

BEWARE OF DOG: HOW WHAT YOU DON'T KNOW ABOUT SERVICE ANIMALS CAN GET YOU IN TROUBLE*

A. POP QUIZ: Which AirBNB Host may have legal trouble??

1. "I don't allow children; my house isn't safe for them and neighbors are too close for screaming babies."
2. "I love my new 'Nest' Doorbell! It's an extra layer of security, and I can detect unauthorized college parties using the camera aimed at the front porch."
3. "I normally use instant book, but if I get a bad feeling about the person I just decline the reservation."
4. "My minimum age for the primary renter is 24. Every time I previously let adults 18-23 rent my home, they'd throw a blow-out college and underage drinking party, break all of my rules and cause too much damage. I could lose my license over that."
5. "As for dogs, I am super allergic so well within my rights to refuse a dog because I would not be able to do the house keeping. I can tolerate hypoallergenic dogs...I do have a shitzu.

So if Airbnb wants hosts to accept these "service dogs" we can refuse by stating that accepting dogs puts our health at risk because we are allergic to them. Hotels have designated rooms for pets so that guests who are allergic do not have the same rooms."

6. I found the following by googling ADA at the government website: "Emotional support, therapy, comfort or companion animals are *not* considered service animals under the ADA." So I declined this lady who wanted to book my unit for 2 months, because she has an emotional support dog.

* Written materials from presentation given 8/16/2017 to hosts at the AirBNB Portland Host Meet up, by Heather Brann and Julie Reading.

It wouldn't be a lawyer presentation without a disclaimer:

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7. “My guest smells like mold. It’s permeating the whole house. I mentioned it to him and he can’t smell it at all. It’s really bad. He asked to book next week as well, and I declined. I’m going to need next week to decontaminate!”

B. LEGAL CONCEPTS IN NONDISCRIMINATION—STUFF YOU CAN’T GOOGLE

- **Location, Location, Location!**

- Where you are located determines what laws apply to you: Federal, then State, then County or City.
- The regulation that is most protective of civil rights will apply.
- So if a federal website suggests you can deny access to an “emotional support animal,” but state law says you cannot, you cannot.

- **Location, Location, Location!**

- Specific answers to what you can and cannot do vary based on the detailed analysis of your space. So an answer for one person is not necessarily true for another person.
- Race, age, religion, ethnicity, LGBTQ, gender, familial status and disability each carry different analyses, scrutiny, and have slightly different rules.
- Details of whether you live in the space with the guests, which parts of the space you share, whether it is your primary residence, how the space is zoned or legally described can affect what is or is not allowed.
- You cannot assume that an answer that applies to someone else applies to your space.

- **You CAN be sued by people that never stayed with you, or never asked to stay with you. And you can lose this lawsuit.**

- Most anti-discrimination laws prohibit owners from advertising or publishing discriminatory policies.
- As the owner, you are responsible for how your listing reads on AirBNB.
- Example of bad thinking: “no children under 2.”

- **Architectural rules for wheelchair accessibility for the disabled are irrelevant to your duty to comply with nondiscrimination laws concerning disability and service animals.**

- Example of bad thinking: “My home is on the historic register, and I read on the ADA website that I have no obligation to install a wheelchair ramp. Because my home was built in 1890, I am exempt from the ADA.”

- **Legitimate, nondiscriminatory business-related rules, policies, and procedures, that you apply consistently with ALL guests regardless of disability, are your friend.**

- Most hosts don’t have a problem with the disabled, they have a problem with guests who cause damage, create problems with neighbors, or put the host at risk of liability.
- Have and enforce against for all guests: a contract, a damage deposit, overtime cleaning fees, if the home can’t be returned to original condition in your cleaning window. **Exception: no pet fee for service animals.**
- If your home is damaged, it really doesn’t matter whether it was the primary guest, their kid, their pet dog, or their service animal.
- Ironic but true: hosts who allow pets can more easily write a non-discriminatory rule of conduct.

- **Be wary of coming up with a “too clever” justification for discrimination.** Finding an exception or “hanging your hat” on one word of the statute or an exception is a really bad idea. In non-discrimination law, every key word or concept likely has its own body of case law that hammers out exactly what that word means.
 - Examples of “wrong headed” thinking: “This is my private home, not a ‘public accommodation.’ My home, my rules!”
 - Message boards are full of bad legal advice—given by lots of people with strong opinions and no actual knowledge or training in the law!
- **Be “business smart!”**
 - AirBNB has no legal obligation to let you be a host.
 - If someone claims that you are engaging in illegal discrimination, AirBNB is going to not going to pay a lawyer to see if you meet some narrow, esoteric, legal exception. They will simply kick you off the website to demonstrate their commitment to nondiscrimination!

