



**DISABILITY LAW  
COLORADO™**

Protecting the rights of Coloradans of all ages since 1976

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# **RESOURCE GUIDE: REQUIREMENTS FOR SERVICE & ASSISTANCE ANIMALS IN COLORADO**

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***Disability Law Colorado distributes this material for informational purposes only. It does not constitute legal advice. For further assistance, we suggest you contact the phone numbers/internet sites referred to in this publication, or seek the counsel of an attorney for your specific issue.***

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## INTRODUCTION

When it comes to the different classifications of animals that help people with disabilities, the law is quite complex and terminology can get confusing. This resource guide is intended to help you better understand the various classifications of animals that help people with disabilities, as well as the rights that attach to the person with a disability when they have each specific classification of animal. It is important to note up front that the rights of the person vary widely based on the setting in which the person wants to have the animal so please keep that in mind as you review the information within this resource guide.

### OVERVIEW OF THE CLASSIFICATIONS OF ANIMALS THAT HELP PEOPLE WITH DISABILITIES

**Service Animals** are defined by the Americans with Disabilities Act (ADA) as a dog or miniature horse that has been individually trained to do work or perform tasks for an individual with a disability.<sup>1</sup> Colorado shares the ADA's definition.<sup>2</sup> The task(s) performed by the service animal must be directly related to the person's disability.<sup>3</sup> *Thus, if an animal is not a dog or a miniature horse, it is not recognized as a service animal under either Colorado or federal law.*

A broader definition of "service animal" applies exclusively to air travel. The Air Carrier Access Act of 1986 requires carriers to permit "service animals" to accompany passengers with disabilities.<sup>4</sup> While the statute does not define the term "service animal," guidance issued by the Department of Transportation indicates that the term, in this specific case of air travel, is intended to extend to emotional support animals.<sup>5</sup>

**Assistance Animals** are animals that work, assist, or perform tasks and services for the benefit of a person with a disability or provide emotional support that improves the effects of a disability.<sup>6</sup> No training is required for assistance animals.<sup>7</sup> The term

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<sup>1</sup> 28 C.F.R. § 36.104.

<sup>2</sup> Colo. Rev. Stat. § 24-34-803.

<sup>3</sup> 28 C.F.R. § 36.104; 6 Colo. Code Regs. § 1010-2:1-202.

<sup>4</sup> 14 C.F.R. § 382.117.

<sup>5</sup> Guidance Concerning Service Animals in Air Transportation, 68 Fed. Reg. 24875 (May 9, 2003), available at [https://www.transportation.gov/sites/dot.gov/files/docs/20030509\\_1.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/20030509_1.pdf).

<sup>6</sup> U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>7</sup> *Id.*

assistance animal generally encompasses both service animals and emotional support animals (often referred to as companion animals).<sup>8</sup>

## **WHAT OTHER CLASSIFICATIONS OF ANIMALS ARE THERE?**

**Therapy animals** are animals that are taken to hospitals, schools and other facilities to provide therapy to the people there. For example, a therapy dog may visit patients at a children's hospital. The major difference with therapy animals is that their owners do not necessarily have disabilities. Instead, therapy animals visit people with disabilities to provide them a form of therapy. Therapy animals are not service animals and are not required to be allowed into places of public accommodation. Unless the person who owns the therapy animal also has a disability and a disability-related need for the animal, therapy animals are not required to be allowed in housing, either.

**Pets** are the final catch-all classification and include all animals that any person, with or without a disability, may have if they do not fall into one of the other categories. Pets do not have to be allowed in places unless the entity has a policy allowing pets – this applies regardless of the context.

## **WHAT IS A DISABILITY?**

Because the tasks performed by the service or assistance animal must be directly related to the disability of the person using that animal, that person must have a disability. Therefore, it is important to understand what qualifies as a disability. Under the ADA and related law, the term *disability* means:

- 1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; or
- 2) A record of such an impairment; or
- 3) Being regarded as having such an impairment.<sup>9</sup>

1) **Substantial Limitation:** This means that the individual has a physical or mental impairment that substantially limits one or more major life activities.<sup>10</sup> This is not meant to be a demanding standard, but should instead be construed broadly in favor of expansive coverage.<sup>11</sup> An impairment that is episodic or in remission is a

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<sup>8</sup> See U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>9</sup> 42 U.S.C. § 12102(2)(A).

<sup>10</sup> 28 C.F.R. § 36.104.

