WHEN IS A "PET" AN ASSISTANCE ANIMAL?; WHEN THE JURY SAYS SO!

SUMMARY:
The federal Fair Housing Act protects the "handicapped" from discrimination in housing. However, many apartments, subdivisions, and cities have laws which, though apparently neutral, deprive the disabled of non-traditional assistance animals. Often "pet fees" or "no pet" rules are applied to reduce housing opportunities. Local laws prohibiting "livestock" also act to bar animals which fall outside of the "seeing-eye dog" expectations of government officials. Recent rulings have determined that non-traditional assistance animals are covered by the Act, and that the jury is the ultimate decision-maker of whether the animal demonstrates enough "utility" to be an "assistance animal."

I. The Scope of the Act:
The federal Fair Housing Act (the Act), 42 USC section 3604 et seq., makes it unlawful to: "discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of ... (A) that buyer or renter ......." One form of discrimination defined by the statute is a failure to accommodate a disabled person. Specifically, "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..."  

The Department of Housing and Urban Development (HUD) set forth two (2) examples of reasonable accommodations where animals were concerned. However, these examples do

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1 "Handicapped" is defined by the Fair Housing Act at 42 USC section 3602(h). 
2 42 USC section 3604(f)(3)(B).
3 24 CFR 100.204(b); Blind person seeking to keep assistance dog in an apartment with a "no pets" policy;
not address "non-traditional" assistance animals. The housing advocate is left to draw upon analogies in order to fit a particular animal within the scope of the Act.

II. **What is a Non-Traditional Assistance Animal:**

The deaf, the paralysed, and several types of medically impaired persons are classes of people whose daily lives benefit from assistance animals. However, the popular imagination has not caught up with the advances of medical science when proscribing different species of assistance animals.

![At least one readily agreed upon "essential" function of modern life.](image)

![The deaf person often can be found with a "hearing dog" which assists in answering doors when knocked, and with navigating streets where motorists are present. The paralyzed use monkey-type animals to open cabinets, fetch items, and change the channels on the television.](image)

The medically impaired such as stroke victims have shown significant recovery and longevity when coupled with a cat or dog as a constant companion.  

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These classes of animal users are plagued by a lack of uniform training standards. Compare the institutionalization of "seeing-eye dogs." These assistance animals are often trained using locally recognized organizations or are state registered. Many states have statutes which define what a "guide dog" or "assistance animal" is for the purpose of state law.

Organizations who train assistance animals differ widely in quality and purpose. Some are free, and others charge fees in excess of $25,000. Currently, there is no uniform national certification program or standards for animal training. The best current source for assistance animal information is the Delta Society which is a clearing house of information on assistance animals, staffed by the disabled and those experienced with assistance animals, is located in Renton, Washington [289 Perimeter Road East, 98055-1329, 1-800-869-6898]. Other sources of information and training include: (1) Helping Hands, 1505 Commonwealth Avenue, Boston, MA 02135 (617)-787-4419 [Monkey Helpers]; (2) ***

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7 Code of Alabama, Chapter 7A; 3-7A-1; Arizona Revised Statutes, Title 11, Chapter 7, Article 6, ARS 11-1024 (Dog Guides and Service Dogs); California Codes Civil Code, Division 1, Part 2.5, Cal Civ. Code 54.1, 54.2 (Right of accommodation); Colorado Revised Statutes, Title 24, Article 34, Part 8, CRS 24-34-803 (Rights of persons with assistance dogs); Idaho Code, Title 18, Chapter 58, IC 18-5812 (Protection of the disabled); Illinois Compiled Statutes, Chapter 720, Act 630, 720 ILCS 630/1 (Blind, hearing impaired or handicapped person -- Guide Dogs); Indiana Statutes, Title 16, Article 32, Chapter 3, IC 16-32-3-2 (Guide Dogs -- Refusal of entry); Louisiana Statutes Annotated, Title 46, Chapter 23, LSA-RS T. 46, Ch. 23;
cases usually refer first to the state law definitions for guidance\textsuperscript{8} but not exclusively where those definitions are unduly restrictive or not specific to the Act\textsuperscript{9}.

