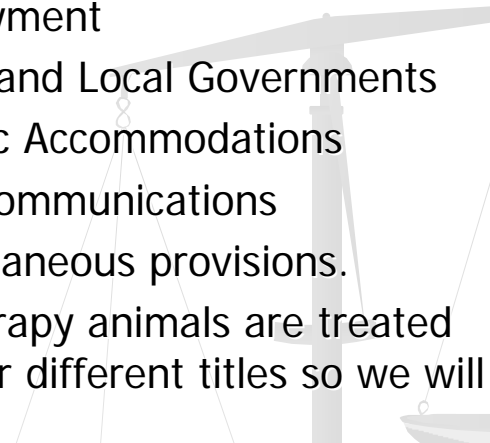




# Service Animals and the Law

Jacquie Brennan  
Attorney  
DBTAC Southwest ADA Center

## Americans with Disabilities Act

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- Title I -- Employment
  - Title II -- State and Local Governments
  - Title III -- Public Accommodations
  - Title IV -- Telecommunications
  - Title V -- Miscellaneous provisions.
  - Service and therapy animals are treated differently under different titles so we will look at each.

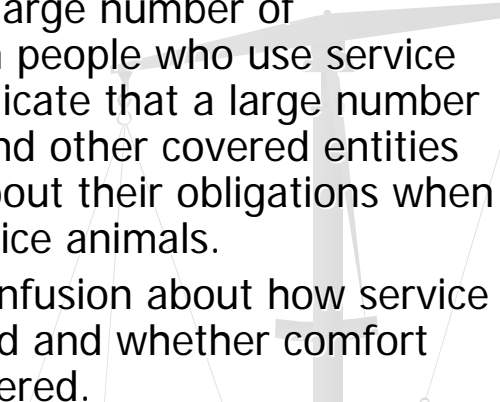
## What is a service animal?

- Currently, the definition in the regulations is “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

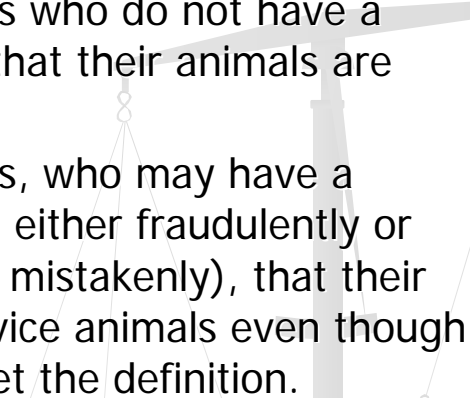
## Why is “currently” underlined?

- Because the Department of Justice (DOJ) has issued new ADA regulations that are expected to be enacted within the next several weeks.
- A lot of these new regs affect this information on service animals and other animals used by people with disabilities.

## Why are there new regs?

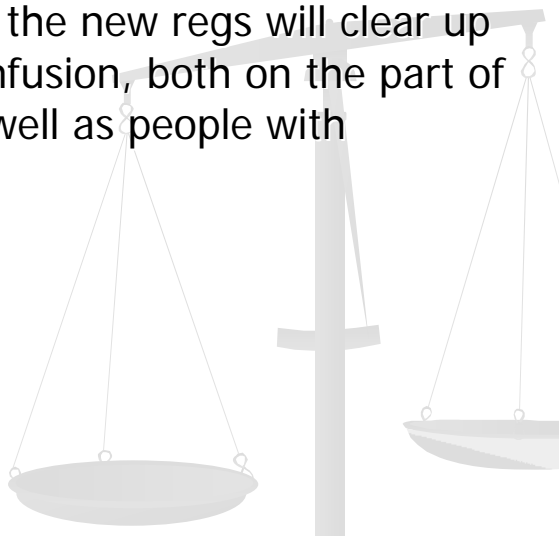
- DOJ receives a large number of complaints from people who use service animals that indicate that a large number of businesses and other covered entities are confused about their obligations when it comes to service animals.
  - There is also confusion about how service animal is defined and whether comfort animals are covered.
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## Also

- Some individuals who do not have a disability claim that their animals are service animals.
  - Other individuals, who may have a disability, claim, either fraudulently or sincerely (albeit mistakenly), that their animals are service animals even though they do not meet the definition.
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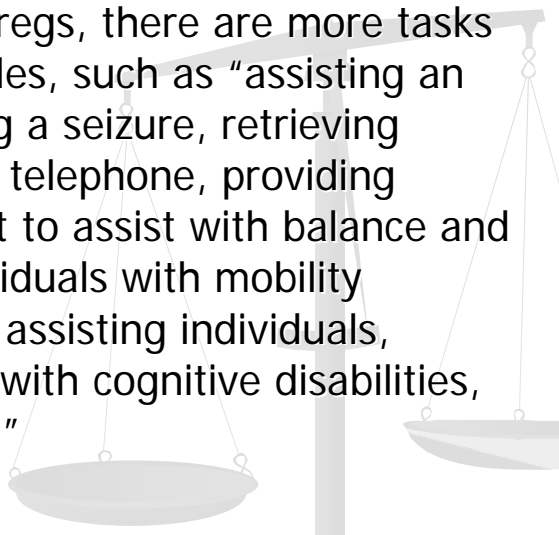
## All Clear

- DOJ hopes that the new regs will clear up some of the confusion, both on the part of businesses, as well as people with disabilities.

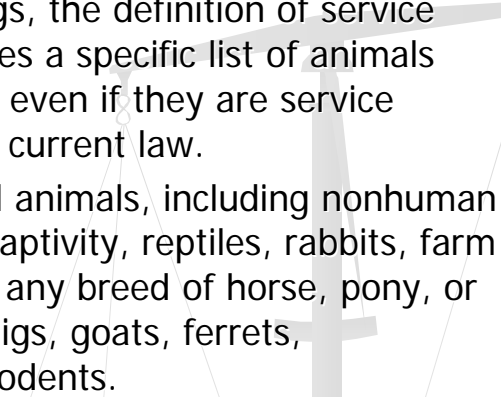


## More Tasks

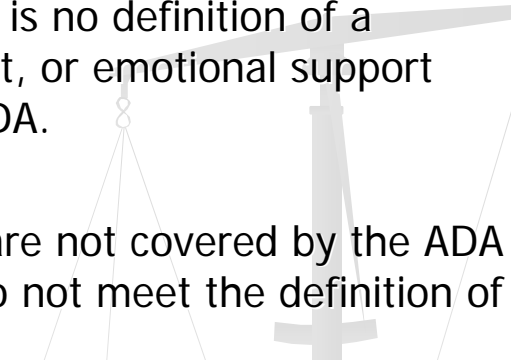
- Under the new regs, there are more tasks listed as examples, such as “assisting an individual during a seizure, retrieving medicine or the telephone, providing physical support to assist with balance and stability to individuals with mobility disabilities, and assisting individuals, including those with cognitive disabilities, with navigation.”