<sup>11</sup> Appendix A to 28 C.F.R. Part 36—Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities.

disability if it would substantially limit a major life activity when active.<sup>12</sup> Major life activities include activities such as caring for oneself and also include major bodily functions, such as bladder and brain functions.<sup>13</sup> Some examples of disabilities are cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes.<sup>14</sup>

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures (with the exception of “ordinary eyeglasses or contact lenses”).<sup>15</sup> As an example, a person with an amputated limb would still be substantially limited in a major life activity even though a prosthetic leg could cure their limitations.

2) **Record of Such an Impairment:** The term “record of such an impairment” means you have a history of, or have been classified as having, a mental or physical impairment that substantially limits one or more major life activities.<sup>16</sup> For example, someone who had cancer, but now the cancer is in remission would be considered a person with a disability under this prong of the definition.

3) **Regarded as Having Such an Impairment:** In order to determine whether a person is regarded as having a disability, the focus for establishing coverage is on how a person has been *treated* because of an impairment.<sup>17</sup> It is important to note that individuals who are qualified *only* under this prong are protected from discrimination, but are not entitled to reasonable accommodations – including service and assistance animals.<sup>18</sup>

You should visit [www.ada.gov](http://www.ada.gov) for additional information for determining whether you are a person with a disability who is covered under the ADA and related law.

## **ANIMALS IN STATE/LOCAL GOVERNMENT & PLACES OF PUBLIC ACCOMMODATION**

### ***WHAT LAWS APPLY TO STATE/LOCAL GOVERNMENT AND PUBLIC ACCOMMODATIONS?***

Service animals are covered under Titles II and III of the ADA, which include requirements that state/local government entities and places of public accommodation provide reasonable accommodations to patrons. Generally, Title II and Title III entities must permit service animals to accompany people with

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<sup>12</sup> 42 U.S.C. § 12102(4).

<sup>13</sup> 42 U.S.C. § 12102(2).

<sup>14</sup> 28 C.F.R. § 36.104.

<sup>15</sup> 42 U.S.C. § 12102(4)(E).

<sup>16</sup> 28 C.F.R. § 36.104.

<sup>17</sup> *Appendix C to 28 C.F.R. Part 36—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities originally published on July 26, 1991.*

<sup>18</sup> 42 U.S.C. § 12201(h).

disabilities in all areas where members of the public are allowed to go.<sup>19</sup> Furthermore, they may not give the person with a service animal a less desirable location or require that the animal remain outside as that would likely be considered discrimination. In addition, Colorado state law covers service animals under the Colorado Anti-Discrimination Act.<sup>20</sup> In Colorado, a service animal in training and its trainer enjoy the same privileges as a trained service animal.<sup>21</sup>

It is also a class 3 misdemeanor in Colorado to withhold, deny, deprive, interfere with or attempt to withhold, deny, deprive or interfere with a qualified individual with a disability who is accompanied by a service animal or a trainer of a service animal.<sup>22</sup> Violators can be subject to actual damages and attorney's fees. Willful and wanton violators are subject to treble damages.<sup>23</sup>

### ***WHAT ENTITIES DOES THIS INCLUDE?***

Title II of the ADA applies to ***state and local government***,<sup>24</sup> which includes: State legislatures, city halls, city councils, state and local agencies, state and local courts, state police, local police, and sheriffs, state and local prisons and jails, public medical or health facilities or clinics, state and local parks and recreation programs, public libraries and museums. Federal government entities are not covered by the ADA, however Section 504 of the Rehabilitation Act does prohibit federal entities from discriminating on the basis of disability as well.

Title III of the ADA applies to ***places of public accommodation***,<sup>25</sup> which are privately operated entities who own, lease, lease to, or operate facilities that are open to the general public, such as: places of lodging, establishments serving food or drinks, places of exhibition or entertainment, places of public gathering, sales or rental establishments, service establishments, stations used for public transportation, public displays or collections, places of recreation or exercise, colleges, universities, and social service centers.

Religious organizations are specifically excluded and therefore not subject to the ADA;<sup>26</sup> however, Disability Law Colorado would hope that these entities would allow service animals into their facilities in order to ensure equal access to individuals with disabilities who wish to attend their services and functions. That said, if another entity is using a church for their program, that program must comply

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<sup>19</sup> 28 C.F.R. § 36.302(c); 28 C.F.R. §35.136(a).

<sup>20</sup> Colo. Rev. Stat. § 24-34-803 (1).

<sup>21</sup> Colo. Rev. Stat. § 24-34-803 (2).