C. SOURCES OF OREGON LAW:

DEFINITION OF DISABILITY and OVERVIEW:

- “The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.”
- We could fill a whole presentation with the law on this topic, but for hosts, this is a distraction.
- **The definition is very broad, but more importantly, not your business! Because it is illegal to ask questions about the disability, if a guest tells you they are disabled, just accept it!**
- Note having a “record of” a disability is a protected class, even if the individual was misclassified as disabled. Example: “I was just released from the state hospital, they thought I was schizophrenic but I am not.”
- Note “regarded as disabled” is also a protected class of disabled individuals. This could include severe disfigurement or “appearance” type issues.
- In general, people who rent real property and people who offer “lodgings” must reasonably accommodate the disabled. Assistance animals are considered a reasonable accommodations or modifications.

FAIR HOUSING LAW

(2) A person may not discriminate because of a disability of a purchaser, a disability of an individual residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any individual associated with a purchaser by doing any of the following:

(a) Refusing to sell, lease, rent or otherwise make available any real property to a purchaser.

(c) Making any distinction or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real

property or the furnishing of any facilities or services in connection with the real property.

(d) Attempting to discourage the sale, rental or lease of any real property.

(e) Representing that a dwelling is not available for inspection, sale, rental or lease when the dwelling is in fact available for inspection, sale, rental or lease.

(g) Refusing to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling.

(3) **A person may not publish**, circulate, issue or display or cause to be published, circulated, issued or displayed **any communication, notice, advertisement**, or sign of any kind relating to the sale, rental or leasing of real property **that indicates any preference, limitation, specification or discrimination against an individual on the basis of disability.**

PUBLIC ACCOMMODATIONS LAW

DEFINITION of “Public Accommodation”: **(a) Any place or service offering to the public accommodations**, advantages, facilities or privileges whether in the nature of goods, services, **lodgings**, amusements, transportation or otherwise.

(2) A place of public accommodation or of access to state government services, programs or activities **may not**:

(a) **Ask an individual about the nature or extent of a disability** that the individual has or may have;

(b) **Require an individual to provide documentation proving that an animal is an assistance animal** or an assistance animal trainee; or

(c) Notwithstanding any fee or admission charge imposed for pets, **require that a person with a disability or an assistance animal trainer pay a fee or admission charge for an assistance animal or assistance animal trainee.**

(3) [†] [OMITTED]

(4) If a place of public accommodation or of access to state government services, programs or activities **customarily charges a person for damages** that the person causes to the place, the place may charge a person with a disability or an assistance animal

[†] NOTE: This section is omitted, because in practice you do not want to push the envelope. There are questions you are allowed to ask, but then there are exceptions that prohibit you from asking. This puts you in a “guest said/host said” situation, and if you mess up the questions at all, that is potential evidence of discrimination.

trainer for damages that an assistance animal or assistance animal trainee causes to the place.

(5) A **person with a disability or an assistance animal trainer must maintain control of an assistance animal** or assistance animal trainee. Except as provided in this subsection, control shall be exerted by means of a harness, leash or other tether. If the use of a harness, leash or other tether would interfere with the ability of the animal to do the work or perform the tasks for which the animal is trained or is being trained, control may be exerted by the effective use of voice commands, signals or other means. If an animal is not under control as required in this subsection, a place of public accommodation or of access to state government services, programs or activities may consider the animal to be out of control for purposes of subsection (6) of this section.

(6)(a) Except as provided in this subsection, a **place of public accommodation** or of access to state government services, programs or activities **may not deny a person with a disability or an assistance animal trainer** the right to be accompanied by an assistance animal or assistance animal trainee in any area of the place that is open to the public or to business invitees. A place of public accommodation or of access to state government services, programs or activities **may require a person with a disability or an assistance animal trainer to remove an assistance animal** or assistance animal trainee if:

(A) The animal is not housebroken; or (B) The animal is out of control and effective action is not taken to control the animal.

(b) A place of public accommodation or of access to state government services, programs or activities **may impose legitimate requirements necessary for the safe operations of the place of public accommodation** or the services, programs or activities. The place of public accommodation or of access to state government services, programs or activities **shall ensure that the safety requirements are based on actual risks, not on speculation, stereotypes or generalizations about persons with disabilities.**

D. RECENTLY UPDATED AIRBNB POLICY- CONSISTENT WITH OREGON LAW

Airbnb hosts **may not**:

- Decline a guest based on any actual or perceived disability.
- Impose any different terms or conditions based on the fact that the guest has a disability.
- Substitute their own judgment about whether a unit meets the needs of a guest with a disability for that of the prospective guest.
- Inquire about the existence or severity of a guest's disability, or the means used to accommodate any disability. If, however, a potential guest raises his or her disability, a host may, and should, discuss with the potential guest whether the listing meets the potential guest's needs.
- Prohibit or limit the use of mobility devices.
- Charge more in rent or other fees for guests with disabilities, including pet fees when the guest has an assistance animal (such as a service or emotional support animal) because of the disability.
- Post any listing or make any statement that discourages or indicates a preference for or against any guest on account of the fact that the guest has a disability.
- Refuse to communicate with guests through accessible means that are available, including relay operators (for people with hearing impairments) and e-mail (for people with vision impairments using screen readers).
- Refuse to provide reasonable accommodations, including flexibility when guests with disabilities request modest changes in your house rules, such as bringing an assistance animal that is necessary because of the disability, or using an available parking space near the unit. When a guest requests such an accommodation, the host and the guest should engage in a dialogue to explore mutually agreeable ways to ensure the unit meets the guest's needs.

Airbnb hosts **may**: Provide factually accurate information about the unit's accessibility features (or lack of them), allowing for guests with disabilities to assess for themselves whether the unit is appropriate to their individual needs.

E. TAKE-AWAY: BEST PRACTICES FOR AIRBNB HOSTS

DOs	DON'Ts
<ul style="list-style-type: none">• Welcome service animals• Use a contract• Require a damage deposit• Have nondiscriminatory policies• Policies should address bad <u>conduct</u>• Stick to your policies and rules• Get it in writing• Check your bias• Consider allowing pets• Use positive language• Check how your online ad reads• Remember that a service animal is not a pet	<ul style="list-style-type: none">• Charge a fee for a service animal• Ask questions (about the animal or disability)• Require “proof” animal is “legit”• Assume you can assess “real” disability• Assume you can assess a “real” service animal• Attribute bad conduct to a disability• Rely on oral communication• Accuse a guest of lying about her disability• Accuse a guest of lying about a service animal• Make passing remarks about guest’s disability• Ask a guest to remove a service animal unless it is a <u>very serious threat</u>, and well-documented.• Make the evening news

References to Quiz Answers:

1. Legal trouble ensues: <http://www.nbcwashington.com/investigations/Home-Rental-Owners-Sued-Over-Ads-Discouraging-Children-399399571.html>
2. Legal trouble ensues: <https://www.usnews.com/news/best-states/oregon/articles/2017-06-28/oregon-rental-house-owner-not-charged-for-recording-hot-tub>
3. Legal trouble ensues: <https://medium.com/stay-woke/i-read-about-this-phenomenon-of-black-people-being-rejected-on-airbnb-f36dd3ab0375>

and

<http://fortune.com/2016/09/15/airbnb-racism-black/>

Check your bias! Bias is when you discriminate without thinking about why you are telling someone “no.”

4. Probably okay. Most age discrimination claims involve bias against aging adults, and there are legitimate business reasons for the policy.
5. <http://www.vrminatel.com/the-dos-and-donts-of-service-animals-how-to-determine-and-properly-accommodate-ada-approved-service-animals-in-the-vacation-industry/> A decent article, but not totally true for Oregon! And you may in fact have to comply with the FHA (Likely for Portland hosts who allow 30 day stays). Misleading when it talks about “rooms” because this is ambiguous in an AirBNB context.
6. Careful! Civil rights laws operate as “one way ratchet.” States, Counties and Cities can be more protective of their citizens’ civil rights, but not less protective than federal law. So federal law is the minimum standard. Oregon law is often more protective than federal law, particularly with movement toward “mental health parity,” i.e., ensuring that our citizens have the same health care rights protecting mental disabilities and health conditions as they enjoy protecting their physical disabilities.
7. Stolen from a host post in the community center. Being “stinky” is not a protected class, so probably okay. But consider this: what if the guest’s odor is a symptom of a well-documented medical condition that rises to the level of a protected disability?