## Not a Service Animal

- Under the new regs, the definition of service animal now includes a specific list of animals that are excluded, even if they are service animals under the current law.
  - These include wild animals, including nonhuman primates born in captivity, reptiles, rabbits, farm animals, including any breed of horse, pony, or miniature horse, pigs, goats, ferrets, amphibians, and rodents.
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## What is a therapy animal?

- Currently, there is no definition of a therapy, comfort, or emotional support animal in the ADA.
  - These animals are not covered by the ADA because they do not meet the definition of service animal.
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## Not Service Animals

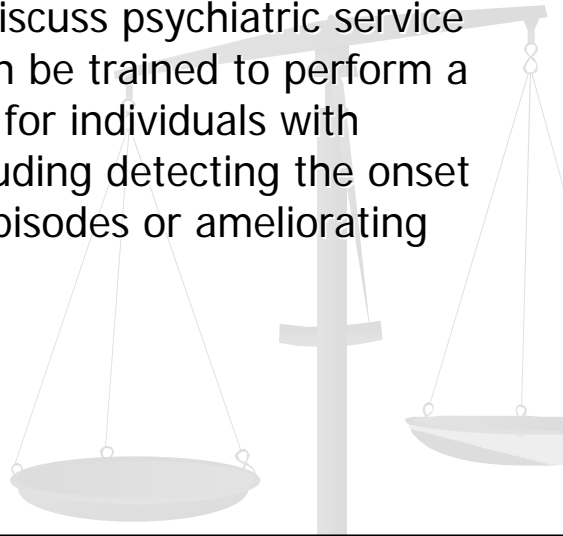
- When the new regs go into effect, the DOJ's position on whether comfort animals are covered as service animals is: "animals who sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or promote emotional well-being are not service animals."

## Psychiatric Service Animals

- Because of the ADA requirement that animals be able to "do work or perform tasks," in most cases, animals that assist people with psychiatric disabilities were considered to be comfort animals and, therefore, not service animals.
- The new regs recognize that there are "psychiatric service animals."

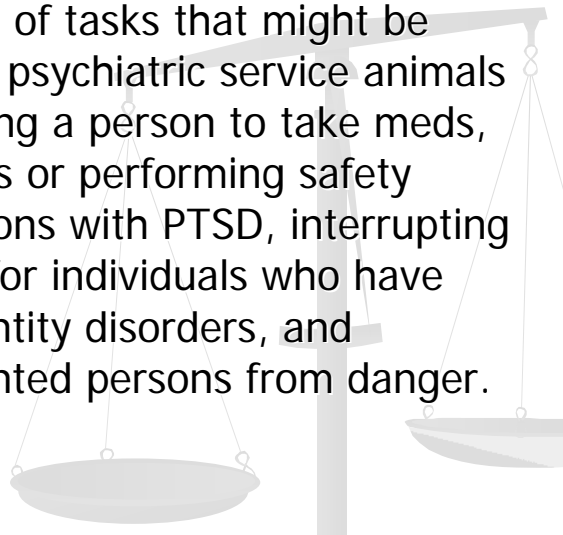
## Tasks

- The new regs discuss psychiatric service animals that can be trained to perform a variety of tasks for individuals with disabilities, including detecting the onset of psychiatric episodes or ameliorating their effects.



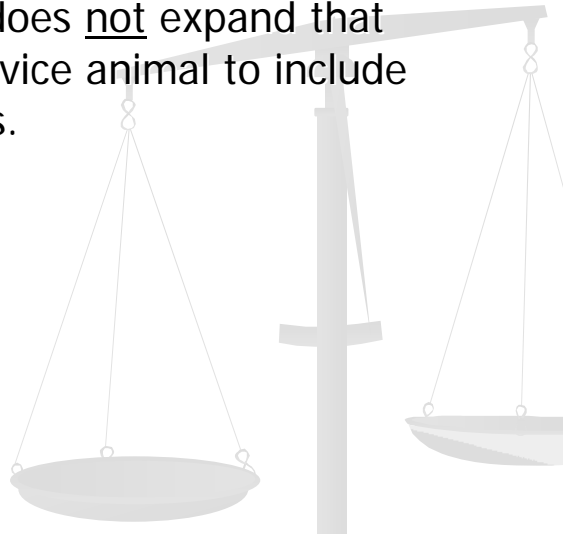
## Other tasks

- Other examples of tasks that might be performed by a psychiatric service animals include reminding a person to take meds, turning on lights or performing safety checks for persons with PTSD, interrupting self-mutilation for individuals who have dissociative identity disorders, and keeping disoriented persons from danger.



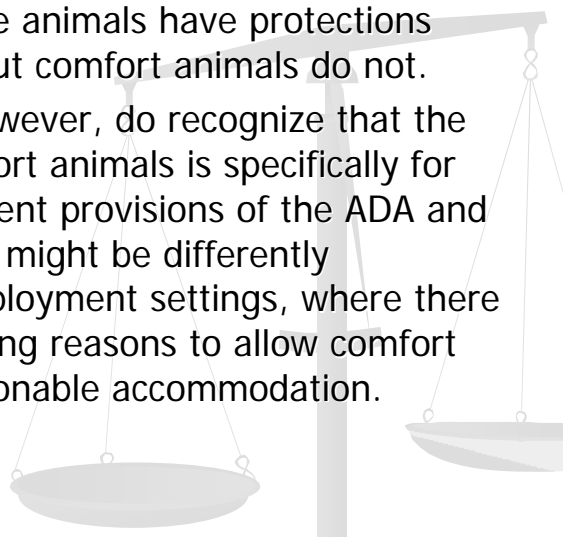
## But

- This expressly does not expand that definition of service animal to include comfort animals.