<sup>22</sup> Colo. Rev. Stat. § 24-34-804 (2).

<sup>23</sup> Colo. Rev. Stat. § 24-34-804 (3).

<sup>24</sup> 28 C.F.R. Part 35.

<sup>25</sup> 28 C.F.R. Part 36.

<sup>26</sup> 28 C.F.R. § 36.102(e).

with the ADA.<sup>27</sup> For example, if a school district is operating preschool program in a church, the school district is required to comply with the ADA. This could mean relocating the program if the church is not accessible and is not willing to make the changes so that it is accessible.

### ***WHAT TRAINING AND CERTIFICATION IS REQUIRED?***

By definition, service animals must be ***individually trained*** to perform a task for the person with a disability.<sup>28</sup> Although service animals are often trained by an official training organization, an individual may train their own service animal and there are no requirements for such training nor are there any licensing or certification requirements.<sup>29</sup>

### ***WHAT QUESTIONS CAN BE ASKED OF THE PERSON WITH A SERVICE ANIMAL?***

When an individual does not have an obvious disability or need for a service animal and they bring a dog (or miniature horse) into a state or local government entity or a place of public accommodation, two questions can be legally asked of the individual: **(1)** Is the animal required because of your disability? and **(2)** What task does it perform?<sup>30</sup> This means that the individual with a service animal cannot be asked any other questions, such as what their disability is, nor can they be asked to show the animal performing the task. Many disabilities are hidden disabilities and though the need for the animal may not be obvious, that does not mean that it is not a service animal. Furthermore, if the disability and the related need for the animal is obvious – such as a seeing eye dog – the business owner cannot even ask the two questions listed above and must allow the service animal access to the facility.<sup>31</sup> Finally, it is important to note that the person cannot be required to provide any documentation proving that the animal is a service animal.<sup>32</sup>

### ***WHEN CAN AN ANIMAL BE EXCLUDED FROM A STATE/LOCAL GOVERNMENT ENTITY OR A PUBLIC ACCOMMODATION?***

An animal – even a qualified service animal – can be excluded if it is (1) out of control and the animal's handler does not take effective action to control it, or (2) The animal is not housebroken.<sup>33</sup> This means that if a dog is defecating in the aisle

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<sup>27</sup> Appendix C to Part 36—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities originally published on July 26, 1991.

<sup>28</sup> U.S. DEP'T OF JUSTICE FREQUENTLY ASK QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA (July 20, 2015), available at [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html).

<sup>29</sup> *Id.*

<sup>30</sup> 28 C.F.R. § 36.302

<sup>31</sup> U.S. DEP'T OF JUSTICE FREQUENTLY ASK QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA (July 20, 2015), available at [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html).

<sup>32</sup> *Id.*

<sup>33</sup> 28 C.F.R. § 35.136; 28 C.F.R. § 36.302.

of a grocery store or sitting on the table in a restaurant to eat off of a plate, staff can ask that the animal be removed (though they still must offer their services to the person with a disability). However, this must be based on actual behavior of the animal, and may not be based on stereotypes or generalizations. Service animals must also be under control of the individual with a disability – either on a leash or under voice commands if a leash would interfere with the task the animal does – so the animal may be excluded if it is out of the control of the individual with a disability.<sup>34</sup>

The Department of Justice has consistently stated that breed restrictions do not apply to service animals.<sup>35</sup> If you live in a city that bans a certain breed of dog, this ban does not apply if your dog is a service animal. Thus, breed is not a legitimate reason to deny access to a service animal.

It should be noted that service animals are the only classification of animal for which places of public accommodation and government entities are required to provide access. This requirement does not extend to assistance animals, emotional support animals, therapy animals, or pets.<sup>36</sup> However, a place of public accommodation may allow these latter classifications of animals to be permitted if an individual requests it as a reasonable accommodation.

***WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST BY A PLACE OF PUBLIC ACCOMMODATION OR A STATE/LOCAL GOVERNMENT ENTITY?***

If you suspect you have been the subject of discrimination by a public accommodation or government entity, you have the right to file a complaint with the Colorado Civil Rights Division (CCRD) or Department of Justice (DOJ).

