

## **PROTECTIONS FOR SERVICE AND ASSISTANCE ANIMALS**

Individuals with disabilities may use service and assistance animals for a variety of reasons. This sheet was prepared by the DLIFLC/POM Legal Assistance Office to provide owners general information regarding federal and state laws' impact on service animals. Case-specific exceptions may apply to this information. As such, this document is not provided as legal advice and should not be used in place of consulting an attorney

### **Frequently Asked Questions:**

#### **Q1: What is an "Assistance Animal"?**

A: An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. The term "Emotional Support Animal" is interchangeable with Assistance Animal.

#### **Q2: What kind of animals can be Assistance Animals?**

A: While dogs are the most common type of assistance animal, other animals can also be Assistance Animals.

#### **Q3: What is the difference between an Assistance Animal and a Service Animal?**

A: A "Service Animal" is a 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. The provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition. "Assistance Animals" are required to perform the same types of work and tasks, however the type of animal can extend beyond a dog and the animal does not require individual training. Assistance and Service Animals have different protections under the law, and Assistance Animals are specifically protected under federal housing laws. However, Service Animals qualify under the broader category of "Assistance Animals."

#### **Q4: To what housing does Assistance Animal protection apply?**

A: Assistance Animals are allowed as reasonable accommodations for a disability in:

1. All dwellings not listed, below, under Q5.
2. Dwellings owned and operated by the Federal Government.
3. Dwellings which has been provided through Federal Government financial support.
4. Dwellings provided by the development/redevelopment of real property which was:
  - a. Purchased, rented, or otherwise obtained from a State or local agency; and

b. The State / local agency received Federal financial assistance for its development.

**Q5: To what housing does Assistance Animal protection not apply?**

A: The protections do not apply to:

1. Rooms or units in dwellings which contain living quarters occupied / intended to be occupied by no more than four families living independently of each other.
2. Any single-family house, sold or rented by an owner, under certain conditions.

**Q6: Who does federal housing law protect?**

A: The law protects buyers and renters of the housing from disability discrimination against themselves, those associated with them, or those who actually reside or intend to reside in the housing, after it is sold or rented.

**Q7: Must I request that the renter allow for the reasonable accommodation of an Assistance Animal?**

A: Yes.

**Q8: If a renter/seller knows that I, or a person associated with me, need an Assistance Animal to treat a disability, what can they not do?**

A: If the housing is available, they cannot tell you that the housing is not available for inspection, sale, or rental. They cannot discriminate in the sale or rental of the property, or otherwise deny or make it unavailable, because of the disability. They cannot refuse to change their “pets’ policy” to reasonably accommodate a service animal’s presence.

**Q9: What can a renter ask a person with an Assistance Animal to verify its authenticity?**

A: If the disability and Assistance Animal’s purpose are not readily apparent, the renter may ask two questions: 1) Does the person seeking to use and live with the animal have a disability; and 2) does the person requiring reasonable accommodation have a disability-related need for an assistance animal? The renter can ask for verification from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. The documentation is sufficient, if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

**Q10: Are there any exceptions to these protections?**

A: Yes. If the Assistance Animal poses a direct threat to the health or safety of other individuals or it might cause substantial physical damage to the property of others, it may not be allowed. Mere speculation or fear about the types of harm or damage an animal may cause, or harm or damage that other animals have caused, is not sufficient to determine a “direct threat” or the

possibility of substantial physical damage. Allergies or fear do not constitute a direct threat, as the animal and allergic or fearful party may be reasonably separated to mitigate the animal's impact. This assessment must be made upon the specific animal in question.

**Q11: Can a renter charge a “pet fee” for having an Assistance Animal present?**

A: No. They must waive it.

**Q12: Can a renter enforce a breed, size, or weight limit restriction on an Assistance Animal?**

A: No. They must waive it.

**Q13: Can a renter require that an Assistance Animal be certified or individually trained?**

A: No. For purposes of reasonable accommodation, there are no requirements that an Assistance Animal be individually trained or certified.

**Q14: Outside of the home, can a public entity or accommodation enforce that my Service Animal be leashed or tethered?**

A: Maybe. There are two conditions where the animal does not have to be tethered: 1) If the animal cannot perform its tasks while leashed or tethered; or 2) the handler is unable to use a leash or tether due to their disability. If a leash or tether is not used, the animal must be controlled in another manner (i.e. voice, signals, or other effective means).

**Q15: Outside of the home, what can a public entity or accommodation ask about a Service Animal to verify its authenticity?**

A: If the disability and Service Animal's purpose are not readily apparent, the entity/accommodation may ask two questions: 1) is the animal required for a disability; and 2) what work does the animal perform? The business cannot ask what the disability is (its nature) or the extent of the disability. They also cannot ask these questions when the disability and the Service Animal's purpose are apparent (i.e. blindness).

**Q16: Can a public entity or accommodation exclude a Service Animal from its property?**

A: It depends. Service Animals are allowed to accompany their handler in all areas of a public entity's or accommodation's facilities where members of the public, participants in services, and programs or activities are allowed. If the animal's behavior is in question, see Q10 (above). Further, the animal may be excluded if its behavior is out of control and it is unable to be returned to control, or if it is not housebroken. Even if you are an employee of a business, the Service Animal will not be allowed in areas specifically used for food preparation.

**Q17: Does federal law protect Assistance Animals' entry into public entities' facilities or public accommodations?**

A: No. However, it also does not prohibit their entry.

### ***California State Law***

#### **Q1: Do I have more or less protections for my Service Animal under California state law?**

A: Federal law provides the basis of protections for all state law protections. You cannot have less protections because of state law. However, the state can still require additional, non-discriminatory measures for animal control.

#### **Q2: My county/municipality requires all animals to have an identification tag and to pay a licensing fee. Do I need to get one for my Assistance Animal, and if so, do I need to pay any required fee?**

A: California provides for standardized identification tags for guide dogs, signal dogs, and service dogs. This tag is created to protect those using guide dogs, signal dogs, or service dogs from additional fees (such as a standard pet fee) for bringing their Service Animal into their residence. The state cannot require that a Service Animal have an identification tag to identify it as a Service Animal. However, the state can require a general license and charge a general licensing fee for a Service or Assistance Animal, as it would for any person's pet or animal.

#### **Q3: Are Assistance Animals protected, under California state law, regarding housing?**

A: Yes.

#### **Q4: Can I bring an Assistance Animal to work?**

A: It depends. If it meets the standards for a reasonable accommodation under the Americans with Disabilities Act, maybe. Employers may disallow access of an animal if it poses an undue hardship upon their business. However, separate laws and regulations govern an animal's access to areas where food is prepared.

#### **Q: What should I do if I believe that someone has discriminated against me?**

A: You may consult an attorney at the Legal Assistance Office or a civilian attorney to review the alleged discriminatory behavior. For housing issues, you are entitled to, without the assistance of an attorney, submit a complaint to the Secretary of Housing and Urban Development for referral to the appropriate investigatory agency and subsequent action. Alternatively, you may immediately file suit in civil court.