## Remember

- In general, service animals have protections under the ADA, but comfort animals do not.
- The new regs, however, do recognize that the exclusion of comfort animals is specifically for the non-employment provisions of the ADA and that such animals might be differently considered in employment settings, where there might be compelling reasons to allow comfort animals as a reasonable accommodation.





## What proof do you need?

- A service animal is not required to wear a special collar or harness.
- A service animal is not required to have papers certifying its training.
- So if it isn't obvious, how does a business know whether an animal is a service animal?

## What can people ask?

- It is all right to ask the handler if the animal is a service animal required because of disability.
- It is all right to ask whether the animal performs specific tasks for the person.
- Disability-specific questions may not be asked.

## WalMart Settlement

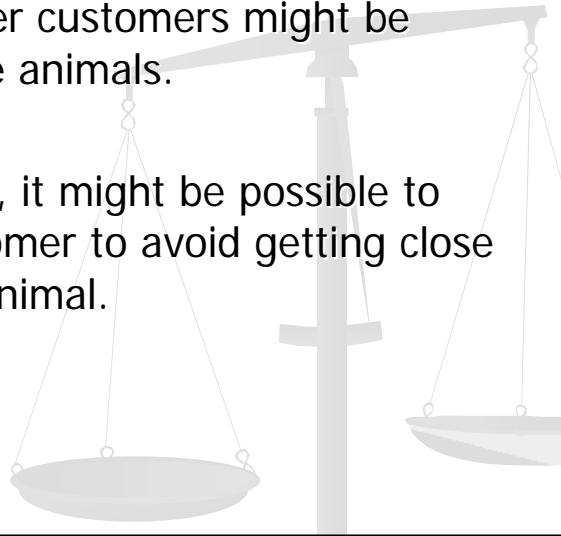
- In January 2009, the DOJ and Walmart reached an agreement about service animals in which Walmart agrees that a greeter or store manager may ask only one question, and that the question can be asked only if the need for the animal is not obvious. The question is -- "Is this a service animal required because of a disability?"

## Out Of Control

- Because of the nature of their work, it is unusual for a service animal to ever display any "out of control" behaviors.
- Businesses may exclude an animal whose behavior poses a direct threat to the health or safety of others.
- This must be based on actual risk and not on potential risk or generalizations.

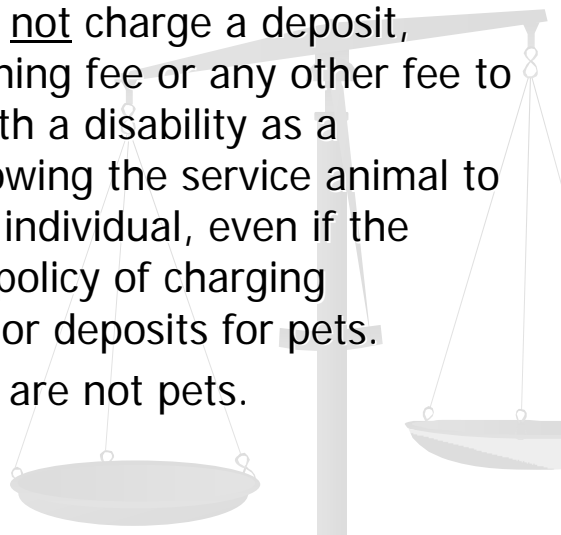
## What About Other People?

- Sometimes other customers might be afraid of service animals.
- If that happens, it might be possible to allow that customer to avoid getting close to the service animal.



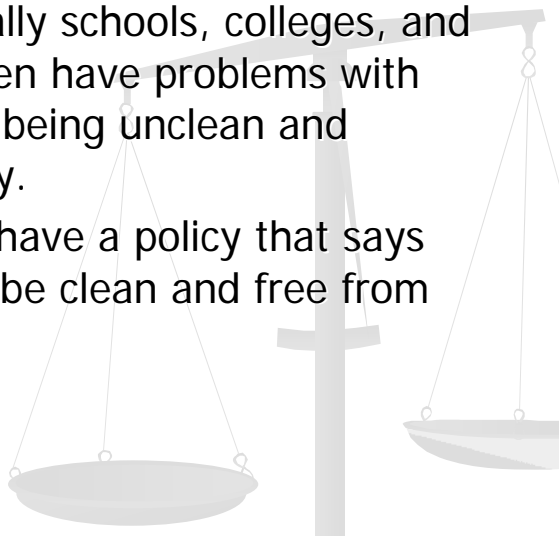
## Fees or Pet Deposits

- A business may not charge a deposit, surcharge, cleaning fee or any other fee to an individual with a disability as a condition to allowing the service animal to accompany the individual, even if the business has a policy of charging customers fees or deposits for pets.
- Service animals are not pets.



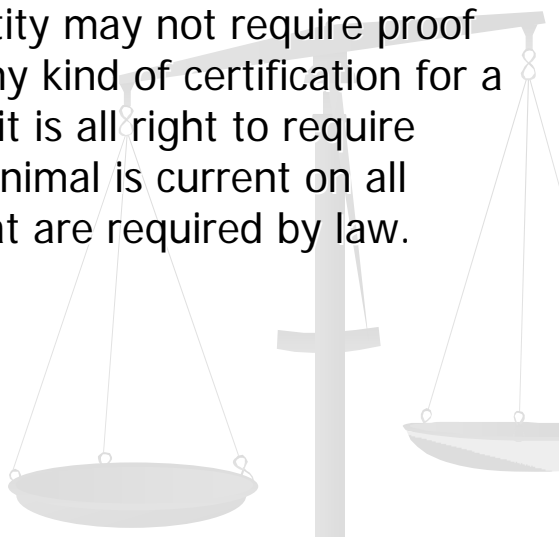
## Smelly Dogs

- Entities, especially schools, colleges, and universities, often have problems with service animals being unclean and downright stinky.
- It is all right to have a policy that says that dogs must be clean and free from offensive odors.



