All Dogs are Emotional Support Animals: The Timely Need to Reconsider the Rights of Renters to Have Dogs Under the Fair Housing Act

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ALL DOGS ARE EMOTIONAL SUPPORT ANIMALS:
THE TIMELY NEED TO RECONSIDER THE RIGHT OF
RENTERS TO HAVE DOGS UNDER THE FAIR
HOUSING ACT

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ABSTRACT

The lack of pet-friendly housing options in the United States and the current web of property-owner-imposed restrictions unfairly prevents renters and lower-income individuals and families from benefitting from dog companionship. The recent confusion and stigma around the term “emotional support animal” has led to misinterpretation of the requirements of a reasonable accommodation request under the Fair Housing Act. Interpreting “assistance animal” under the Fair Housing Act as a blanket classification that applies to all dogs would reverse this current bias. Restrictions should promote responsible pet caretaking, not limit dog ownership. Considering recent heightened protections for dogs in other areas of the law, the proven positive impact of dogs on mental health, and the current critical capacity of animal shelters across the United States, now is the perfect time to acknowledge that all people should have the right to have a dog in their home.
# Table of Contents

## Introduction .................................................................................................................. 136

### I. Pets of the Pandemic: The Current Owner Surrender Crisis ................................................. 139

### II. Legal Background ...................................................................................................... 141

#### A. The Federal Fair Housing Act ................................. 141

#### B. Americans with Disabilities Act ............................ 143

#### C. The ADA and FHA on Service and Assistance Animals ................................................. 144

#### D. “Emotional Support Animal” ................................. 144

#### E. The Standard of Proof for a Mental Health Condition Allowing for an Assistance Animal as a Reasonable Accommodation ......................................................... 145

#### F. Enforcement and Tenant Rights Under the FHA .......................... 146

### III. Mental Health: Legal Definition, Circumstantial Effects, and the Impact of Dogs ......... 146

#### A. Mental Health as a Disability Under the Law ................................. 146

#### B. The Effects of the COVID-19 Pandemic on Mental Health .................................................. 148

#### C. Dogs and Mental Health .................................................. 150

1. Veterans, Dogs, and PTSD ................................. 150

2. Exercise, Dogs, and Mental Health: A Walk a Day Keeps the Doctor Away  .................. 151

3. Reasonable Accommodation Requests for Dogs as Companions for People With Mental Health Issues .......................... 152

### Analysis .......................................................................................................................... 153

### IV. All Dogs Are Assistance Animals .......................................................... 154

#### A. The Fallacy of the “Emotional Support Animal” ............................................................... 155

#### B. Just Dogs? ...................................................................................................................... 158

### V. What Property Owners Really Have to Lose By Renting to People With Dogs .......... 160

#### A. Dog Damage ................................................................................................................. 160

#### B. Dog Bite Liability .......................................................................................................... 161

#### C. Prohibited Breeds ......................................................................................................... 163

#### D. Effective Controls on Potential Negative Consequences of “All Dogs Allowed” ........... 163
E. How to Manage Dogs in Semi-Public Spaces on Shared Rental Properties .......................... 164

VI. OTHER INCONSISTENCIES OF DOGS IN THE LAW ........ 165

VII. PROPOSALS FOR CHANGE ........................................ 166

A. Is This Really a Radical Idea? .............................. 168

CONCLUSION ........................................................................ 169
INTRODUCTION

Pets allowed on case-by-case basis. No dogs over 25 lbs. Restricted breeds include Pit Bull, German Shepherd, Akita, Rottweiler, Boxer, Doberman Pinscher, Mastiff, Malamute, Cane Corso, Husky, Chow Chow, and Great Dane.¹ There will be a $250 fine for any pets that are on the premises without landlord permission, even on the first offense.² No pets allowed. This is the restrictive language many people encounter when trying to bring home a canine companion.

