Mid-Atlantic ADA Center

Welcome!

Assistance Animals in Public Accommodations & Housing

will begin at 2:00 p.m. Eastern Time

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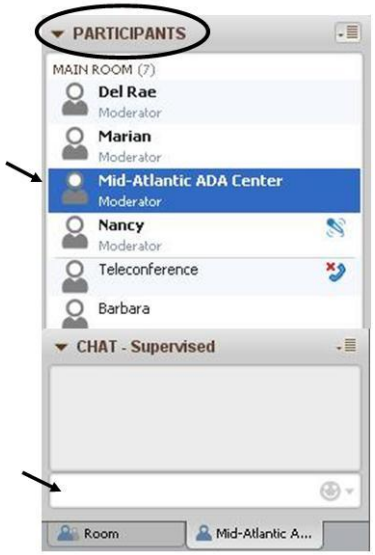

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Assistance Animals in Public Accommodations & Housing

Presented by:

Mid-Atlantic ADA Center

Today's presenter:

Kat Taylor

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ADVANCING CIVIL RIGHTS FOR ALL

Equal Rights Center
est. 1983
Advancing Civil Rights For Over a Quarter Century

- Service and Assistive Animals
  August 14, 2014

- Kat Taylor

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Equal Rights Center

The Equal Rights Center is a non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment, public accommodations, and government services.

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ERC Services

- Education and Outreach
- Compliance Services
- Civil Rights Testing
- Intakes and Advocacy

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Objectives

- Applicable Laws (ADA Title III and FHA, only)
- Reasonable Modifications & Accommodations
- Defining the animal
- Animals as a modification and accommodation
- Common questions and answers

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Americans with Disabilities Act (ADA)

The Americans with Disabilities Act, enacted in 1990, prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and government services.

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Americans with Disabilities Act

- Title I: Employment
- Title II: State and Local Government, Transportation
- Title III: Public Accommodations
- Title IV: Telecommunications
- Title V contains miscellaneous provisions

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Americans with Disabilities Act Title III

Prohibits discrimination by all businesses open the public, this includes ensuring structural accessibility and providing reasonable modifications to ensure equal access to good and services.

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Fair Housing Act (FHA)

The **Fair Housing Act** is comprised of Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988: The FHA states that, it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

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Protected Classes

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability

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Disability as Defined by the Law

An individual with a disability is defined as a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities, or
- Has a record of such an impairment, or
- Is regarded as having such an impairment.

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ADA (Title III)

- Restaurants
- Retail stores
- Hotels
- Movie theaters
- Convention centers
- Doctors offices
- Public transportation
- Museums
- Apartment leasing offices

FHA

- Apartments
- Condos
- Nursing Homes
- Group homes for recovering addicts

(not transient facilities)

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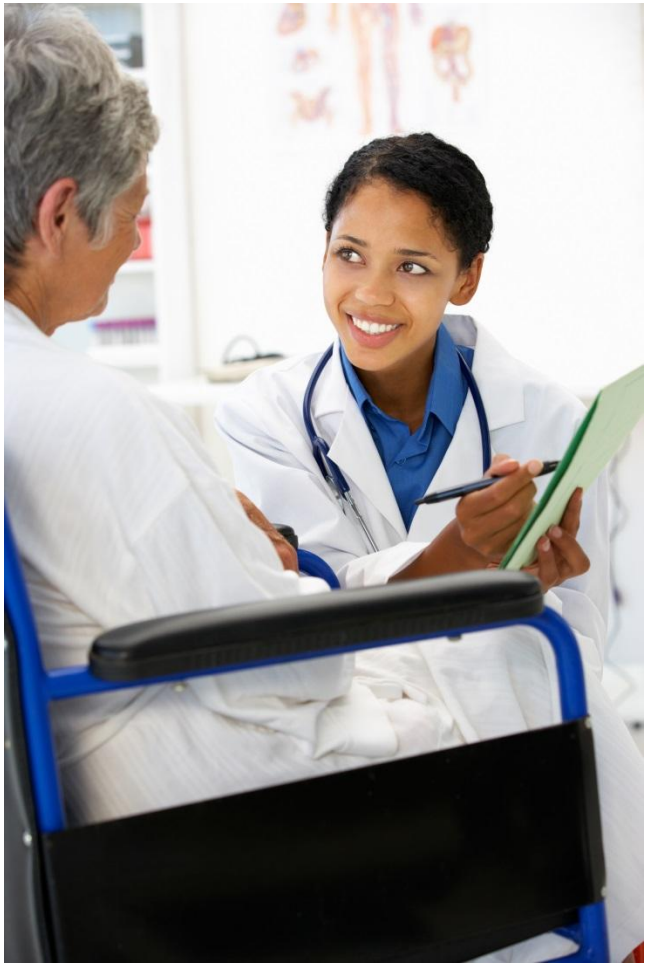
Tamara v. El Camino Hospital