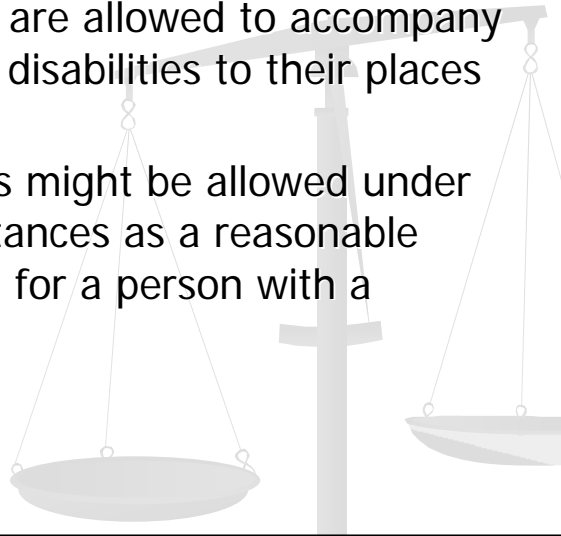
## Proof of Vaccination

- Although an entity may not require proof of training or any kind of certification for a service animal, it is all right to require proof that the animal is current on all vaccinations that are required by law.



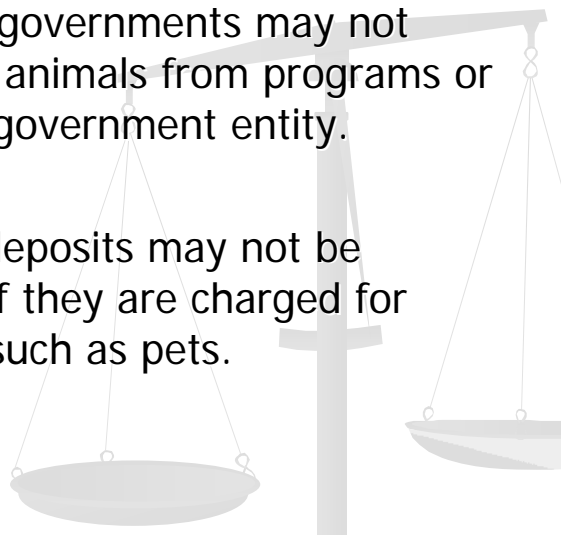
## Title I -- employment

- Service animals are allowed to accompany individuals with disabilities to their places of employment.
- Comfort animals might be allowed under certain circumstances as a reasonable accommodation for a person with a disability.



## State and Local Governments

- State and local governments may not prohibit service animals from programs or services of the government entity.
- Surcharges or deposits may not be charged, even if they are charged for other animals, such as pets.



## Title III: Public Accommodations

- Places of public accommodation, such as hotels, restaurants, bars, theaters, auditoriums, parks, stores, law offices, doctor offices, banks, bus stations, museums, amusement bars, salons, dry cleaners, spas, social service centers, golf courses, real estate offices, gyms, and coffee shops, may not exclude service animals from any area that is open to the public.

## Transportation

- The ADA also applies to transportation providers.
- If the provider is a government entity, (as is the case for subways, fixed route buses, paratransit, rail, and light rail), it is covered under Title II.
- If the provider is a private entity offering taxi, car, or limo service, it is covered by Title III.

## Fair Housing Act

- The FHA was passed in 1968 to provide protection from discrimination in housing, based on race, color, national origin, or gender.
- In 1988, it was amended to expand protection from housing discrimination to other classes, including disability and familial status.

## What is prohibited

- Landlords, condominium associations, and other housing providers are prohibited from discriminating against housing applicants or residents because of their disability or because of the disability of anyone associated with them, as well as from treating persons with disabilities less favorably than others because of their disability.

## Reasonable Accommodations

- The FHA also mandates that housing providers make reasonable accommodations in rules, policies, practices, or services when necessary so that a person with a disability has the equal opportunity to use and enjoy the housing.
- That is the key provision when discussing animals.

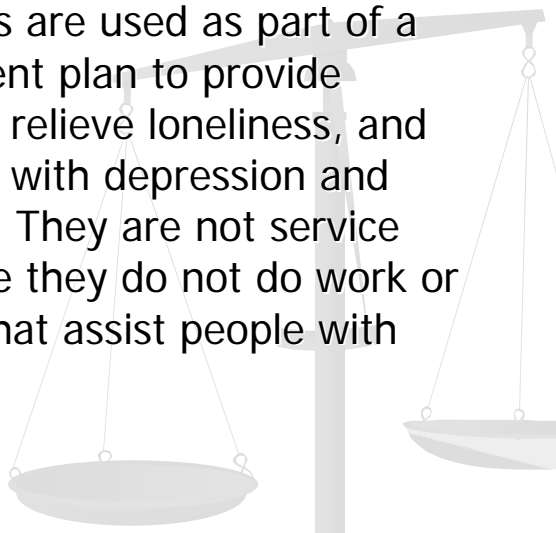
## Like the ADA

- Everything we've discussed that pertains to service animals under the ADA also applies to service animals under the FHA.
- But -
- While the ADA does not provide coverage for therapy animals, comfort animals, or pets, the Fair Housing Act may.



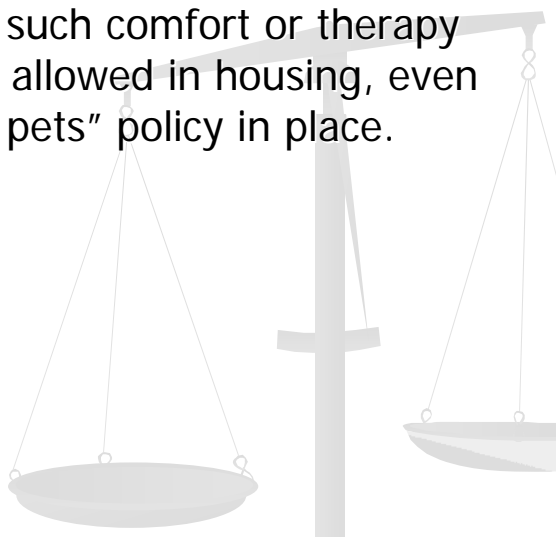
## Emotional Support Animals

- Therapy animals are used as part of a medical treatment plan to provide companionship, relieve loneliness, and sometimes help with depression and certain phobias. They are not service animals because they do not do work or perform tasks that assist people with disabilities.