**Colorado Civil Rights Division**

1560 Broadway, Suite 1050  
Denver, CO 80202  
Phone: (303) 894-2997  
Toll Free: (800) 262-4845  
V/TTY: (711) 894-2997  
askdora.colorado.gov  
(click on File a Complaint)  
Satellite offices in Pueblo & Grand Junction,  
But all intakes through Denver Office

**U.S. Department of Justice**

ada.gov/filing.complaint.htm  
950 Pennsylvania Ave, NW  
Civil Rights Division  
Disability Rights Section - 1425 NYAV  
Washington, D.C. 20530  
Phone: (202) 514-4609  
Fax: (202) 307-1197  
V/TTY: (202) 514-0716

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<sup>34</sup> *Id.*

<sup>35</sup> U.S. DEP'T OF JUSTICE FREQUENTLY ASK QUESTIONS ABOUT SERVICE ANIMALS AND THE ADA (July 20, 2015), *available at* [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html).

<sup>36</sup> *Id.*

If your complaint is against a preschool, an elementary/secondary school, a college, a university, or a public library, you can also file a complaint with the U.S. Department of Education Office for Civil Rights (OCR).

**U.S. Department of Education  
Office for Civil Rights – Denver Office**

Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Telephone: 303-844-5695  
FAX: 303-844-4303; TDD: 800-877-8339  
Email: OCR.Denver@ed.gov

***You also have the option of filing a private lawsuit in state or federal court.***

***HOW QUICKLY MUST I FILE A COMPLAINT?***

The deadline to file a complaint with CCRD is **60 days**.<sup>37</sup>

The deadline to file a complaint with OCR is **180 days**.<sup>38</sup>

DOJ does not have a deadline; however, you should be aware that DOJ does not respond to all complaints and it is not unusual for a complainant to hear nothing with regards to the complaint they filed for a year or more.

***Should you decide to file a lawsuit, you have a statute of limitations (deadline) within which you must file. You should consult an attorney for specific timelines and exhaustion requirements.***

**ANIMALS IN PUBLIC PRIMARY & SECONDARY SCHOOLS**

***WHAT LAWS APPLY TO PUBLIC PRIMARY & SECONDARY SCHOOLS?***

Public K-12 schools must comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and the Individuals with Disabilities Education Act (IDEA).<sup>39</sup> Thus, in addition to the requirement to allow service animals under the ADA, schools also have an obligation to provide students with disabilities with a free appropriate public education under the IDEA.<sup>40</sup> This

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<sup>37</sup> Colo. Rev. Stat. § 24-34-604.

<sup>38</sup> U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS CASE PROCESSING MANUAL, available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

<sup>39</sup> 28 C.F.R. § 36.104; 29 U.S.C. § 794; 20 U.S.C. § 1400 et. seq.

<sup>40</sup> 20 U.S.C. §1401.

occurs through the development and implementation of an Individual Education Program (IEP), which is developed by an IEP team.<sup>41</sup> If the IEP team determines that the student needs a service or assistance animal in order to receive a free appropriate public education, that animal will need to be allowed to attend school with the student.<sup>42</sup> The IEP team would also have the ability to require that a staff person assist the student with the animal, but that would be based on the individual needs of the student as determined by the IEP team.

### ***CAN A SCHOOL BE REQUIRED TO PROVIDE ASSISTANCE FOR THE ANIMAL?***

An issue that comes up often in the K-12 school context is that the service animal must be under the control of the individual with a disability. It is not generally considered reasonable to require school staff to control or take care of the animal, so the student must be able to control and care of the animal by him/herself.<sup>43</sup> The exception to this would be if the student's IEP team determines that assistance is appropriate and necessary for that student as discussed above.

### ***WHAT IF SOMEONE ELSE IN THE SCHOOL HAS A SEVERE ALLERGY?***

Another common issue in this context is allergies of other students or school staff. The Department of Justice has made it clear that allergies are not a legitimate reason to deny access to a service animal and that entities must accommodate both the individual with the service animal and the individual with the allergy.<sup>44</sup>

### ***WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST BY A SCHOOL?***

If you suspect you have been the subject of discrimination by a public school, you have the right to file a complaint, with the U.S. Department of Education Office for Civil Rights or the Colorado Department of Education.

**U.S. Department of Education  
Office for Civil Rights – Denver Office**  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Phone: 303-844-5695  
Fax: 303-844-4303; TDD: 800-877-8339  
Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

**The Department of Justice**  
Detailed instructions available at:  
[ada.gov/filing\\_complaint.htm](http://ada.gov/filing_complaint.htm)  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights Section –  
1425 NYAV  
Washington, D.C. 20530

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<sup>41</sup> *Id.*; 34 C.F.R. § 300.321.