III. Elements of an accommodations case:

A. Prima Facie Case of Discrimination:

1. Americans With Disabilities Act:

a. "To prove a public program violates Title II of the ADA, a plaintiff must show: (1) he is a 'qualified individual with a disability'; (2) he was either excluded from participation in or denied the benefits

\textsuperscript{8} See, Bronk v. Ineichen, Fair Housing - Fair Lending, 8/1/95, 15,998 (HUD No. 94-2882, 7th Cir. 5-11-95).

\textsuperscript{9} Green v. Housing Authority of Clackamas County, 994 F. Supp 1253, 1255 (D.Or 1998) Regarding plaintiffs' state law claims pursuant to Or.Rev.Stat. §§ 346.660 and 346.690, the requirement in § 346.640(2) that a hearing ear dog must be on a orange leash is preempted by federal law. Oregon state law is more restrictive than any federal law on this subject. "Absent explicit preemptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is 'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it[.]'" quoting, Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 239, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)
of a public entity's services, programs or activities, or was otherwise discriminated against by a public entity, and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability."

2. Rehabilitation Act of 1973:

a. Establishing a prima facie case under Section 504 and the FHA is similar. "[U]nder Section 504 of the Rehabilitation Act, a plaintiff must show (1) he is an 'individual with a disability'; (2) he is 'otherwise qualified' to receive the benefit; (3) he was denied the benefit of the program solely by reason of his disability; and (4) the program receives federal financial assistance.""1

3. Federal Fair Housing Act:

a. To establish "a prima facie case under [the FHA] [plaintiff] is required to show that (1) [plaintiff] suffers from a handicap as defined in 42 U.S.C. § 3602(h); (2) defendants knew of [plaintiff's] handicap or should reasonably be expected to know of it; (3) accommodations of the handicap 'may be necessary' to afford [plaintiff] an equal opportunity to use and enjoy the

10 Green v. Housing Authority of Clackamas County, 994 F. Supp 1253, 1255 (D.Or 1998) quoting, Weinreich v. Los Angeles County Metropolitan Transportation Authority, 114 F.3d 976, 978 (9th Cir.1997)

11 Green v. Housing Authority of Clackamas County, 994 F. Supp 1253, 1255 (D.Or 1998) quoting, Weinreich v. Los Angeles County Metropolitan Transportation Authority, 114 F.3d 976, 978 (9th Cir.1997)
dwelling; and (4) defendants refused to make such accommodation." ¹²

B. Defenses:

1. **Not a “Pet” Alone:** Those seeking to resist accommodating the request of the individual with disabilities usually claim that the animal has no documentation of "specialized" training. In Green, the Court discounted the Respondent’s [Housing Authority] demands for “documentation” of a hearing assistance dog since they did not require such documentation from others,¹³ there was no process to document assistance animals (in many states) other than seeing guide dogs, and the determination of what is sufficient “documentation” is an arbitrary standard not subject to meaningful review or fair application.¹⁴


¹³ “HACC requested independent authority, other than plaintiffs, to make the determination that the dog was an assistance animal. Plaintiffs contend that this is contrary to HACC’s established practice of accepting the tenant’s word that the assistance animal is effective. It is undisputed that defendant has never questioned the ability of guide dogs for blind tenants or companion animals for emotionally disturbed tenants. It is also undisputed that defendant never asked mother or son to demonstrate to it that the dog assisted Jeremy with his disability.” *Green v. Housing Authority of Clackamas County*, 994 F. Supp 1253, 1255 (D.Or 1998).

¹⁴ The only requirements to be classified as a service animal under federal regulations are that the animal be (1) individually trained, and (2) work for the benefit of a disabled individual. There is no requirement as to the amount or type of training a service animal must undergo. Further, there is no requirement as to the amount or type of work a service animal must provide for the benefit of the disabled person. *28 C.F.R. § 36.104*. The regulations establish minimum requirements for service animals. *Green v. Housing Authority of Clackamas County*, 994 F. Supp 1253, 1256 (D.Or 1998).
2. **Medical Orders Not Required:** A prescription or other indication of a medical necessity for the specific animal is the most certain tool to dispel doubts of a resistant Respondent. Additionally, expert witnesses can also testify to the “psychological dependence” or “emotional attachment” to the assistance animal in order to establish the “assistance” qualifications of an animal on a case by case basis.\(^\text{15}\) If no expert testimony or prescription is available to the individual with disabilities (due to homelessness or the failure of the medical system), then a stipulation is possible for limited judicial purposes but such a stipulation is only likely where the expert testimony is forthcoming.\(^\text{16}\)