Under Title III, a court held that though a hospital's policy stated that the public or service animals were not permitted in "restricted access areas" of the hospital, a service animal must be permitted in the behavioral health section of a hospital, since it is not sterile area and would not inhibit the staff from performing their duties.



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The ADA Title III & Reasonable Modifications

The Americans with Disabilities Act requires private places open to the public to provide people with disabilities **reasonable modifications**.

FHA and Equal Opportunity to Enjoy the Dwelling

The Fair Housing Act requires housing providers to provide and/or allow **reasonable accommodations** and **reasonable modifications** for people with disabilities if such changes will afford the person full enjoyment of their housing.

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Reasonable Modifications/ Accommodations

Changes in rules, policies, practices, or services that give a person with a disability equal opportunity to benefit from a program's goods and services.

- Example: Waiving a "no pet" policy
- Example: Providing alternative forms of communication

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Denying an Accommodation

- If an accommodation request would result in a **direct threat to the health and safety of others,** the provider is not required to provide it.
- If an accommodation request would result in **a fundamental alteration to the nature of the program,** the provider is not required to provide it.
- If an accommodation request would pose **an undue financial or administrative hardship** to the program, the provider is not required to provide it.

Questions

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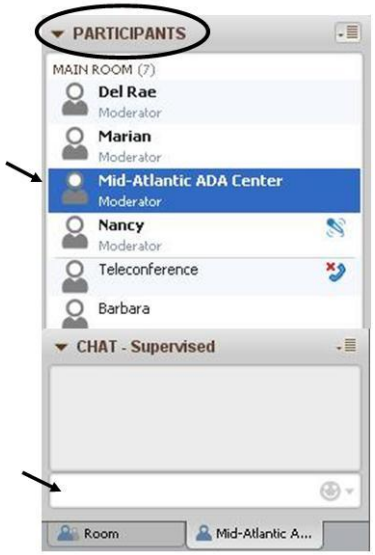

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Service Animals as a Modification (ADA)

- A dog
- Individually trained to do work or perform tasks
- For the benefit of an individual with a disability, the work or tasks performed by the service animal must be directly related to the handler's disability
- Miniature horses may also be considered a modification

(*The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship does not constitute work or tasks for the purpose of this definition*.)

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Miniature Horses as a Modification (ADA)

- Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds. Entities covered by the ADA must modify their policies to permit miniature horses where reasonable.
- The facility must be able to accommodate the miniature horse's type, size, and weight
- The miniature horse must:
  1) Be housebroken
  2) Under the owner's control
  3) Not compromise the legitimate safety requirements of the facility

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Newberger v. La. Dep't of Wildlife & Fisheries

Court held that four small monkeys did not qualify as service animals under the ADA. While Ms. Newberger had autism, the Court found that her claim that these animals qualified as service animals "lacked merit." The Court acknowledged that service animal is defined as "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefits of the individual with a disability."

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Assistive Animals (FHA)

- The individual must have a recognized disability under the law
- The animal must serve to ameliorate at least one of the conditions of the disability.

(*Service animals, companion animals, and other trained animals that assist a person with a disability*)

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Fair Housing of the Dakotas, Inc. v. Goldmark Property Management

Court held that emotional support animals do not qualify as service animals under the ADA, but they do qualify as reasonable accommodations under the FHA and thus fees cannot be imposed on an individual needing an emotional support animal as a reasonable accommodation.