<sup>42</sup> *See Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 247 (2d Cir. 2008).

<sup>43</sup> 28 C.F.R. § 36.302(c).

<sup>44</sup> U.S. DEP'T OF JUSTICE SERVICE ANIMAL GUIDANCE (July 12, 2011), *available at* [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm).

**Colorado Department of Education**  
201 East Colfax Ave.  
Denver, CO 80203  
Phone: 303-866-6600; Fax: 303-830-0793

Phone: (202) 514-4609  
Fax: (202) 307-1197  
V/TTY: (202) 514-0716

### ***HOW QUICKLY MUST I FILE A COMPLAINT?***

The deadline to file a complaint with OCR is **180 days**.<sup>45</sup>

The deadline for filing with CDE is **1 year for a state complaint** and **2 years for a due process complaint**, which is more like a trial.<sup>46</sup> For additional information regarding these two types of complaint with CDE, please visit their website at <https://www.cde.state.co.us/spedlaw>. You may be required to file a claim with CDE before filing in court.

DOJ does not have a deadline; however, you should be aware that DOJ does not respond to all complaints and it is not unusual for a complainant to hear nothing with regards to the complaint they filed for a year or more.

***You may also have the option of filing a private lawsuit in state or federal court regardless of whether you file with an agency above. You should consult an attorney for specific filing deadlines and exhaustion requirements.***

## **ANIMALS IN HOUSING**

### ***WHAT LAWS APPLY TO HOUSING?***

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep assistance animals even when a housing provider's policy explicitly prohibits pets.<sup>47</sup> This protection extends to companion and emotional support animals, and service animals are also protected under the broad definition of assistance animals.<sup>48</sup> These animals are a type of reasonable accommodation under the Fair Housing Act and Colorado Law, and refusal to make reasonable accommodations in the sale or rental of a property is a form of illegal

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<sup>45</sup> U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS CASE PROCESSING MANUAL, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

<sup>46</sup> BRIEF OVERVIEW OF CDE SPECIAL EDUCATION DISPUTE RESOLUTION OPTIONS AVAILABLE UNDER THE IDEA, *available at* <https://www.cde.state.co.us/sites/default/files/documents/spedlaw/download/disputeresoptionstable-july2011.pdf>.

<sup>47</sup> U.S. DEP'T OF JUSTICE AND U.S. DEP'T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), *available at* [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>48</sup> *Id.*

discrimination.<sup>49</sup> There is no specific limitation on the number of animals that may need to be allowed, but is based on what is reasonable for that individual. Because assistance animals – including emotional support and companion animals – are a reasonable accommodation, housing providers *may not charge a pet fee or an additional security deposit for these animals.*<sup>50</sup>

### ***WHAT HOUSING IS COVERED UNDER THESE LAWS?***

Covered housing includes dwellings that are occupied as, or designed or intended for occupancy as, a residence by one or more families.<sup>51</sup> In some circumstances, the Fair Housing Act exempts owner-occupied buildings with no more than four units, single family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.<sup>52</sup> However, Colorado state law is more broad and defines covered housing as “any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership; except that “housing” does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.”<sup>53</sup> Thus, some housing may be covered under Colorado State law even though it is exempt from the Fair Housing Act.

### ***WHAT ARE THE TENANT’S RESPONSIBILITIES?***

A tenant must take care of the animal and it is not considered reasonable to ask the housing provider to assist with the animal’s care. The tenant also has an obligation to clean up after the animal and to ensure that the animal does not pose a *real* threat or a *significant* nuisance.<sup>54</sup> The tenant must also retain control over the animal, either by having it on a leash or under the control of voice commands. Furthermore, so long as management charges all tenants for damages, the tenant may be responsible for covering the cost of any damages to the property caused by the animal.<sup>55</sup>

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<sup>49</sup> 24 C.F.R. § 100.204; Colorado Revised Statutes § 24–34–501 through § 24–34–510.

<sup>50</sup> Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 4-13(b) (1998).

<sup>51</sup> 24 C.F.R. § 100.201.

<sup>52</sup> 24 C.F.R. § 100.10.

<sup>53</sup> C.R.S. § 24-34-501(2).

<sup>54</sup> See U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>55</sup> See U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT (May 17, 2004), available at <https://www.hud.gov/sites/documents/hudjojstatement.pdf>.