3. **No accommodation requested:** The petitioner who is disabled is almost always societally conditioned to accept significantly reduced services, and does not request reasonable accommodations. Additionally, often the petitioner is reliant upon public assistance for food, rent, and enabling services. Many service providers do not either know the rights of the disabled or they do not assert those rights because they fear endangering the living situation of their charge.\(^\text{17}\) Therefore, both the

\(^\text{15}\) Whittier Terrace Associates v Hampshire, 532 NE 2d 712, 713 (Mass App Ct 1989), “there was expert testimony by psychiatric rehabilitation specialists describing the relationship between the defendant’s ability to function and the companionship of the cat, and the judge accepted that the plaintiff’s ‘emotional attachment (to) and perhaps even psychological dependence (on the cat) is at this time undeniable.”

\(^\text{16}\) Majors v Housing Authority of City of DeKalb GA., 652 F2d 454, 457 (5th Cir 1981), “Defendants have stipulated for the purposes of summary judgment that [plaintiff] suffered from a mental disability which requires the companionship of her dog.”

\(^\text{17}\) Sharin Roche, Roche v. Roads (HUD No. 95-); Petitioner received SSI for physical and mental disabilities. She received $218 per month. Petitioner alleged discrimination by the apartment management of the only subsidized housing units for the disabled in the entire rural
petitioner and the service provider often feel threatened if they encounter resistance when they assert a right to an accommodation. Where the program at issue is a local government sponsored action, such as legislation, administrative rules, code enforcement, or similar governmental action, then the government must be more sensitive to the disparate impact of its otherwise facially neutral actions. There may be no apparent method for obtaining an “accommodation” of such a governmental adoption. Similarly, private actors may fail to provide obvious avenues for an accommodation request. It is that failure which more often than not results in litigation or an administrative complaint. It is also the most easily avoided result.18

The fundamental consideration for a local government when legislating, if confronted with issues of disability and the adverse effects of an enactment, is to provide some form of review, exception, or relief process which is not judicially imposed. Individuals with disabilities are entitled to request and receive a “reasonable accommodation” of any rule, ordinance or law which has an unlawful effect upon them as a group or individually. It serves local governments better if they plan for such requests by first avoiding the impact, and second creating a process for granting relief from the offending regulation.

4. **Evading eviction:**

18 HUD v. Riverbay HUD ALJ No. 02-93-0320-1 (FH-FL ¶25,734)
The landlord often asserts that the complainant is only raising the accommodation issue to evade eviction.\(^\text{19}\)

\textbf{C. Making the Case:}

\textbf{1. Disparate Impact & Treatment:}

The plaintiffs in a disparate impact case must show that they were (1) injured as a result of the (2) conduct of the defendants that has (3) resulted in a disparate impact upon classes protected by the federal Fair Housing Act. Pfaff v. U.S. Dept of Housing, 88 F3d 739, 745 (9\textsuperscript{th} Cir 1996) (plaintiff alleged that the occupancy standards of the defendant private landlord had discriminatory effect). The disparate impact test is applied equally to claims arising under the ADA and the Rehabilitation Act allowing private rights of action.\(^\text{20}\)

The plaintiff in a disparate treatment case must show the added element of intent which can be shown through either direct or circumstantial evidence.\(^\text{21}\) Municipal governments can be compelled to adopt non-discriminatory rules, programs, or decisions where courts determine that the enactments reflect disparate treatment of a protected class such as individuals with disabilities.\(^\text{22}\)

\(^{19}\) HUD v. Riverbay, infra.