Moving is one of the most stressful life events a person can experience, and with rent increases leading to a staggering rise in eviction rates over the past few years, many people do not have a choice in their change in circumstances.³ The fear and complications brought on by property-owner-imposed pet restrictions make this already stressful situation far worse for pet owners who rent. While there are available options to get around pet restrictions, such as submitting a reasonable accommodation request under the Fair Housing Act⁴ and presenting your landlord with documentation that your dog is your support animal,⁵ landlords, property owners, and

⁴Fair Housing Act, 42 U.S.C. §§ 3601-3619.
⁵An Emotional Support Animal (ESA) is an animal that provides a therapeutic benefit (e.g., emotional support, comfort, companionship) to a person with a mental health or psychiatric disability (such as a serious mental health condition. An ESA is not considered a Service Animal, but under U.S. law, an emotional support animal is also not
apartment management companies often do not acknowledge these options. Additionally, the rise in media reports of claimed “emotional support animals” such as peacocks and hamsters wreaking havoc in public spaces has led to an increased stigma behind claiming the need for a support animal.\(^6\) Renters with mental health issues, including anxiety and depression, are hesitant to exercise these rights, and many people are either unaware of the process or lack the resources to fight a landlord’s denial of such a request. Consequently, pet ownership is far more accessible for homeowners, as renters are continually forced to surrender their beloved pets when they cannot find a place to live with them.\(^7\)

Considering the proven significant positive impact dogs have on mental health,\(^8\) the extreme financial and mental health burdens brought on by the COVID-19 pandemic,\(^9\) the current overcrowding of animal shelters across America,\(^10\) and the recent rise in the recognition of dogs as part of the family,\(^11\) it is time for this barrier to pet ownership as a renter to be reevaluated. This paper will argue that renters should not be discriminated against and unable to enjoy the many benefits of dog ownership, particularly concerning mental health, that homeowners and others with more resources can

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\(^7\) According to the Humane Society, “housing problems are some of the main reasons that pets are given up to animal shelters.” Information for renters with pets, HUMANE SOCIETY OF THE UNITED STATES, https://www.humanesociety.org/resources/information-renters-pets (last visited July 16, 2022), archived at https://perma.cc/5AZE-ZFSH. While high refundable and nonrefundable pet deposits ranging on average from $100-$750 are another factor limiting the choice of available rental options, a discussion of the fairness of pet fees is beyond the scope of this paper. Owners do not have to pay pet fees for assistance animals. However, landlords can still charge a security deposit. The Fair Housing Act and assistance animals, HUMANE SOCIETY OF THE UNITED STATES, https://www.humanesociety.org/resources/fair-housing-act-and-assistance-animals [https://perma.cc/TE8Z-2X88] (last visited March 4, 2023).

\(^8\) See discussion infra note 88.

\(^9\) See discussion infra note 78.

\(^10\) See Nair infra note 24.

\(^11\) Id.; See generally Cassidy McCants, Millennials prefer pets to children (Survey), CONSUMER AFFAIRS (updated June 1, 2023), https://www.consumeraffairs.com/pets/pets-are-family.html [https://perma.cc/X328-F2FS]. (When surveyed, 58% of millennials in 2022 said they would rather have pets than children.)
access.\textsuperscript{12} The most effective and fair way to address and correct this injustice is to interpret “assistance animal” under the Fair Housing Act to apply inherently to all dogs.

While people being forced to give up their pets due to changes in circumstances, including eviction and the lack of pet-friendly housing options, is currently an issue all over the United States,\textsuperscript{13} this paper will consistently highlight Texas due to the extremely high number of stray dogs\textsuperscript{14} and animals in shelters across the State.\textsuperscript{15} Additionally, while there is a case for all pets, from the fluffy to the scaled, providing emotional support for their human companions,\textsuperscript{16} this paper will focus on the case for a blanket classification of dogs as assistance animals under the Fair Housing Act. Dogs have consistently been the most popular pet choice in the United States, and dogs have proven their worth as “mankind’s best friend” over the 12,000 years they have been domesticated.\textsuperscript{17}

This paper will begin in Part I with an exploration of the effect of the pandemic on dog ownership and dog abandonment. Part II will give a legal background on the definitions of assistance animal and

\begin{footnotesize}
\begin{enumerate}
\item[12] While the Fair Housing Act also applies to homeowners who are subject to homeowner association rules, as well as individuals in public housing, this paper will consistently use the word “renters” as a blanket term to apply to anyone who might face pet restrictions in the place where they live.