### ***WHEN CAN AN ANIMAL BE EXCLUDED?***

An animal can be excluded if it is an *actual* threat or a *significant* nuisance.<sup>56</sup> Exclusion cannot be based on generalizations or stereotypes.<sup>57</sup> Furthermore, assistance animals are not bound by weight, size, or breed restrictions.<sup>58</sup> This means, for example, that a Pitbull who is a legitimate service or assistance animal would need to be allowed despite the City of Denver’s breed ban. This also means that if a housing provider has a weight restriction for pets, the assistance animal is exempt from this policy.

### ***WHAT DOCUMENTATION CAN BE REQUIRED?***

An individual who desires to keep a service or assistance animal with them in their housing may be required to provide documentation of their disability and disability-related need for the animal. Proof of the individual’s disability should come from a medical provider, but proof of the benefit the animal provides can come from anyone “in the know” and does not necessarily need to come from a medical provider.<sup>59</sup> Furthermore, if the disability and related need for the animal are obvious, the housing provider may not request documentation of the disability or the need for the animal.<sup>60</sup> However, if the disability is obvious but the need for the animal is not, the housing provider may ask only for proof of the disability-related need for the animal.<sup>61</sup> Housing providers may also ask for proof that the animal has been vaccinated. They may not, however, require full access to the individual’s medical records, require proof of training or certification, or require that the letter from the medical provider is notarized.<sup>62</sup>

### ***SAMPLE DOCTOR’S LETTER FOR AN ASSISTANCE ANIMAL***

The text below is pulled directly from a letter written by a medical provider. Disability Law Colorado believes this is a satisfactory letter that provides the information required by the law, and suggests that individuals use this as an example when their personal providers are unsure as to what should be contained in a letter supporting the need for an assistance, companion, or emotional support

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<sup>56</sup> U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *See Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> U.S. DEP’T OF JUSTICE AND U.S. DEP’T OF HOUSING JOINT STATEMENT: SERVICE AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS (April 25, 2013), available at [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf).

animal. It is beneficial to have a current letter, meaning the letter was written within the past year. The two main components of a satisfactory letter are (1) that the person has a disability that substantially limits specific life activities, which are listed in the letter, and (2) identifies the disability-related need for the animal. However, as mentioned above, remember that this latter requirement can be satisfied by anyone “in the know” and does not necessarily need to come from a medical provider. Furthermore, the letter does not have to disclose the person’s actual disability, only that they are a person with a disability.<sup>63</sup>

*[Date]*

*To Whom it May Concern,*

*This letter is written at the request of [name redacted] and contains sensitive medical information. The original copy of this letter has been given to [name redacted] for the stated purpose of providing information in support of a companion animal. A ROI is on file. Release of this highly sensitive information should be limited to only those individuals with compelling need for access to this information.*

*[Name redacted] is my patient and has been under my care since [date redacted]. I am familiar with his history and with the functional limitations imposed by his disability. In my professional opinion, he meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.*

*Due to his disability, [name redacted] has certain limitations regarding social interaction and coping with stress. In order to help him manage these difficulties, improve his quality of life, enhance his ability to live independently, and to help him to fully use/enjoy the dwelling you administer, I am prescribing an emotional support animal that will hopefully assist [name redacted] in coping with his disability.*

*I am familiar with the professional literature concerning the therapeutic benefits of assistance/companion animals for people with disabilities such as [name redacted] experiences. If you need additional information to support this request or any other assistance, please contact me at [phone number redacted].*

*Sincerely,  
[Signature of provider]*

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<sup>63</sup> *Id.*

### ***WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST BY A HOUSING PROVIDER?***

If you suspect you have been the subject of housing discrimination, including if your housing provider or potential housing provider failed to provide reasonable accommodations, you have the right to file a complaint, or charge, with the Colorado Civil Rights Division (CCRD) or Department of Housing and Urban Development (HUD).

Make sure you are aware of deadlines for filing the charges that are listed below. Failure to file before the deadline may cause you to lose your right to file a claim or charge.