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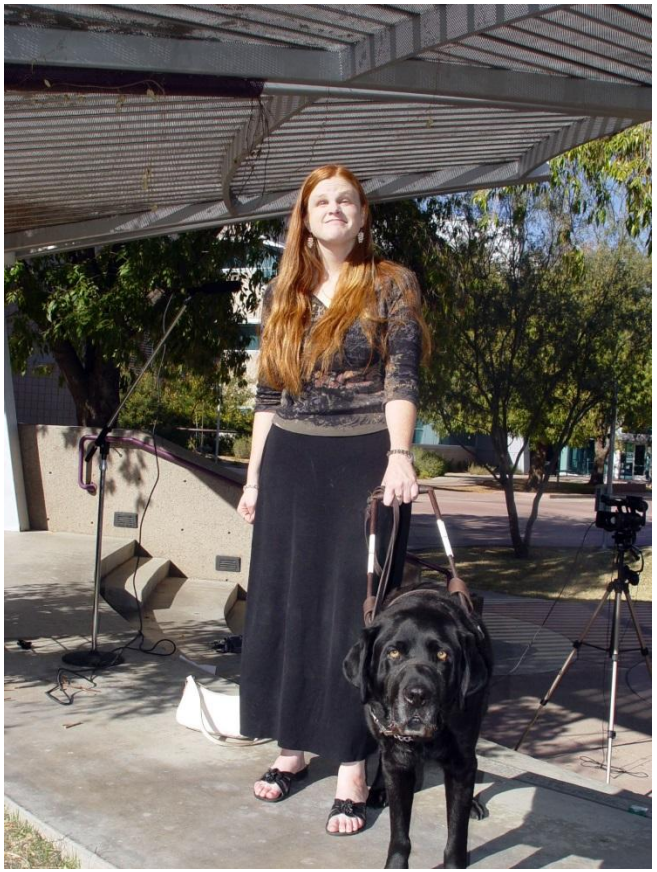

Types of Service & Assistive Animals

- Guide dogs (ADA & FHA)
- Dog that alerts person before seizure (ADA & FHA)
- Dog that fetches medication or acts as alarm for medication (ADA & FHA)
- Cats that provide emotional support (FHA)
- Birds that provide comfort and companionship (FHA)
- Monkeys that can pick up and fetch items (FHA)

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Animals as an Accommodation (ADA & FHA)

- No formal training needed
- No special harness or vest necessary
- Do not need specific documentation “papers”

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WHY???

- Modifications intended to assure access to public places vs. accommodations enjoying a dwelling (Public vs. Home)
- Training (Training vs. No Training)
- Documentation and identification (No papers vs. verification)

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Common Questions & Answers

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Can a restaurant owner inquire as to the need of an animal?

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Inquiries

- **Yes.**
- A business owner may inquire if an animal is a service animal that is required because of a disability and what work or task has the dog been trained to perform.
- But may **NOT** inquire as to the nature and extent of an individuals or disability or require that the animal "prove" it can perform a certain task.

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Can a housing provider inquire as to the need of animal?

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Assessing the Need

It is unlawful for a housing provider to deny a request for a modification or accommodation if there is an identifiable “nexus” and the request is reasonable.

To assess the need to provide the accommodation a housing provider can require:

- Verification as to whether the person has a disability IF the disability is not visible
- Description of the needed modification or accommodation
- Demonstrated relationship between the person’s disability and the request.