\(^{22}\) United States v. City of Parma, 661 F2d 562, 569, 577-78 , (6\textsuperscript{th} Cir. 1981) cert denied 456 US 926 (1982)
D. Zoning Decisions Must Not Discriminate Against Individuals with Disabilities and Where Identified Must Be Reasonably Accommodated:

1. Long Established Authorities:

Municipal governments must modify even the most otherwise innocuous rule such as the standard rule on front yard setbacks to allow a home owner’s wheelchair ramp. A municipal ordinance requiring facilities for individuals with disabilities be “licensed” was found to have a discriminatory effect since there was no legitimate non-discriminatory reason for the licensure requirement. An ordinance or state law can be invalidated as it is applied to individuals with disabilities where it imposes extra conditions directed only at users who happen to have disabilities. Zoning laws, such as spacing requirements, are regularly held to be inapplicable where they have a disparate impact upon the ability of individuals with disabilities to enjoy public accommodations and housing alternatives. There need not be a causal “nexus” between

23 Robinson v. City of Friendswood, 890 F Supp 616 (SD Tex 1995).
25 Assoc., for the Advancement of the Mentally Handicapped v. City of Elizabeth NJ, 876 F Supp 614 (D. NJ 1994). (Ordinance imposing additional conditions upon homes where reside six or more persons who are “disabled”).
26 United States v. Village of Marshall Wis., 787 F. Supp 872 (WD Wis 1991) (Court orders the City to provide a reasonable accommodation of both an ordinance and a state law by ignoring the spacing requirements, imposed by both, which otherwise compelled “community based residential facilities” within certain proximity to other uses. The accommodation would not have an “adverse impact” on the state statute’s legitimate goals and would not impose an “undue hardship” upon the City.)
the zoning code provisions and the type of disability afflicting the individual seeking the accommodation.27

2. Local Governments Must Consider the Impact of Zoning Laws on Individuals with Disabilities:

Municipal governments must comply with the laws which protect individuals with disabilities28 regardless of the source and regardless of the facially neutral aspect of the enactment.29 Where the enactment has a discriminatory impact it must be remedied.30 Restrictions in public accommodations which apply to service animals are subject to the same legal standards of scrutiny.31 Where courts are involved in the review of the enactment, then the local government

27 United States v. City of Philadelphia, 838 F. Supp 223, 229 (E.D. Pa 1993). “Section 3604(f)(3) contains an independent definition of ‘discrimination’ – a definition not modified by the phrase ‘because of...handicap’ found in §§3604(f)(1) & (2). Thus the language of §3604(f) does not suggest that to establish a Fair Housing Act violation, a plaintiff must show a ‘causal nexus’ between the challenged provision and the handicaps of the prospective residents.”

28 Both the Federal Fair Housing Act and the Rehabilitation Act of 1973 prohibit discrimination against individuals with disabilities (Rehabilitation Act applying exclusively to actors who receive federal funds or support). See, Crossroads Apartments Associates v. LeBoo, 578 NYS2d 1004, 152 Misc 2d 830, (City Ct 1991) (Invalidating “no pet clause” as applied to cat used to alleviate mental illness in federally assisted/subsidized housing).

29 Griggs v. Duke Power Company, 401 US 424, 91 S.Ct 849 (1971); An action brought under the Civil Rights Act of 1964 against a private employer claiming race based discrimination in the terms and conditions of employment. Court recognizes the “disparate impact” cause of action in the context of civil rights enforcement.

30 United States v. City of Black Jack Missouri, 508 F 2d 1179, 1184-85 (8th Cir. 1975) In a Federal Fair Housing case (Title VIII, Civil Rights Act of 1968) the Court stated the legal standard applied to zoning decisions “The plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated.” Id., at 1185. Once the discriminatory impact is established the local government must respond by showing a “compelling governmental interest was furthered by the ordinance.” Id., at 1186.