\item[13] See infra note 22.

\item[14] Houston, Texas, has even been recently described by a documentary filmmaker visiting from the UK as “like a third-world country” in terms of the stray dog overpopulation. Randy Wallace, UK filmmaker making documentary says Houston is like a third-world country regarding stray dog overpopulation, FOX 26 HOU. (Dec. 1, 2021), https://www.fox26houston.com/news/uk-filmmaker-making-documentary-says-houston-is-like-a-third-world-country-regarding-stray-dog-overpopulation [https://perma.cc/VB6Y-ZEN8].

\item[15] It should be noted here that while this paper will argue for specific possible solutions to help mitigate the crisis of overflowing shelters due in part to renters forced to surrender their animals, the overpopulation of stray dogs in the United States is a complex issue with no single answer. See Samantha Raphelson, No Easy Answer To Growing Number of Stray Dogs In The U.S., Advocate Says, NPR (Dec. 29, 2017, 2:52 PM), https://www.npr.org/2017/12/29/574598877/no-easy-answer-to-growing-number-of-stray-dogs-in-the-u-s-advocate-says [https://perma.cc/CN4E-AVQG].

\item[16] Even if the animal itself has no concept of a relationship with the human with whom it shares its home, studies have shown that the mere act of pet ownership can contribute positively to a person’s mental health. See Pets and Mental Health, MENTAL HEALTH FOUND. (Feb. 15, 2022), https://www.mentalhealth.org.uk/explore-mental-health/a-z-topics/pets-and-mental-health [https://perma.cc/RXW9-MX75].

\end{enumerate}
\end{footnotesize}
service animal under both the Fair Housing Act and the Americans with Disabilities Act, including a discussion of how the Acts differ in application. Part III will then discuss mental health: as a disability, during the pandemic, and as related to the companionship and assistance of dogs. Part IV will then analyze reasonable accommodation requests under the Fair Housing Act, comparing the definition of assistance animal alongside the value dogs can provide to their human companions. Part V will then discuss the balance between landlord and tenant rights concerning pet ownership in rental properties. Part VI will explore various inconsistencies of dogs in the law, such as the legal status of dogs as equivalent to children in divorce proceedings. This paper will conclude with a proposal for a new regime of regulation for pet ownership and a discussion of why the opportune time for change is now.

I. PETS OF THE PANDEMIC: THE CURRENT OWNER SURRENDER CRISIS

As of 2022, over 69 million American households have at least one dog. The COVID-19 pandemic highlighted the importance of the positive effect dogs can have on mental health, as millions of Americans worked from home over the past few years with only their animal companions for company. Recent reports show that one in five households in the United States added a new dog or cat into their home during the pandemic. In April 2020, many shelters posted pictures on social media of empty cages due to an overwhelming number of dog adoptions. Unfortunately, while

people adopted shelter animals at record rates in 2020, and more animals left shelters than entered, in 2022, tens of thousands more animals entered shelters than left, as people gave up their pandemic-acquired companion animals due to changes in work schedules and living circumstances.\textsuperscript{22} With the current state of an increase in homeless animals and a decrease in adoptions leading to a “nationwide animal shelter crisis,” the number of dogs entering shelters in 2023 and 2024 will likely continue to climb.\textsuperscript{23} Shelters all over the United States, particularly in Texas, are full to bursting with stray and surrendered dogs.\textsuperscript{24} Rescue organizations are beyond capacity as they try to keep up with providing care for dogs found on the street and rescuing dogs on the long-stay euthanasia lists at overflowing shelters.\textsuperscript{25} However, the problem is not just people who are choosing to abandon their pets: it is also the people who have been forced to.