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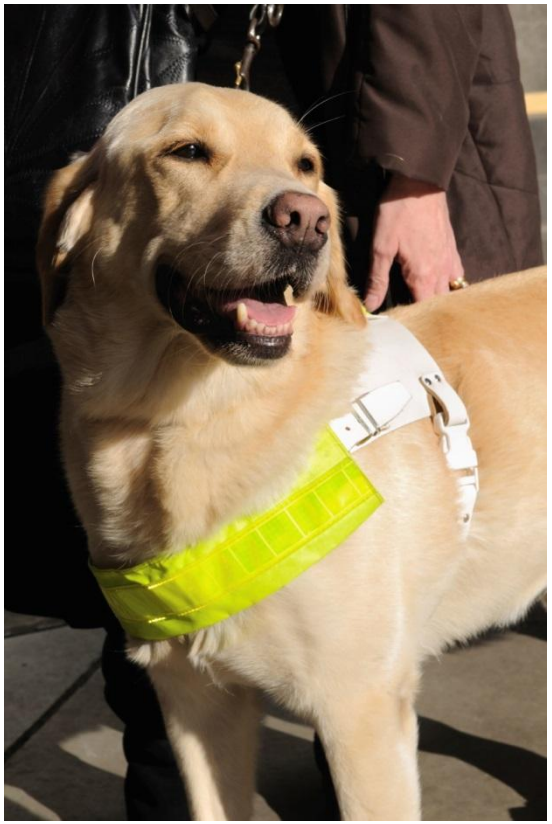

When can an animal be excluded from a place of public accommodation such as a store or restaurant?

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Owner's Responsibilities

An animal may be excluded if it is not house broken or poses a direct threat to other customers or the property.

- The "threat" must pose a direct health and safety risk to others. Allergies of others are generally not considered threats.
- Threat to property does not include normal wear and tear such as needing to clean dog hair or flooring.
- Speculation, NOT a threat

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When can an animal be excluded from an apartment complex?

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Owner's Responsibilities

- Animals must not pose a threat to others or the property
- Residents must follow "pet" rules that may include: clean up and general control of animal

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Can ‘prohibited’ breeds of dogs (pitbulls) be excluded from public places and housing if they are service animals?

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Sak v. City of Aurelia

No. If a dog has record of non-aggressive behavior, enforcement of the ADA, or national public interest, trumps that of the local public interest in the regulation of certain breeds of dogs for health and public safety.

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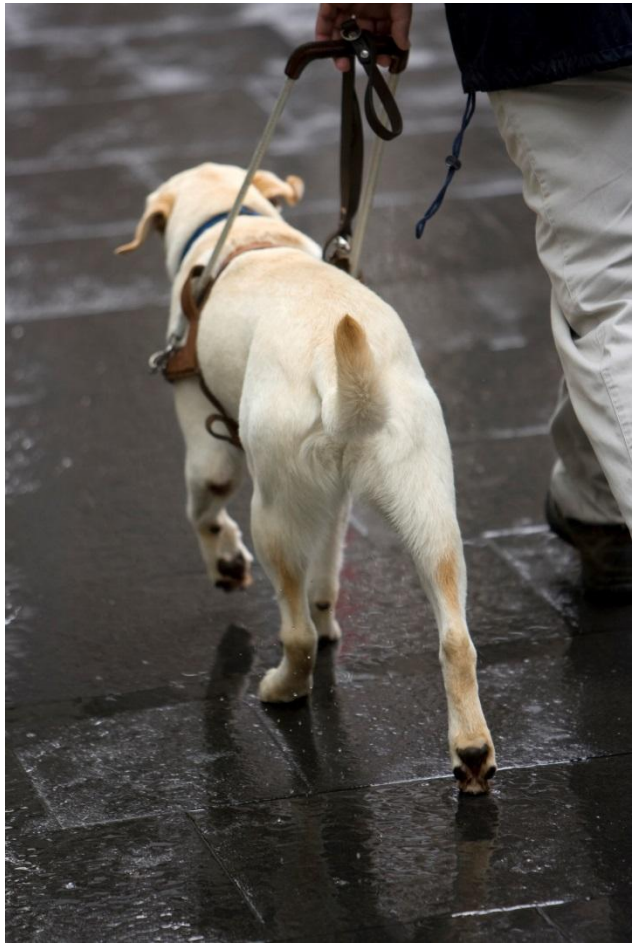
Are dogs that assist individuals with PTSD actual service dogs or emotional support animals?



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- **It depends.**
- But it is very likely they are service dogs. Many dogs that assist individuals with PTSD perform tasks such as fetching medication and creating additional personal space in public places.