31 Johnson v. Gambrinus, 116 F.3d 1052 (5th Cir 1997) (ADA applies to require that agency regulation state that public accommodation should generally modify policies to permit use of service animal by individual with disability was reasonable); Crowder v. Kitagawa, 81 F.3d 1480 (9th Cir. 1996) (ADA requires that without reasonable modification Hawaii’s animal quarantine requirement effectively prevented visually impaired persons from enjoying the benefits of state services and activities in violation of ADA)
is forced to justify its enactment by proving by a preponderance of the evidence that the ordinance serves a “compelling governmental interest.”\textsuperscript{32} The control of traffic, the overcrowding of schools, and the prevention of the devaluation of existing homes, have all been found to be not compelling local government interests when compared to the detriment of the discriminatory enactment.\textsuperscript{33} Numerous courts have held that local governments must accommodate, bend, or not enforce rules, ordinances, or laws which work a discriminatory impact.\textsuperscript{34} In order to reject the request of the individuals with disabilities or the request of those who serve them requires the local government to determine that the request is either “unreasonable or unduly burdensome.”\textsuperscript{35}

\textsuperscript{32} In \textit{Black Jack}, 508 F2d at 118 the City tried to zone out apartments. The Court imposed a three part test all portions of which must be satisfied in order for a Court to uphold a local government zoning enactment which has discriminatory effect: “[F]irst, whether the ordinance in fact furthers the governmental interest asserted; second, whether the public interest served by the ordinance is constitutionally permissible and is substantial enough to outweigh the private detriment caused by it; and third, whether less drastic means are available whereby the stated governmental interest may be attained.” \textit{Id.}, at 1186-87.

\textsuperscript{33} \textit{United States v. City of Black Jack Missouri}, 508 F 2d 1179, 1186 (8th Cir. 1975)

\textsuperscript{34} In order to reject the request of the individuals with disabilities or the request of those who serve them requires the local government to determine that the request is either “unreasonable or unduly burdensome.”

\textsuperscript{35} \textit{United States v. Village of Marshall Wis.}, 787 F Supp 872, 878 (W.D. Wis) “In general a ‘reasonable accommodation’ is one which would not impose an undue hardship or burden upon the entity making the accommodation, \textit{Majors v. Housing Authority of DeKalb}, 652 F2d 454, 457 (5th Cir 1981), and would not undermine the basic purpose which the requirement seeks to achieve. \textit{Doherty v. Southern College of Optometry}, 862 F2d 570, 575 (6th Cir 1988).”
E. **Failure to Accommodate a Rule, Ordinance, or Law:**

The petitioner's attorney must first draft the form of judgment and determine amongst whom the liability will be assigned. The judgment is what the petitioner wants. Therefore, prepare this first and reverse engineer the case.

The jury instructions should be decided upon so that the petitioner knows the essential elements of proof required to make the case. The instructions should be drafted to mirror the language of the CFR. The instructions must also clearly distinguish between the pendent state law claims and the claims made under the Act.

Identify the principle theme of the case. Pick a simple sound bite which best summarizes the highest point in the case. The theme helps focus your witnesses when they testify and focuses the jury's imagination.

The prima facie case of a Fair Housing Act violation based on a refusal to reasonably accommodate is established by proving the following elements:

1. **Respondent is subject to the Act;**
2. **Respondent knows or should have known of the disability of Complainant;**

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36 The jury instruction must be set forth to repeat 24 CFR 100.204 and the prohibitionary language. A practice question is whether the petitioner can also get the jury instructions to repeat the examples of reasonable accommodations found in the regulations.

37 In the case of Bronk v. Ineichen supra the Seventh Circuit remanded to the trial court an animal case in which the jury instruction mixed the state and federal standards.

38 One theme which works in an accommodation case is the following: "They didn't like her dog, they didn't respect her needs, and they disobeyed the law." This sound bite summarizes all of the high points of an animal case where reasonable accommodation is rejected.

39 HUD v. Riverbay, infra.
3. Court has jurisdiction over the Act;

4. The Petitioner is "handicapped" as defined by the CFR;

5. The animal is an "assistance animal;"

6. An accommodation was sought;

7. The accommodation sought was "reasonable;"

8. The accommodation of the handicap "may be necessary" to afford the Complainant an equal opportunity to use and enjoy the dwelling;

9. The Respondent failed to provide the accommodation & any offered alternative was not reasonable.

"handicap" refers in part to a "mental impairment which substantially limits ... [a] person's major life activities." 42 USC section 3603(h)(1).