Housing insecurity and financial hardship are the leading causes of pet surrender and abandonment.\textsuperscript{26} The long-lasting financial impacts of the pandemic continue to reverberate throughout the United States.\textsuperscript{27} Many people lost their jobs and were forced to adjust


\textsuperscript{23} See supra note 22; see Michelle Homer, ‘Lives are hanging in the balance’: COVID crisis continues to impact Houston-area animal shelters, KHOU 11 (Feb. 1, 2022, 4:44 PM), https://www.khou.com/article/life/animals/covid-crisis-animal-shelters/285-0f53d1b-310f-4c1a-8857-d18c5137adf6 [https://perma.cc/8J84-D9KQ]. According to the South Central Regional Director for Best Friends Animal Society, “[t]he consequences of the pandemic for shelters are that lives are hanging in the balance . . . dog adoptions have waned so there is currently a higher volume of pets in shelters or sitting in foster homes compared to the last two years.”


\textsuperscript{26} See supra note 22.

their living situations, with their circumstances further complicated by skyrocketing rent and housing prices. Consequently, many people found themselves in circumstances where they were unable to find a living situation for themselves and their pets. Shelters saw an increase in owner surrenders as the pandemic’s effect on jobs and households rendered people suddenly unable to care for and house their pets. The director of Montgomery County Animal Shelter in Texas attributed this rise in owner surrenders to factors including "[r]elocating, downsizing, house to apartment, new landlord, limits on breeds or numbers of animals" and other related circumstances.

II. LEGAL BACKGROUND

When faced with property-owner-imposed pet restrictions, people still have specific rights to have animals in their home, particularly dogs, that provide assistance to them in some way under both the Fair Housing Act and the Americans with Disabilities Act.

A. The Federal Fair Housing Act

Title VIII of the Civil Rights Act of 1968, also known as the federal Fair Housing Act (FHA), imposes the most substantial limitations on the rights of property owners at the federal level concerning who

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28 The situation even caused the Centers for Disease Control and Prevention (CDC) to issue an eviction moratorium in September 2020, halting residential evictions for specific classifications of renters. The CDC reasoned that the eviction moratorium was necessary to prevent the interstate spread of COVID-19, as evictions had the potential for increased homelessness and consequently relocation to new congregate living situations that would increase the risk of the rapid spread of COVID-19. See Wen W. Shen, CONG. RSCH. SERV., RS R46758, Scope of CDC Authority Under Section 361 of the Public Health Service Act (PHSA), 3 (April 13, 2021). The Supreme Court ultimately found that extending the order was beyond the agency’s regulatory authority without further clear and specific authorization by Congress. See Ala. Ass’n of Realtors v. Dept. of Health and Hum. Servs., 141 S.Ct. 2485 (2021).

29 See Nair, supra note 24.

30 See id.

31 Id.

32 This paper will consistently use the phrase “property owner(s)” to refer to all people and agencies subject to the federal Fair Housing Act, including property managers, condo associations, co-op boards, and even homeowners’ associations.

they choose to rent to.\footnote{See \textit{History of Fair Housing}, U.S. DEPT OF HOUS. AND URB. DEV., \url{https://www.hud.gov/program_offices/fair_housing_equal_opp/aboutfheo/history/} [\url{https://perma.cc/45YL-MMP3}] (last visited Aug. 8, 2022).} The FHA prohibits discrimination in housing-related transactions based on race, color, national origin, religion, sex, familial status, and disability.\footnote{Fair Housing Act, 42 U.S.C. §§ 3601-19.} The FHA provides a minimum level of protection that state-specific fair housing laws may exceed.\footnote{Auburn Woods I Homeowners Ass’n v. Fair Emp. and Hous. Comm’n, 121 Cal.App.4th 1578, 18 Cal.Rptr.3d 669 (2004).} Forty-nine states, as well as the District of Columbia, have adopted their own fair housing laws to expand on federal protections for these classes of individuals, such as prohibiting discrimination based on an individual’s sexual orientation, gender identity, or source of income.\footnote{Maps Outlining State Fair Housing Laws, State Landlord-Tenant Laws, and City Nuisance Property Laws are Now Available on LawAtlas, TEMP. UNIV. CTR. FOR PUB. HEALTH LAW RSC. (Feb. 15, 2018), \url{https://blog.petrieflom.law.harvard.edu/2018/02/15/maps-outlining-state-fair-housing-laws-state-landlord-tenant-laws-and-city-nuisance-property-laws-are-now-available-on-lawatlaws/} [\url{https://perma.cc/Z5FC-97JE}].} In addition to regulating which classes the law protects, the federal FHA and corresponding state laws also regulate the types of discriminatory actions that are prohibited.\footnote{Id.}