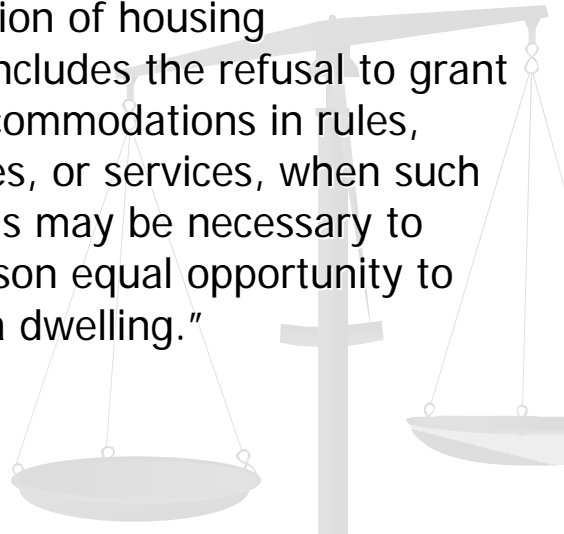
## “No Pets Allowed”

- Under the FHA, such comfort or therapy animals may be allowed in housing, even if there is a “no pets” policy in place.



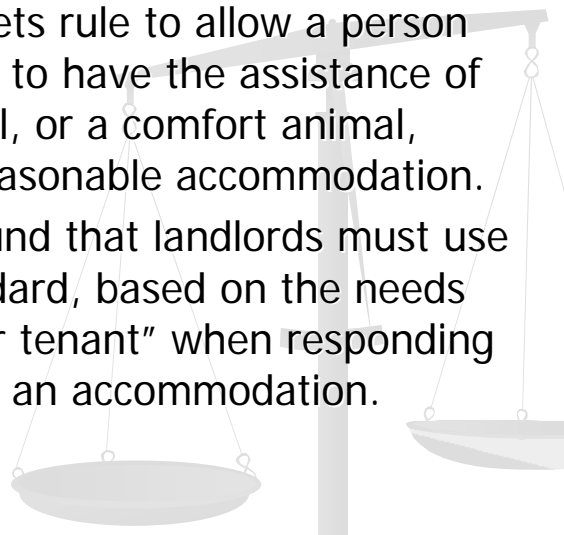
## Reasonable Accommodation

- The FHA definition of housing discrimination includes the refusal to grant “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.”



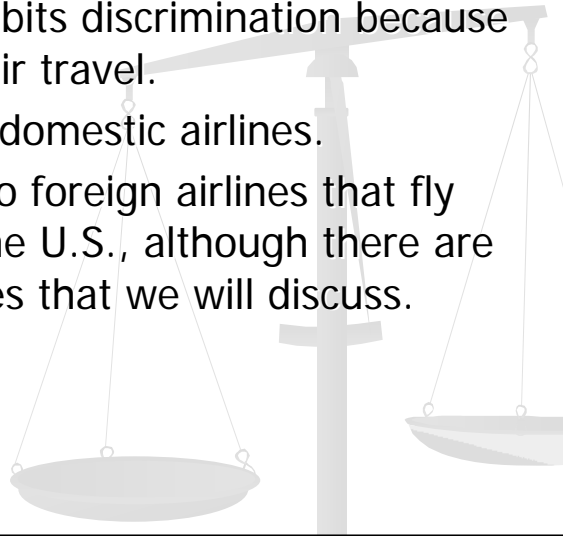
## Waiver

- Waiving a no-pets rule to allow a person with a disability to have the assistance of a service animal, or a comfort animal, constitutes a reasonable accommodation.
- Courts have found that landlords must use “a flexible standard, based on the needs of the particular tenant” when responding to a request for an accommodation.



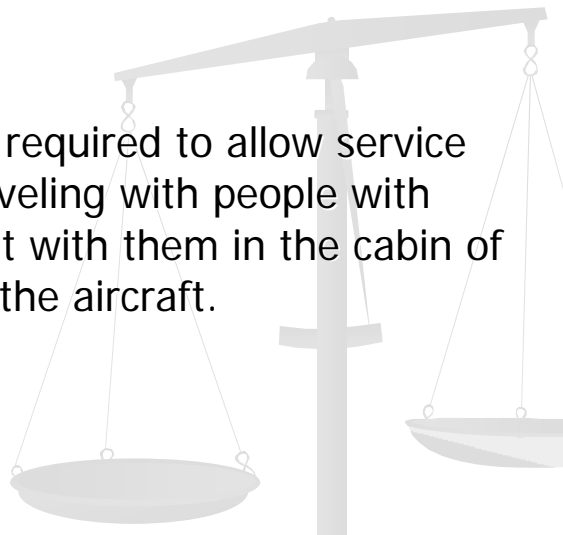
## Air Carrier Access Act

- The ACAA prohibits discrimination because of disability in air travel.
- It applies to all domestic airlines.
- It also applies to foreign airlines that fly into or out of the U.S., although there are some differences that we will discuss.



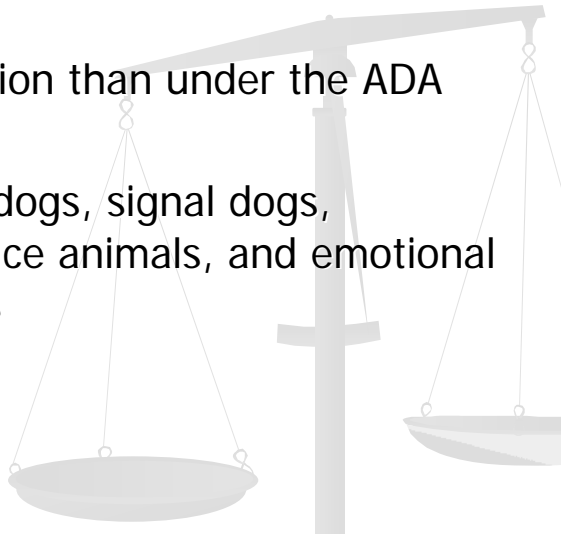
## Service Animals

Air carriers are required to allow service animals traveling with people with disabilities to sit with them in the cabin of the aircraft.



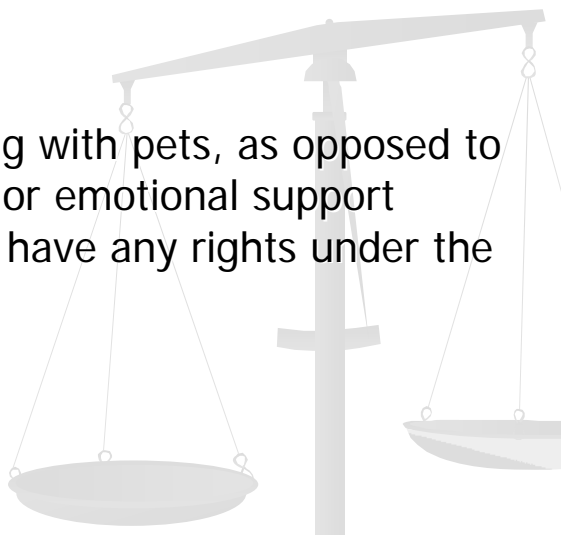
## Definition of Service Animal

- Different definition than under the ADA
- Includes guide dogs, signal dogs, psychiatric service animals, and emotional support animals



## Pets

Persons traveling with pets, as opposed to service animals or emotional support animals, do not have any rights under the ACAA.



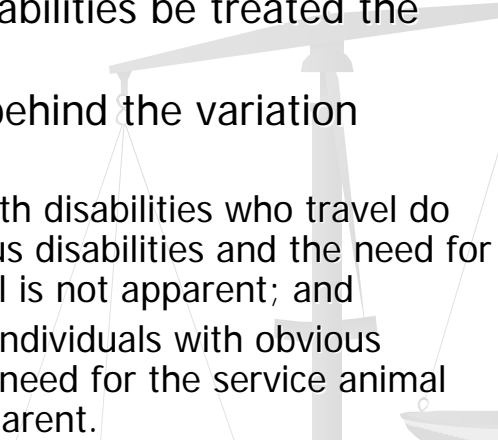
## Questions

- Personnel may ask questions and request documentation in certain circumstances to determine whether the person is entitled to travel with a service animal.
- A common misconception among passengers is that, once you invoke disability, questions are forbidden.
- The types of question that may be asked vary depending the disability & the animal.

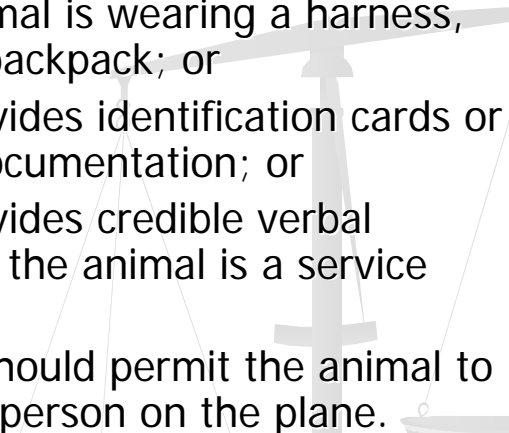
## Documentation

- Additionally, documentation may be required.
- The level of documentation that may be required depends on the person's disability and the type of service animal.

## Why does it depend on that?

- Shouldn't all disabilities be treated the same?
  - The reasoning behind the variation includes:
    - Many people with disabilities who travel do not have obvious disabilities and the need for a service animal is not apparent; and
    - Even for some individuals with obvious disabilities, the need for the service animal may not be apparent.
- 

## If the person has an obvious disability and...

- The service animal is wearing a harness, tags, vests, or backpack; or
  - The person provides identification cards or other written documentation; or
  - The person provides credible verbal assurances that the animal is a service animal –
- Then the airline should permit the animal to accompany the person on the plane.
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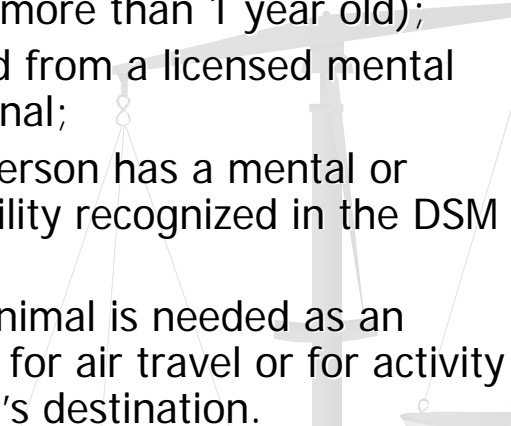
## Additional Questions

- If personnel are not certain of the animal's status, even after being told that it is a service animal, they can ask things like:
  - What tasks or functions does your animal perform for you?
  - What has the animal been trained to do for you?
  - Would you describe how the animal performs this task or function for you?

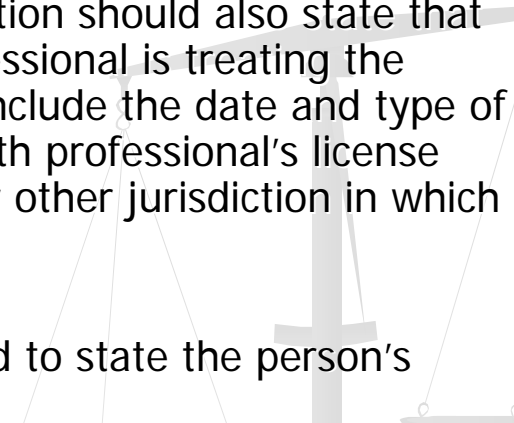
## Emotional Support or Psychiatric Service Animals

For these animals, airlines may request very specific diagnostic documentation to be provided 48 hours in advance of the flight.

## Documentation must:

- Be current (not more than 1 year old);
  - Be on letterhead from a licensed mental health professional;
  - State that the person has a mental or emotional disability recognized in the DSM IV; and
  - State that the animal is needed as an accommodation for air travel or for activity at the individual's destination.
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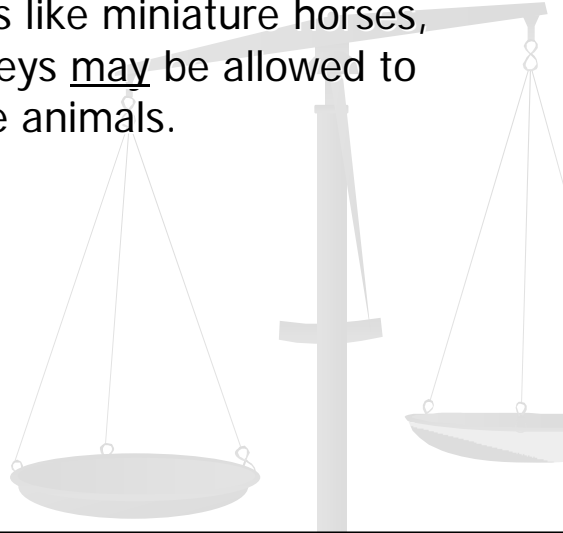
## Also

- The documentation should also state that the health professional is treating the individual and include the date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.
  - It does not need to state the person's diagnosis.
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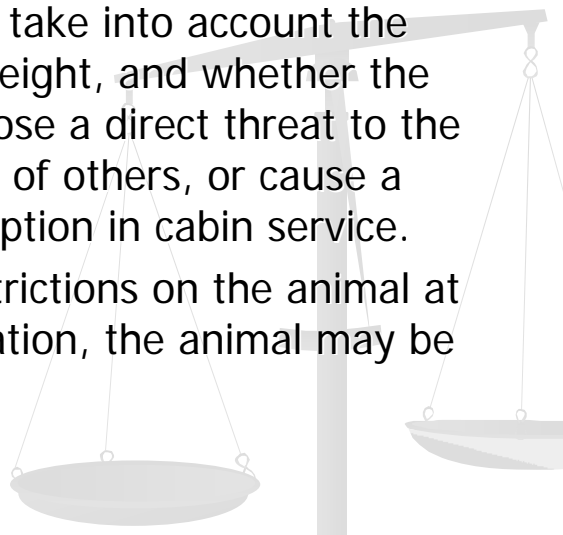
## Unusual Animals

- Unusual animals like miniature horses, pigs, and monkeys may be allowed to travel as service animals.
- It depends on...



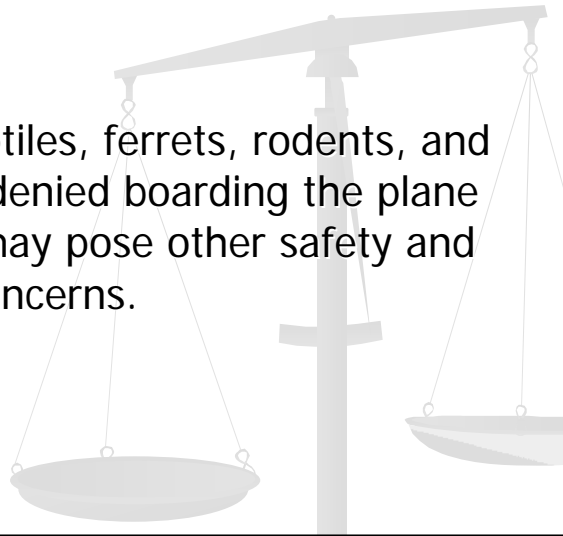
## Depends on what?

- The airline may take into account the animal's size, weight, and whether the animal would pose a direct threat to the health or safety of others, or cause a significant disruption in cabin service.
- If there are restrictions on the animal at the final destination, the animal may be denied.



## Even more unusual animals

Snakes, other reptiles, ferrets, rodents, and spiders will be denied boarding the plane at all, as they may pose other safety and public health concerns.



## Dogs only

- Foreign carriers are required to transport only dogs as service animals.



## Barking and Jumping

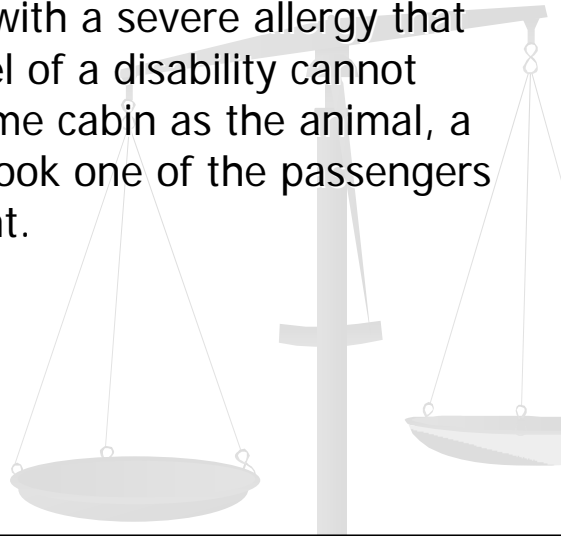
- If a service animal barks, growls, jumps on people, or misbehaves in ways that indicate that the animal has not been trained to behave properly in public settings, poses a direct threat to the health and safety of others, or poses a significant risk of disruption in airline service, it may be denied boarding.

## Other customers

- Service animals cannot be denied passage because other customers are allergic to, annoyed by, or afraid of, animals.
- The airline will make accommodations to assure that other passengers are comfortable.

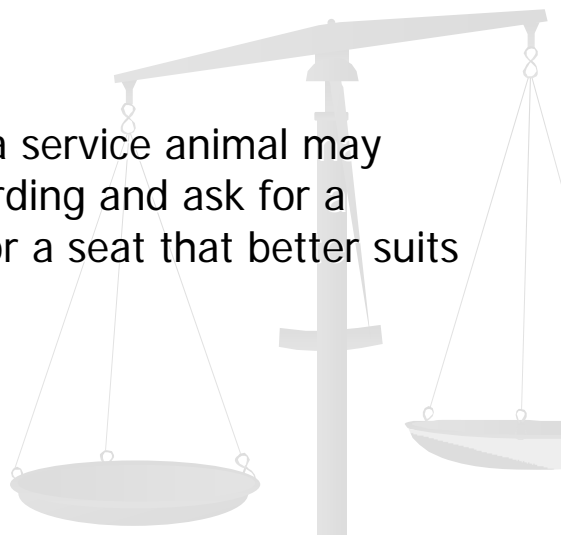
## Severe Allergies

- If a passenger with a severe allergy that rises to the level of a disability cannot travel in the same cabin as the animal, a carrier may rebook one of the passengers on another flight.



## Preboarding

Passengers with a service animal may request preboarding and ask for a bulkhead seat or a seat that better suits their needs.



## Seating

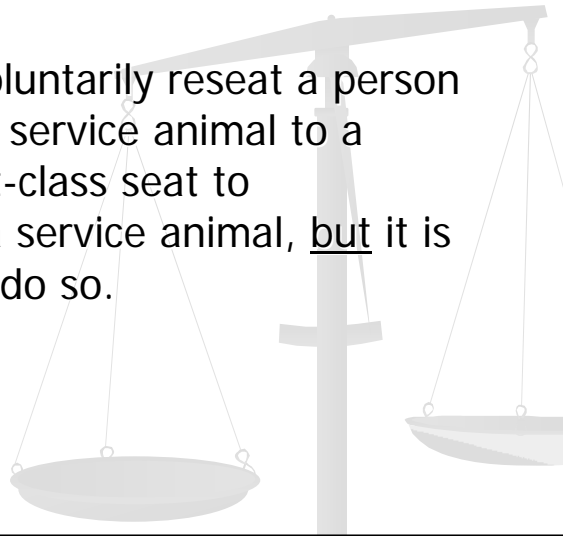
- A person traveling with a service animal may request any seat unless it blocks an aisle or an area designated for emergency evacuation.
- If the person cannot be accommodated in a requested seat, then s/he must be given the opportunity to move to another seat within the same class of service.

## Not Required

- The airline does not have to ask other passengers to give up all or most of the space in front of their seats to accommodate space for a service animal.
- The airline may try to find someone willing to do that.

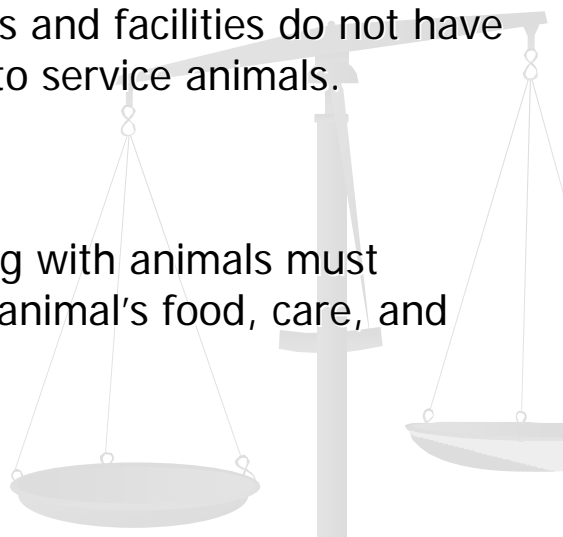
## Voluntary Response

The airline can voluntarily reseat a person traveling with a service animal to a business or first-class seat to accommodate a service animal, but it is not required to do so.



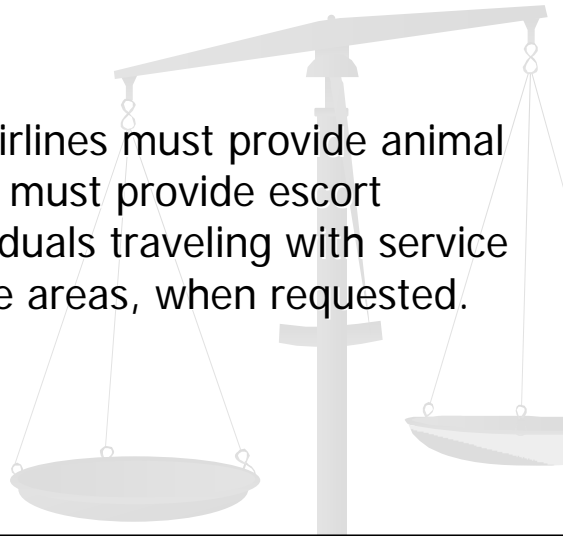
## In-flight services for animals

- In-flight services and facilities do not have to be provided to service animals.
- Owners traveling with animals must provide for the animal's food, care, and supervision.



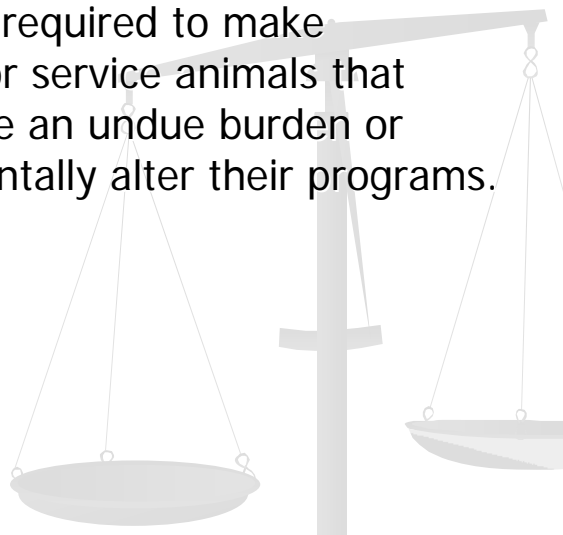
## Terminal Relief

In the terminal, airlines must provide animal relief areas and must provide escort service to individuals traveling with service animals to these areas, when requested.



## Undue Burden

- Airlines are not required to make modifications for service animals that would constitute an undue burden or would fundamentally alter their programs.



# Questions

Let's talk now  
or  
Email me any time  
[jbrennan@bcm.edu](mailto:jbrennan@bcm.edu).