This determination is completely reliant on proof of "utility." See, Brock, infra.; Items which may help prove utility include state statutory definitions, doctor's prescription, training certificates, or expert testimony by social workers as to utility. See, HUD v. Riverbay Corp., Fair Housing-Fair Lending 25,734 (HUDALJ 02-93-03204) (HUD Office ALJ 9-8-94) order vacated by agreement (ALJ ruled that medical testimony by the complainant's psychiatrist expert who performed a 45 minute examination of the complainant was sufficient and more compelling on the issue of the degree to which the this dog could "fulfill a person's emotional needs.").

It is not clear that the petitioner must "request" accommodation. The CFR is silent on who has the burden to assert the need. However, the implication is that the person needing the accommodation will ask for it. The second issue is in what form must the request be presented. Often the request is implied by the petitioner orally or his/her situation when they present themselves before the apartment management. A common example is the deaf applicant in a state which requires fire alarms in buildings wherein the manager should know that a special (visual/vibration) fire alarm is necessary.


HUD v. Dedham Housing Authority., 2 Fair Housing-Fair Lending, 25,015 at 25,212 (HUDALJ 11-15-91).
10. The Petitioner was damaged;\textsuperscript{45}

At least one Circuit has decided that "a deaf individual's need for the accommodation afforded by a hearing dog is, we think, per se reasonable within the meaning of the statute."

However, whether the specific animal is an "assistance animal" is a question of fact for the jury and not the court to decide.\textsuperscript{46}

\textbf{IV. Summary of animal accommodations cases:}

The number of reported accommodation cases involving assistance animals can be counted in the single digits.

\textbf{A. Bronk v. Ineichen, ___ F3d ___ (7th Cir. 1995):} Remanded to the trial court for a new trial after court, in the jury instructions, mixed the standards of law for state and federal Fair Housing claims.

The landlord refused to allow two profoundly deaf women to keep a dog in their rented townhouse. The petitioners had several disputes with the respondent of which the dog was one. The petitioners requested an accommodation at the application stage by asking for relief from the "no pets" rule for a "hearing" dog. This was refused. Petitioners moved in and had the dog secretly delivered later.

The trial revealed that the petitioners had lived together on several occasions. On no prior occasion had they requested or demanded access to a hearing dog.

\textsuperscript{45} There is a recent case reported from California in which the Court determined that the successful Petitioner in a case under the Act has presumed damages in the form of emotional distress due to the discriminatory act(s).

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"[The dog's] skill level, however, was hotly contested, ... Other than their own protestations. Given this level of uncertainty and conflicting evidence about [the dog's] training level, it was well within the province of a rational jury to conclude that Pierre's utility to the plaintiff's was as a simple house pet and weapon against a cranky landlord, not necessarily in that order." Bronk v. Ineichen, at 15,998.3.
The dog was allegedly trained as a hearing dog by the Petitioner Bronk's brother. However, the brother, at trial, testified that he had no demonstrable experience in training hearing dogs. Expert witness for the defense testified that intensive, professional schooling, and isolation from other animals were prerequisites for a "hearing dog."

The landlord evicted the dog. The petitioners continued to argue the case with the landlord who did not speak the same language as the petitioners. The local government EOC received a complaint from the petitioners and subsequently obtained an injunction against the "no pet" rules. The petitioners eventually moved out and sued the landlord in federal court.

The Circuit Court analysis discounted the "intent" of the respondent. The focus, instead, is on the "reasonable" and the "necessary" aspects of accommodation requested under the statute. "The requirement of reasonable accommodation does not entail accommodation to do everything humanly possible to accommodate a disabled person." 48

A piece of dicta worth noting is the reliance of the Circuit Court on analogy to the examples of accommodation of guide dogs found in 24 CFR sections 100.204(b). The question driven by the examples is whether the animal qualifies as an assistance animal. 49

B. HUD v. Purkett, *Fair Housing- Fair Lending, 12-1-90, p19569 (HUD

47 Discrimination under 42 USC section 3604(f)(2) includes 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."

48 There is a requirement to balance the needs of the parties involved. See United States v. Village of Palatine, 37 F3d 1230, 1234 (7th Cir. 1994);