To file online with HUD, visit this link, and follow the instructions on the page:  
[http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination)

Learn more about the HUD complaint process, visit this link:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_op\\_p/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op_p/complaint-process)

Or contact:

#### **Colorado Civil Rights Division**

1560 Broadway, Suite 1050  
Denver, CO 80202  
Phone: (303) 894-2997  
Toll Free: (800) 262-4845  
V/TTY: (711) 894-2997  
askdora.colorado.gov  
(click on File a Complaint)

#### **HUD**

1670 Broadway  
Denver, CO 80202  
Phone: (303) 672-5151  
Fax: (303) 672-5004  
V/TTY: (303) 672-5022

### ***HOW QUICKLY MUST I FILE A HOUSING DISCRIMINATION COMPLAINT IN ORDER TO PROTECT MY LEGAL RIGHTS?***

The deadline for filing an administrative case with CCRD or HUD is ***one year***.<sup>64</sup>

***You also have the option of filing a private lawsuit in state or federal court without going through any administrative complaint process.*** The statute of limitations for bringing a fair housing complaint in federal court is ***two years***.<sup>65</sup>

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<sup>64</sup> Colo. Rev. Stat. § 24-34-504;

<sup>65</sup> 42 U.S.C. § 3613(a)(1).

## **ANIMALS IN A PERSON'S PLACE OF EMPLOYMENT**

### ***WHAT LAWS APPLY TO A PLACE OF EMPLOYMENT?***

Title 1 of the ADA requires employers with 15 or more employees to make reasonable accommodations for people with disabilities.<sup>66</sup> The Colorado Anti-Discrimination Act further requires that employers with fewer than 15 employees provide reasonable accommodations.<sup>67</sup> A reasonable accommodation is any change in the work environment or the way things are usually done that gives equal employment opportunities to a person with a disability.<sup>68</sup> One such reasonable accommodation is allowing a service animal or an assistance animal, which could include an emotional support or companion animal, to accompany the individual in the workplace. Therefore, employers must consider allowing an employee with a disability to have a service or assistance animal at work if that is the accommodation the individual requests.

### ***WHEN CAN AN ANIMAL BE EXCLUDED?***

An accommodation is considered reasonable if it is feasible and meets the need of the person with a disability without causing an undue burden or fundamental alteration for the employer.<sup>69</sup> An employer must make a reasonable accommodation for an employee with a disability unless the employer can show that the accommodation would cause an undue financial burden or hardship on the operations of its business, or that providing the accommodation would pose a direct threat to the health or safety of the employee or others.<sup>70</sup> Furthermore, the employer could offer the employee an alternative accommodation, as long as it is equally as effective as the individual's animal in mitigating the effects of their disability.<sup>71</sup> For example, if an employee requests that their emotional support dog be allowed to accompany them to work to help with anxiety in a brightly lit and crowded space, the employer could instead offer the individual a private office with lower lighting as a potentially acceptable alternative to having the animal.

### ***WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST BY MY EMPLOYER?***

If you suspect you have been the subject of employment discrimination, including if your employer failed to provide reasonable accommodations such as your request to have a service or assistance animal with you at work, please review Disability Law Colorado's "Employment Law Packet," available at

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<sup>66</sup> 29 C.F.R. § 1630.2.

<sup>67</sup> Colo. Rev. Stat. § 24-34-401.

<sup>68</sup> 29 C.F.R. § 1630.2.

<sup>69</sup> 29 C.F.R. §§ 1630.9 and 1630.15.

<sup>70</sup> *Id.*

<sup>71</sup> *Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act.*

<https://disabilitylawco.org/resources/fact-sheets>, which explains the relevant filing deadlines and entities with which to file a complaint.

***In most cases, you must file a sworn written statement (charge) with EEOC or CCRD before a private lawsuit may be filed in court. You must receive a right-to-sue letter from EEOC/CCRD prior to filing a private suit. For specific information regarding filing deadlines and exhaustion requirements, you should consult an attorney.***

## **ANIMALS IN AIR TRAVEL**

### ***WHAT LAWS APPLY TO AIRLINES?***

In the sole context of air travel, and with one exception noted below, the term “service” animal is inclusive of emotional support animals, because the term is statutorily defined in the Air Carrier Access Act of 1986.<sup>72</sup> Carriers must permit service animals to accompany passengers with disabilities.<sup>73</sup> A carrier cannot refuse to allow a “service” animal on a plane based on possible annoyance to the crew or other passengers.<sup>74</sup>

A credible verbal assurance from the passenger with a disability that the animal is a “service” animal generally constitutes sufficient documentation that the animal is a “service” animal.<sup>75</sup> Carriers are permitted to ask for documentation specifically for emotional support animals.<sup>76</sup>

Many carriers require 48 hours of advance notice that a traveler is bringing a “service” animal. However, this requirement must be waived if the carrier can accommodate the “service” animal by making reasonable efforts and without delaying the flight.<sup>77</sup>

The “service” animal must be allowed to sit with the passenger.<sup>78</sup> An airline cannot require a passenger traveling with a “service” animal to sit on the bulkhead row, but the passenger may choose to sit on the bulkhead row and the airline must provide this accommodation if requested.<sup>79</sup> If necessary, the carrier must offer the passenger the opportunity to move with the animal to another seat where both the

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<sup>72</sup> 14 C.F.R. §382.117.

