

The Fair Housing Act and the Americans with Disabilities Act in the Housing Context

The Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) are civil rights acts that address discrimination. The protected classes under the FHA include race, color, religion, sex, national origin, familial status, and disability. In contrast, the ADA only protects individuals with disabilities.

The FHA prohibits discrimination in the operation, leasing, or sale of housing, while the ADA prohibits discrimination in places of public accommodation, such as restaurants, retail stores, libraries, and hospitals. In the housing context, the ADA covers public housing that meets the ADA definition of "public entity," as well as housing operated by the state or county, such as housing on a public university campus.

Accessibility under the FHA and ADA

There are areas in multifamily housing developments that must be accessible under both FHA and ADA standards. For example, if a housing complex has a rental office or recreational center that is open to the public, these areas need to comply with both the ADA and the FHA. Common use areas that are used only by residents and their guests are not covered by the ADA.

If your housing development has a rental office or a "public accommodation" covered under the ADA, or if parking spaces are provided for persons other than residents, there must also be a marked handicap accessible stall compliant with the ADA. These accessible stalls are, however, different from accessible stalls a resident can request if they are living on the property. For more information on stalls for residents, please review our "Specific Parking Stall as a Reasonable Accommodation: Q&A."

Assistance Animals (FHA) v. Service Animals (ADA)

The FHA provides that, if requested as an accommodation for a disability, a housing provider may need to modify its rules to allow a resident to keep an assistance animal. This animal can include a trained service dog as defined under the ADA, but also includes emotional support animals who do not need special training. An assistance animal under the FHA can be a dog, cat, bird, fish, rabbit, or a wide variety of other animals. Under the FHA, a housing provider can request verification of a disability (if the disability is not readily apparent) and that the animal alleviates one or more symptoms of the disability.

On the other hand, the ADA provides that only service dogs (or service miniature horses) who are specifically trained to provide a service to a disabled person are allowed in a place of public accommodation. The fact that an animal wears a vest or has certification is irrelevant and does not prove that it is a service animal. Emotional support animals, comfort animals and therapy animals DO NOT qualify for access to a place of public accommodation. Service animals in training are also not considered service animals under the ADA.

The ADA allows staff working at a place of public accommodation to ask only two questions: (1) "Is the dog a service animal required because of a disability?" and (2) "What work has the dog been trained to perform?"

BOTTOM LINE: A service animal, as defined under the ADA, is also an assistance animal under the FHA. But an assistance animal is not necessarily a service animal. An assistance animal that is providing emotional support in one's home most likely does not meet the definition of a service animal that can be taken into a place of public accommodation.