to comply with applicable restrictions, rules or regulations.

### ADA and Service Animals - Reasonable Accommodation

Homeowners associations are subject to the Americans with Disabilities Act (ADA) to the extent that such associations own, operate, and maintain common areas and amenities which are open to the public or dedicated to the use of the residents within the community. Therefore, the association is required to provide reasonable accommodations within the common areas once a request has been made.

Often, the request for reasonable accommodation related to a support animal is presented after a notice of violation has been issued. If a resident responds to a notice of violation with a statement that the animal in question is a support animal, the response should be treated as a request for reasonable accommodations.

An association is not required to provide reasonable accommodations unless a request is made.

### What Qualifies as a Service Animal According to the ADA?

A service animal is defined by the ADA as “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.”

If the animal is not a dog, it is not a “service animal” as defined by the ADA. However, some jurisdictions include other animals, such as miniature horses, in the definition of service animals and associations are advised to check their local statutes and ordinances.

### Requesting Service Animal Documentation from a Homeowner

Under the ADA, the association’s inquiry as to whether the animal is a support animal is limited to two questions:

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

If the disability is readily apparent, but the need for the animal is not, the housing provider may ask for information about the disability-related need for the service animal, such as verification from a licensed health professional, or verification that the animal is in good health and current on its vaccinations.

An association may not ask for a service animal’s certification or training papers or ask directly whether a person has a disability or the extent of the disability.

### Additional Requirements for Service Animals in Common Areas

Even though service animals may be allowed in common areas as a reasonable accommodation, the service animal is required to be under the control of its handler.

A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal’s effective performance of its work, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals or other effective means).

An individual with a service dog may be asked to remove the animal from the premises if the animal is out of control and the owner does not take effective action to control it.

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The ADA does not require accommodations or “emotional support” or “assistance animals” as those are defined by the Fair Housing Act (FHA). Stay tuned for more on the FHA in our next article.

**Read Part 2: Homeowner Associations and Service Animals in Common Areas Part 2: FHA Considerations**

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