Animals in housing properties where pets would otherwise be restricted are taken into account in the section of the FHA that outlines the limitations on property owners discriminating against individuals based on disability.\footnote{See Fair Housing Act, 42 U.S.C. § 3604.} The FHA makes it unlawful to refuse to make a reasonable accommodation to rules or policies when such an accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.\footnote{A “reasonable accommodation” under the FHA is a “change, excepti on, or adjustment to a rule, policy, practice, or service.” \textit{Reasonable Accommodations and Modifications}, U.S. DEPT OF HOUS. AND URB. DEV., \url{https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accomm odations_and_modifications} [\url{https://perma.cc/X9SP-R9jM}] (last visited Aug. 8, 2022).} The FHA considers an assistance animal to be a reasonable accommodation for a disability, analogous to a device such as a wheelchair that helps individuals manage their disability.\footnote{Regina Schoenfeld-Tacher et al., \textit{Public Perceptions of Service Dogs, Emotional Support Dogs, and Therapy Dogs}, INTL J. ENV’T RSC. PUB. HEALTH (June 12, 2017), \url{https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5486328/#B6-ijerph-14-00642} [\url{https://perma.cc/RHT2-2TDL}].} To be considered an assistance animal under the FHA, the animal does not have to be trained to provide any specific task for the person with a

disability.\textsuperscript{42} A person does not have to prove that the animal is absolutely necessary; they just have to demonstrate that there is a connection between the animal and a disability and that the animal does something to alleviate just one symptom of that disability.\textsuperscript{43}

\section*{B. Americans With Disabilities Act}

Title III of the Americans with Disabilities Act (ADA), which covers public accommodations and commercial facilities, applies to service animals in housing.\textsuperscript{44} The ADA defines a service animal as “a dog that is individually trained to do work or perform tasks for a person with a disability.”\textsuperscript{45} The only animals recognized by the ADA are dogs, and recently, miniature horses.\textsuperscript{46} Only service animals qualify for access to a place of public accommodation under the ADA, not other assistance animals.\textsuperscript{47} Like the FHA, the ADA is a civil rights act, enacted to provide a specific class of people with protections against discrimination.\textsuperscript{48} The ADA prohibits discrimination and guarantees that people with disabilities have the same access and ability to enjoy employment opportunities, purchase goods and services, and participate in government programs and services.\textsuperscript{49} The ADA specifically prohibits discrimination against the disabled in places of public accommodation.\textsuperscript{50}

\textsuperscript{42} See 42 U.S.C. § 3604.
\textsuperscript{43} See Sullivan, supra note 6, at 13:40.
\textsuperscript{46} Id. Some states have a broader definition of service animal that includes any animal that has been trained to perform tasks for an individual with a disability, not just dogs or miniature horses as protected under federal law. Additionally, almost all states include protections for service animals who are in training in places of public accommodation, which the ADA does not include.; Rebecca F. Wisch, Table of State Service Animal Laws, Animal Legal & Historical Center (2023), https://www.animallaw.info/topic/table-state-assistance-animal-laws [https://perma.cc/6AKT-MFBU].
\textsuperscript{47} There are still some limits on service animals in places of public accommodation, including that the animal must be house broken, under the owner’s control, of a type, size and weight that can be accommodated in the facility, and not compromise the safe operation of the facility. Diaz, supra note 33.
\textsuperscript{48} See id.
\textsuperscript{49} See supra note 44. “Modeled after the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, or national origin…the ADA is an ‘equal opportunity’ law for people with disabilities.” Id.
\textsuperscript{50} Diaz, supra note 33.
C. The ADA and FHA on Service and Assistance Animals