49 "In reaching this conclusion we are guided by the regulations instituting the provisions of the FHAA. 24 CFR sections 100.204(b), promulgated by the Department of Housing and Urban Development ("HUD"), gives two examples of reasonable accommodation: the first is that of a blind applicant for rental housing who wishes to keep her seeing eye dog in a building with a no pets policy. Clearly, the situation of a deaf resident who wishes to keep a hearing dog is analogous. With respect to the present situation, however, the example begs the question of whether Pierre [the dog] was a hearing dog in which case he falls directly within the scope of the regulations; or was merely a house pet, in which case the regulations have no explicit application to him." n.6
Office of Admin Law Judges No. 09-89-1495-1, 7/31/90). Respondents agreed to a consent order after being charged by HUD with discrimination. Respondents were ordered to pay $60,000 in damages and enjoined from discriminating handicapped persons after they denied stroke victim the use of a certified "service dog."

HUD issued charges of discrimination after Respondents attempted to evict a stroke victim because of the presence of her service animal.

The Complainant, Ms. Roberts, is disabled by a brain hemorrhage which rendered her unable to use her left arm and leg. She uses a wheelchair and suffers petite mal seizures. The assistance animal is a black Labrador called "Quartz" and trained by a non-profit organization that provides and certifies assistance animals.

The Respondents were the apartment manager, the complex owners, and the general partner of the owner. The officers of one of the owners were not included because there was no apparent personal capacity liability.

The Respondents were alleged to have done the following: (1) not allow dog near the apartment pool; (2) charged a pet deposit for the right to keep the assistance animal; and (3) verbally harassed the Complainant.

The case was settled before the hearing and the consent decree was entered.

C. Crossroads Apartments Associates v. LeBoo, 578 NYS2d 1004 (City Ct of Rochester, Monroe County, 1991); Municipal trial court held that a motion for summary judgment was not proper because material issues of fact existed whether the animal was an "assistance" animal. The action was brought under the federal Rehabilitation Act of 1973 section

50 Fair Housing Act sections 810(g)(1) & (2); 42 USC sections 3610(g)(1) & (2).
51 Referred to in the decision as a "service animal."
52 42 USC section 3617.
The Respondent apartments were federally assisted through Section 8 Housing Assistance Payment Contracts. This assistance made the apartments fall within the scope of the Rehabilitation Act which also precludes discrimination based on disability. *****

29 USC section 794, 24 CFR section 8.1, 42 USC section 3602(h).
An interesting aspect of the case was the claim of res judicata raised by the respondent. The local eviction court dismissed the fair housing defense to the eviction. However, the ALJ decided that HUD was not a party in privity with the complainant in the eviction. Therefore, HUD can bring an action on behalf of the complainant even though the local eviction court found against the complainant on the same claims.

V. Sources of animal training expertise:

   1. Canine Companions for Independence of Rancho Santa Fe, California.
   3. Helping Hands (Monkey Training), Boston, Massachusetts.
   4. 

VI. Conclusion:

There is no uniform standard for defining what an "assistance animal" is and when a housing provider must accommodate the animal user. This void should be filled by statutes as opposed to case decisions. Clear standards will improve enforcement and dampen growing resentment about the law among the housing providers.

The objective of housing and disabled person advocates must be to create uniform definitions across states of the term "assistance animal." Rather than leave the definitions to the ebb and flow of jury verdicts, the states should be enlisted to establish a uniform set of criteria for a person claiming the need of an animal under the Fair Housing Act. If advocates fail to accomplish this goal, then a case will come which so abuses the law that less encompassing

\[55\] Some advocates would argue for a HUD generated rule rather than a state by state effort. Such an approach would be an error. First, the experience with the "occupancy" question was recent enough example of how charged federal rule making has become in this field. If advocates can agree on a "uniform" definition of "assistance animal," then states can be encouraged to adopt it much like the Uniform Commercial Code or other uniform acts. Second, clarifying the law at a state level will allow more inclusive states to maintain the current expansive definitions, thus insuring no net loss of protections for the disabled.
federal legislation may result as a backlash. Therefore, it is in the interest of the disabled, the advocates, and the business community to come together on a definition of "assistance animal" which will serve as a guide to all housing providers.