*****Remember, in determining whether an animal is a service animal or emotional support animal, look to what they are trained to do and not the nature of a person's disability.**

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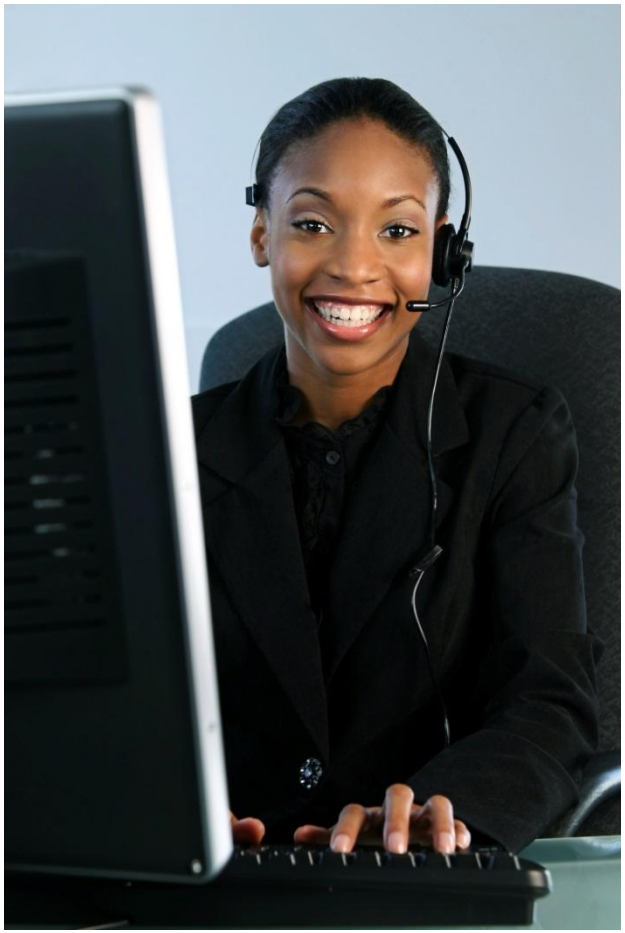

Can a housing provider impose a fee on an individual with an assistive animal?

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Fees

- **No.**
- As a reasonable accommodation, the housing provider is responsible for any costs and may not impose additional costs on a tenant.

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Do homeless and emergency shelters have to permit service animals and assistive animals?

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- **It depends.**
- **All** shelters are places of public accommodation under the ADA and must admit service animals as a modification.
- Shelters that serve as permanent housing, also fall under the FHA and must permit service animals AND emotional support animals and other assistive animals.
- In either instance, the handler, not shelter staff, is responsible for care of the animal.

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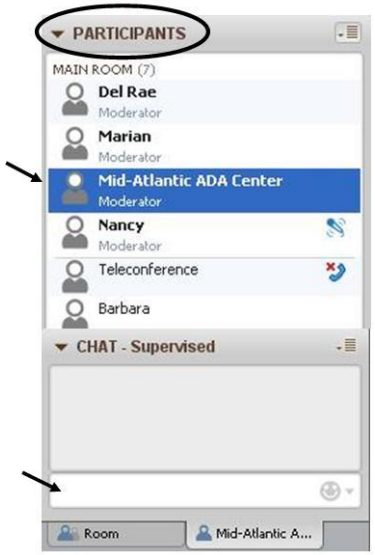

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RESOURCES

- The Americans with Disabilities Amendments Act of 2008. 42 U.S.C. §§ 12181-89.
- The Fair Housing Amendments Act of 1988. 42 U.S.C. § 3601, et seq.
- Americans with Disabilities Act Title III Regulations 2010. 28 CFR Part 36.
- Pet Ownership for the Elderly and Persons with Disabilities 2008. 24 CFR Part 5.
- Bazelon Center for Mental Health Law. Right to Emotional Support Animals in “No Pet” Housing.
- Memorandum to the FHEO Regional Directors from Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 of the Rehabilitation Act (Feb 17, 2011)
- United States Department of Housing and Urban Development, “Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations under the Fair Housing Act,” (2004)

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Contact Us

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