ADA regulations apply to a person’s right to bring a service animal into a public place where pets are otherwise prohibited, whereas the FHA regulations only apply to a person’s right to live with an animal within a residential dwelling. The ADA specifically excludes “dogs whose sole function is to provide comfort or emotional support” from its definition of service animals that state and local governments, businesses, and nonprofit organizations that serve the general public must allow to access all areas open to the public. The FHA uses the term “assistance animal” to include any animal not classified as a service animal but who otherwise provides emotional support for an individual with a disability. For example, while the ADA definition of “service animal” applies to whether or not a dog will be required to be allowed on public transportation, the legal definition of “assistance animal” is what applies to whether or not a renter can make a reasonable accommodation request under the FHA to have their animal live in their home with them despite any property-owner-imposed pet restrictions. The ADA definition of “service animal,” as specified by the Department of Justice in the 2010 revisions to the ADA, does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act.

D. “Emotional Support Animal”

While the term “emotional support animal” has risen in media attention over the past few years, “emotional support animal” is not actually a legally defined term under the FHA or the ADA. The FHA includes the phrase “assistance animal,” which is considered either “1) a service animal or 2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic

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51 See Schoenfeld-Tacher et al., supra note 41.
52 Supra note 45.
54 Supra note 45.
emotional support for individuals with disabilities." It is the second type of assistance animal that has come to be known by the term "emotional support animal."

E. The Standard of Proof for a Mental Health Condition Allowing for an Assistance Animal as a Reasonable Accommodation

Property owners can ask renters for verification of an invisible disability before they grant a reasonable accommodation request. However, HIPAA still applies, and renters do not have to divulge sensitive personal information. Renters only have to include information from a reliable source on how their disability affects daily living and how the animal helps alleviate a symptom of that disability.

People who indicate to their landlord that their pet is an assistance animal using an online printout from a “verified mental health professional” claiming the animal is a “registered emotional support animal” may not be fraudulently registering their animal, as no registration is required for an animal to be considered an assistance animal under the FHA. However, they would likely still not fulfill the FHA requirements for a reasonable accommodation request. The person on the other end of the internet transaction may be qualified to diagnose anxiety, but if they are not actually familiar with the person who made the request, an online-issued ESA letter will not meet the necessary standard of reliability. The documentation of a mental health problem that could benefit from an assistance animal is not actually required to come from a mental health professional, but it is required to come from a “reliable”

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56 Sullivan, supra note 6, at 25:55.

57 HIPAA, the Health Insurance Portability and Accountability Act of 1996, is a federal law that ensures individuals’ health information is properly protected. Health Insurance Portability and Accountability Act of 1996 (HIPAA), CTRS. FOR DISEASE CONTROL AND PREVENTION (June 27, 2022), https://www.cdc.gov/phlp/publications/topic/hipaa.html [https://perma.cc/L6U4-3H35].

58 Sullivan, supra note 6, at 26:32.

59 Id. at 27:03.

60 Id.; supra note 45.
source with personal knowledge of the individual, for example, a peer support group. Property owners would be within their rights under the current interpretation of the FHA to deny a reasonable accommodation request for an assistance animal through the form of an ESA online verification letter.

F. Enforcement and Tenant Rights Under the FHA

The Department of Justice enforces both the FHA and the ADA. Additionally, both the FHA and the ADA create a private cause of action that allows individuals to file suit directly against a landlord, property management company, or even community association for discrimination. It is not required to hire a lawyer to fight discrimination under the FHA, however. The FHA is also subject to enforcement by city and county human rights commissions, state and local fair housing boards, and the Department of Housing and Urban Development (HUD). Individuals can file complaints directly with HUD. However, this is not an option that many citizens realize they have, and discrimination penalties are often only steep for landlords when there is a proven pattern of discrimination. Even when it is possible for renters to get around pet restrictions, landlords can push back and issue evictions, putting people without the resources to fight back in difficult and unfair positions.

III. MENTAL HEALTH: LEGAL DEFINITION, CIRCUMSTANTIAL EFFECTS, AND THE IMPACT OF DOGS

A. Mental Health as a Disability Under the Law

Both the ADA and the FHA define a disabled person as someone who has “a physical or mental impairment which substantially limits one or more of such person’s major life activities” and has “a record

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61 Id.; supra note 55.
62 Id. at 31:00.
63 Id. at 33:10.
64 See id.
of having such an impairment.” The ADA further defines “major life activities” in the following words: “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working[,]” as well as “the operation of a major bodily function.”

“Disability” is defined differently across distinct areas of the law in order to achieve particular purposes. For example, the ADA and FHA definition of disability for the purpose of anti-discrimination is broader than the definition of disability to qualify for Social Security disability insurance. The ADA construes the definition of disability broadly, and includes that an impairment needs only to limit one major life activity in order to be considered a disability. Contrastingly, the Social Security Act defines disability as the inability to engage in any substantial gainful activity (SGA) due to a physical or mental impairment that has lasted or is expected to last at least 1 year or to result in death. Depression would only be considered a disability under the Social Security Act if it completely prohibited a person from working for pay or profit. However, depression would essentially always be considered a disability under the ADA and FHA, as depression often affects many major life activities such as caring for oneself, concentrating, and working. According to the American Psychiatric Association, depression “is a common and serious medical illness that negatively affects how you feel, the way you think and how you act...[i]t can lead to a variety of emotional and physical problems and can decrease your ability to function at work and at home.” In many cases under both state and federal law, courts have held that depression and its related
manifestations meet the definition of disability under anti-discrimination laws.\textsuperscript{77}

\section*{B. The Effects of the COVID-19 Pandemic on Mental Health}

Studies have shown that in the first year of the COVID-19 pandemic, anxiety and depression increased by 25\% across the globe.\textsuperscript{78} This increase was due to the unprecedented stress caused by social isolation, fear of infection, and financial worries.\textsuperscript{79} The latest Global Burden of Disease study\textsuperscript{80} indicated that young people have been the most significantly impacted by the mental health effects of the pandemic.\textsuperscript{81} In response to concerns about potential lasting increases in mental health conditions brought by the pandemic, 90\% of countries included some form of mental health support in their pandemic response plans.\textsuperscript{82}

While the pandemic caused financial stress for almost everyone across the globe, low-income households were disproportionately affected, facing food insecurity, housing insecurity, loss of income, and symptoms of depression.\textsuperscript{83} Among low-income households making less than $35,000 a year, 57.3\% experienced income or employment loss during the pandemic.\textsuperscript{84} In January 2021, over seven million people feared being evicted or foreclosed on due to being behind on rent or mortgage payments, and nearly six million adults were behind on payments estimated that they would need to leave their home within the next two months because of eviction or foreclosure, forced to find a new living situation.\textsuperscript{85}

\begin{thebibliography}{9}
\bibitem{GlobalBurden} Id.
\bibitem{GlobalBurdenStudy} “The Global Burden of Disease Study (GBC) is the most comprehensive worldwide observational epidemiological study to date.” About the Global Burden of Disease, THE LANCET, https://www.thelancet.com/gbd/about (last visited Aug. 8, 2022).
\bibitem{GlobalBurdenOrganization} WORLD HEALTH ORG., supra note 78.
\bibitem{GlobalBurdenNote} Id.
\bibitem{PandemicNote} Id.
\bibitem{PandemicNote2} Id.
\end{thebibliography}
insecurity and poverty pose a severe strain on mental health.\textsuperscript{86} Research has shown that poverty “imposes a psychological burden so great that the poor are left with little mental ‘bandwidth’ with which to perform everyday tasks.”\textsuperscript{87}

