

The Legal Center for People
with Disabilities  and Older People

Colorado's Protection & Advocacy System

**KEEPING YOUR SERVICE ANIMAL WITH YOU IN YOUR HOME.
A GUIDE FOR PERSONS WITH DISABILITIES IN COLORADO WHO BENEFIT,
OR MAY BENEFIT, FROM THE ASSISTANCE OF A SERVICE ANIMAL**

[In some cases, different rules or laws will apply regarding "public accommodations".
This paper covers only housing issues.]

This guide is not legal advice. It is intended as an informational introduction to the topic of service animals in housing. Anyone anticipating or experiencing disability discrimination should contact an attorney or advocate with expertise in disability discrimination law.

Prepared by the Protection and Advocacy for Individual Rights Program at The Legal Center for People with Disabilities and Older People.

A REMINDER: ALL LAWS ARE SUBJECT TO CHANGE AT ANY TIME.

1. What laws apply?

Four federal laws and one state law protect persons who need the assistance of a service animal from disability discrimination. Colorado statutes protect the use of "assistance dogs" that aid persons with physical disabilitiesⁱ.

The laws are: The Fair Housing Act Amendments of 1988 (FHA), the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (Section 227), and Colorado statutesⁱⁱ.

2. What is a service animal?

Under federal law a service animal is a dog or any other animal individually trained to provide assistance to an individual with a disabilityⁱⁱⁱ. State law, however, protects only a person's right to the services of a *dog*, "specially trained for that person." Although a service animal's guardian may also consider their animal a pet, the law makes a distinction between "service animal" and "pet". Companionship may be a *service* provided by the animal, but the laws discussed in this guide do not recognize the term "companion animal." The term 'service animal' helps to avoid confusion and includes animals providing companionship.

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Other than specific training to provide assistance to an individual with a disability, there is no minimum training required to qualify an animal as a service animal. Companionship is among services that inherently require no training.

3. Will I need to certify or license my service animal?

In the past, Colorado statutes made reference to "certification" of assistance dogs. These references have been removed. Currently in Colorado, there is no such thing as state certification of an assistance dog. The federal government does not certify service animals. Despite this, federal law governing federally-supported housing allows property managers or owners to request that a guardian "certify" that their service animal is in fact a service animal and that the animal has been trained for such purposes. This certification is your "word" that the animal has been appropriately trained.

If there is a conflict over a service animal, it is helpful (but not necessary) to have papers documenting that the animal was appropriately trained. It is also helpful to have physician's statements documenting the guardian's disability and the guardian's need for the service animal.

Given the appropriate training, animals are considered service animals regardless of whether they have been licensed by a state or local government.

It is a guardian's responsibility to obtain the licenses (different from "certifying") necessary for their animal, regardless of the "service" label. Under Colorado law, an individual with a physical disability may not be required to pay any licensing fees.

4. Who may have a service animal?

The laws protecting guardians of service animals protect only persons with disabilities. These laws protect persons whose disability substantially limits one or more major life activities. In the event of a dispute over whether a person is covered by a specific statute, it is very helpful to have medical documentation of a disability and a physician's statement that the guardian requires the services of the animal.

5. What types of housing are affected by the service animal laws?

Apartments are covered by the service animal laws. This includes federal and state subsidized housing. Privately owned homes and townhomes may be covered if housing covenants or zoning laws prohibit persons with disabilities from having service animals in their homes.

6. Are extra charges allowed such as deposits, fees, or increased rent?

No. Not if the animal is trained to provide assistance to an individual, and is providing that service. An exception to this rule is when a guardian fails to clean up animal waste. The property manager may fine a person who fails to clean up after his or her animal. The property manager may initiate other proceedings against a guardian, including eviction proceedings, if the guardian fails to meet his or her obligations.

Importantly, if an animal is not acting as a service animal, federal regulations may still limit the amount of charges, fees, or deposits.

7. Who is responsible for the service animal's behavior?

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The service animal's guardian is always responsible for the service animal's behavior.