<sup>73</sup> 14 C.F.R. § 382.117(a).

<sup>74</sup> *Id.*

<sup>75</sup> 14 C.F.R. § 382.117(d).

<sup>76</sup> 14 C.F.R. § 382.117(e).

<sup>77</sup> 14 C.F.R. § 382.27.

<sup>78</sup> 14 C.F.R. § 382.117(b).

<sup>79</sup> 14 C.F.R. § 382.81 (c).

passenger and animal can be accommodated, presuming such a seat exists on the plane.<sup>80</sup>

If a carrier refuses to accept an animal as a “service” animal, it must explain its decision to the affected passenger in writing within 10 days.<sup>81</sup>

### ***WHAT SHOULD I DO IF I BELIEVE I WAS DISCRIMINATED AGAINST BY AN AIRLINE COMPANY?***

If you suspect you have been the subject of discrimination during air travel, you can file a complaint with the U.S. Department of Transportation. Questions regarding this process should be directed to the Aviation Consumer Protection Division’s Hotline at (800) 778-4838.

#### **U.S. Department of Transportation**

Aviation Consumer Protection Division

1200 New Jersey Ave, SE

Washington, D.C. 20590

Phone: (855) 368-4200

Online Complaint Form:

<http://airconsumer.dot.gov/escomplaint/ConsumerForm.cfm>

***You may also have the option of filing a private lawsuit in state or federal court.***

### **Colorado’s Law Regarding Misrepresentation of an Animal**

During the 2016 legislative session in Colorado, House Bill 16-1426 was passed, with an effective date of January 1, 2017. The law addresses misrepresentation of both service and assistance animals. An individual must have first received a verbal or written warning regarding the fact that it is illegal to intentionally misrepresent an animal as a service or assistance animal prior to being charged under this law.

Furthermore, it is extremely important to note that this law does not trump federal law as laid out in the Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act. This is particularly important with regards to documentation requirements for assistance animals – including those that provide companionship and emotional support – in housing. Specifically, nothing about this law changes the documentation requirements for individuals who need assistance animals in housing – they still need proof of disability (if not obvious) and disability-related need (if not obvious), the latter of which does *NOT* have to come from a

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<sup>80</sup> 14 C.F.R. § 382.117(c).

<sup>81</sup> 14 C.F.R. § 382.117(g).

medical provider. However, if an individual is charged under this new law in the context of housing, providing a letter from a medical provider that supports both that the individual has a disability and a disability-related need for the animal serves as an affirmative defense for that individual.

Violation of this law is a class two petty offense, with a fine of \$25 for the first offense, a fine of \$50 to \$200 for the second offense, and a fine of \$100 to \$500 for the third offense.

### **Service & Assistance Animal Lawyer Referral List**

The attorneys listed below have identified themselves as having knowledge of the law regarding service and assistance animals. These attorneys embrace the following values in providing services and advocacy for people with disabilities:

- Empowerment;
- Self-determination;
- Independence; and
- Inclusion.

Disability Law Colorado neither receives nor pays any compensation from/to these attorneys for their placement on this list.

#### **Rathod | Mohamedbhai LLC**

2701 Lawrence St

Denver, CO 80205

(303) 578-4400

<http://www.rmlawyers.com/>

Specialties: Employment Law, Disability Discrimination, Civil Rights

#### **Law & Mediation Office of Phyllis A. Roestenberg, Esq.**

217 East 7<sup>th</sup> Ave.

Denver, CO 80203

<http://www.phyllisroestenberg.com/>

Specialties: Animal Law, Housing Law, Employment Law, Civil Rights Law

#### **The Animal Law Center**

730 W. Hampden Avenue, #304

Englewood, Colorado 80110

(303) 322-4355

<http://www.theanimallawcenter.com/>

Specialties: Animal Law Only

## **Additional Resources**

Disability Law Colorado Website:

<https://disabilitylawco.org/issues/category/service-assistance-animals>

ADA Service Animal Hotline: Phone: 1-800-514-0301 – TTY: 1-800-514-0383

Department Of Justice Service Animal FAQ:

[https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html)

HUD/DOJ Joint Statement Regarding Service & Assistance Animals:

[https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf)