

General Requirement

The Maine Human Rights Act (“MHRA”) requires housing providers to allow people with disabilities to use assistance animals. While there are some exceptions, the general rule is one of inclusion, requiring that the assistance animal be allowed to be present.

What is a Service Animal or an Assistance Animal? How are they different?

SERVICE ANIMALS are those that must be allowed in public places (“public accommodations”). *ASSISTANCE ANIMALS* are those that must be allowed in housing. The MHRA was changed in September 2016 to try to make clear these two different definitions.

For public accommodations, the MHRA defines “service animal” as a dog that has been individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work the dog is trained to do must be directly related to the person’s disability. Examples include: assisting a person with a vision loss in navigation; alerting a person with a hearing loss to the presence of people or sounds; providing physical assistance with balance and stability to a person with a mobility disability; and reminding a person with an intellectual disability to take a medication.

For housing, the MHRA includes a broader category of animals that a person with a disability might have to assist them. An “assistance animal” is an animal (dog, cat, bird, etc.) that is EITHER determined

necessary to mitigate the effects of a mental or physical disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker OR is individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability. This can include the types of externally-observable work service animals provide but also can include providing emotional support, well-being, comfort, or companionship related to an invisible disability (such as depression, anxiety, and certain phobias); they can - but do not always - have special training to perform tasks that assist people with disabilities. Some people have used terms like “emotional support”, “comfort” or “therapy” to refer to the latter type of assistance animal.

A housing provider is required to allow a tenant to be accompanied by an assistance animal if the animal is necessary to allow the disabled person to enjoy the benefits of the housing. An assistance animal is an aid that helps a person with a disability access the housing accommodation, like a wheelchair or cane. Assistance animals are not pets; so “no pet” policies do not apply to them.

As this change in Maine law is recent, many people with disabilities are not aware of the new distinction in Maine law between service and assistance animals.

What about tenants’ visitors who have Assistance Animals?

A housing provider is also required to allow a person with a disability who is visiting a tenant to be accompanied with an assistance

animal, even if the housing provider has a “no pets” policy. Why? Because the MHRA prohibits discriminating against a tenant because of his/her association with a person with a disability. If the tenant’s visitor is a person with a disability accompanied by an assistance animal, the housing provider may not deny the tenant the benefits and privileges of the housing accommodation (like having visitors) because of the visitor’s disability-related need for an assistance animal.

Can a housing provider ask for the Animal’s identification (tags/collar/ID)?

It is not necessary for an assistance animal to have a special ID card, be certified, be registered, or wear a harness or collar identifying it as an assistance animal. Some assistance animals have these characteristics, but they are not required for an assistance animal to be covered under the MHRA.

What can a housing provider ask a person with an Assistance Animal?

A housing provider may ask about the nature of the person’s disability if it is not obvious and for some evidence that the assistance animal has been trained or prescribed. Evidence of training may be shown by demonstration. The housing provider may not demand that a person with a disability provide a medical release to review the person’s medical records or talk to the person’s medical provider.

Terms of Use:

A person with an assistance animal should be afforded the same housing experience on the same terms as other tenants without assistance animals. For example, the person should not be isolated or removed from the normal usage areas of the housing. It is unlawful for a property owner to assign specific apartments for tenants with assistance animals, or charge an assistance animal user extra fees. For example, a housing provider cannot impose an additional security deposit for an assistance animal, even if it charges such a fee for pets. Remember, an assistance animal is NOT a pet; it is an aid that allows a person with a disability an equal opportunity to use/enjoy the housing. Housing providers may charge for damage (other than normal wear and tear) caused by assistance animals, however, if it is the normal practice to charge for damage.

An assistance animal generally must be on a halter/tether/leash when it is outside the residence of the tenant with a disability or is visiting a tenant with a person with a disability, unless the handler's disability prevents using a halter/tether/leash, or doing so would interfere with the work or task the animal is trained to do. If the animal cannot be on a halter/tether/leash, it must be otherwise under the handler's control (such as through voice command or hand signals).

What if there's a problem with an Assistance Animal? Can it be removed?

Yes, under certain, limited circumstances. An assistance animal may be removed from the premises if EITHER (a) it is a direct threat to

the health or safety of others, OR (2) it would result in substantial physical damage to the property of others, OR (3) it substantially interferes with the reasonable enjoyment of the housing by others. A dog that regularly barks at night while other tenants are trying to sleep or nips at other people, for example, can permissibly be removed. There must be a factual basis for removing the animal, however, and not simply fears or stereotypes about certain animals. For example, an animal with a history of aggressive behavior may be denied access or removed but not one that is merely a certain size or breed. If tenants have allergies to the animal, it may be necessary to accommodate all people concerned, such as by keeping the animal away from the person with allergies while still allowing the person with the animal access to the housing.

What if the landlord's rules or insurance excludes certain animal breeds/types?

The landlord cannot impose breed restrictions or limit the type of animal permitted as an assistance animal other than to comply with Maine law (such as zoning ordinances or restrictions on exotic animals). A landlord may not want to allow a certain breed or animal because it is not covered by the building's insurance. In that case, the analysis focuses on whether the request for an assistance animal is a reasonable accommodation, considering factors like availability of an insurance rider or another insurance policy and the total cost compared to the resources available. Landlords cannot require the tenant to get insurance unless it requires all tenants to do so.

ASSISTANCE ANIMALS IN HOUSING



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Compliance with this section of the Maine Human Rights Act can be technical and complicated. Feel free to call us with any questions you may have!