8. What are specific responsibilities of a service animal's guardian?

- License the animal if your local municipality requires it.
- Clean up after your service animal.
- Keep your service animal under control and on a leash if appropriate.
- Keep your service animal from making too much noise.
- Provide for your service animal's health and safety.
- Keep records of your service animal's medical treatment, vaccinations, spaying or neutering, and names of those who may assist with the animal's care in an emergency.
- Keep records of all training, including general training and training specific to your service needs.

If a service animal's guardian cannot keep their animal from annoying or threatening neighbors, the property manager may attempt an eviction.

9. How do I request that my service animal stay with me when my landlord, housing association, or property manager tells me that I may not have my service animal live with me--or that I must pay an extra amount?

Write a letter to the property manager, and send it by certified mail (if time allows), since this will give you proof that the manager received your letter. The FHA requires property managers to make a "reasonable accommodation" to persons with a disability so that they may fully and equally enjoy their home^{iv}. The letter should include the following:

- request a reasonable accommodation under the Fair Housing Act.
- describe disability-related limitations.
- describe the accommodation requested: keeping the service animal, and/or not paying an extra fee.
- describe how the service animal will provide assistance.
- describe how the service addresses disability-related limitations.
- describe how this service is necessary to fully use and enjoy your home.
- describe how the service animal is adequately and appropriately trained, or whether the animal inherently possesses the skill necessary to provide service.
- describe how you will be responsible for the service animal's noise, waste, and cleanliness.
- inform the property manager that you will supply medical documentation regarding your limitations (and, if possible, supply medical documentation supporting your need for a service animal) upon his or her request.
- request a reply within a certain number of business days.
- date the letter.
- copy the letter and retain the copy for your records.

10. What can I do if my service animal is not permitted to accompany me in my home despite an appropriate, lawful request?

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You have administrative and court-oriented options. You may make a complaint to the Colorado Civil Rights Division, at 1-800-262-4845. You may make a complaint to the Fair Housing Enforcement Center, at 1-800-669-9777. If your housing is federally subsidized, you must make the complaint within one hundred and eighty days of the discrimination (the denial of permission to keep your service animal). If the housing is not federally subsidized, you must make a complaint within one year of the discrimination. These administrative agencies may be able to assist in helping both parties reach a settlement.

You do not need to make these complaints to pursue a remedy. You may sue in state or federal court. To do so, you should seek the assistance of an attorney who is familiar with disability discrimination law. Lawsuits must be brought within two years if there is no federal financial assistance involved, or if the lawsuit is brought under Colorado law. It may be possible to file a lawsuit regarding housing involving federal financial assistance within a three-year timeline, but a two-year timeline will assure meeting all filing deadlines for Fair Housing claims.

11. How do I avoid a conflict with my landlord, the property manager, or the homeowners association?

It is not always possible to avoid a conflict. However, two effective approaches include: Be diplomatic in your discussions about your need to keep your service animal, and take care of all of your responsibilities regarding the animal.

12. What agencies offer assistance?

The Colorado Cross Disability Coalition (Denver), 303-839-1775, TTY 303-839-0015

The Animal Legal Defense Fund (California), 707-769-7771

The Doris Day Animal League (Massachusetts), 202-546-1761

The Bazelon Center for Mental Health Law (Washington, D.C.), 202-467-5730, TTY 202-467-4232

The Delta Society (Washington), 206-226-7357, TTY 1-800-809-2714

ⁱ Colorado law provides for accompaniment by an assistance dog to persons, "with a disability, including but not limited to a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person. . ." Colo. Rev. Stat. § 24-34-803 (2002). The "not limited to" language in the statute may allow for a colorable claim that persons with mental impairments may benefit from the protections of the statute.

ⁱⁱ The FHA is at 42 U.S.C. § 3601, the ADA is at 42 U.S.C. § 12131, Section 504 is at 29 U.S.C. § 794, Section 227 is at 12 U.S.C. § 1701r-1, and the Colorado Revised Statutes are § 24-34-501, 502, 502.2, 803, 804 (2002).

ⁱⁱⁱ See U.S. Department of Justice, Civil Rights Division, Disability Rights Section publication, "Commonly asked questions about service animals in places of business".

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^{iv} 24 Code of Federal Regulations § 100.204 (2002).