One bright spot amidst the dark impact of the pandemic on mental health worldwide has been the rise in acknowledgment of the positive effect pets have on mental health. Dogs have long been found to have positive effects on the well-being of their human companions.\textsuperscript{88} Researchers have noted that “[t]he context of the COVID-19 pandemic offered a unique opportunity to better understand how dogs may provide social support for their owners and buffer heightened symptoms of stress, anxiety and depression and contribute to happiness.”\textsuperscript{89} Recent studies account that dog owners reported that their dogs helped them both cope with emotional stress during the pandemic and maintain physical activity during mandated isolation.\textsuperscript{90} Many pet owners said they “would not have been able to get through” the pandemic without their pets.\textsuperscript{91} The results of dogs’ positive contribution to the well-being of people were reported to be even higher for individuals who otherwise lacked a strong social support system of family and friends.\textsuperscript{92} On the other hand, people who became less active due to the restrictions imposed by the pandemic reported higher levels of depression and poorer mental health as a result.\textsuperscript{93}

While the significance of the impact of dogs on mental health has been further realized as people stayed home with only their pets for company throughout the pandemic, the value dogs provide humans has been utilized and appreciated for years by one specific group of people in the United States: veterans.


\textsuperscript{87} Id.

\textsuperscript{88} Francois Martin et al., \textit{Depression, anxiety, and happiness in dog owners and potential dog owners during the COVID-19 pandemic in the United States}, \textsc{PLOS One} (Dec. 15, 2021), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0260676 [https://perma.cc/A6Y9-C4AX].

\textsuperscript{89} Id.

\textsuperscript{90} Id.

\textsuperscript{91} Id.

\textsuperscript{92} See id.

C. Dogs and Mental Health

1. Veterans, Dogs, and PTSD

Veterans have consistently recognized and utilized the positive and often lifesaving effect dogs can have on mental health. Pet ownership can be particularly helpful for veterans who suffer from post-traumatic stress disorder (PTSD) from their service days.94 There are numerous 501(c)3 organizations dedicated to training dogs and connecting them with veterans.95 For example, Pets for Vets “identifies veterans who could benefit from and care for a companion animal and then pairs them with shelter pets which have been rescued, rehabilitated and trained for that purpose.”96 Similarly, the “No Veteran Left Behind Program” developed by the organization Working Dogs for Vets focuses on rescuing dogs from shelters and training them to provide relief to disabled vets who suffer from “PTSD night terrors, anger & irritability and fear of crowds,” helping the veterans to “regain their independence and build their confidence and self-esteem.”97

While it can be extremely beneficial for a disabled veteran to have a dog trained to perform specific tasks, such as intentionally waking up the veteran during an anxiety nightmare or staying alert for them in a crowded space, veterans with task-trained service dogs have actually reported the untrained behaviors of their dogs to be more important than the performance of trained tasks.98 This shows

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98 Abbey Nickel, Study finds the most important task for a PTSD service dog for veterans is disrupting anxiety, PURDUE UNIVERSITY (July 22, 2020), https://www.purdue.edu/newsroom/releases/2020/Q3/study-finds-the-most-important-task-for-a-ptsd-service-dog-for-veterans-is-disrupting-anxiety.html [https://perma.cc/ZA97-8F88].
that the therapeutic benefits of a dog’s companionship help just as much, if not more, than the benefits of having a trained service animal. Dogs who have received no task-specific training inherently provide companionship, happiness, structure, and routine to the lives of veterans, just as they do for any human.

2. Exercise, Dogs, and Mental Health: A Walk a Day Keeps the Doctor Away

Many studies have been done to indicate the therapeutic benefits of dogs for veterans because veterans as a group have widespread mental health concerns, such as PTSD. However, veterans are far from the only group of people who can benefit from the therapeutic nature of the dog-human bond. The built-in required exercise element of dog ownership is one of the many ways in which dogs can positively impact mental health. Exercise can reduce and even ward off depression, anxiety, and other mental health issues. Exercise has been found to be not only clearly effective in treating depression, but even on par with antidepressant drugs without the common negative side effects.

Recently, exercise has been found to help treat and avoid not just depression, but also anxiety disorders, along with other serious psychotic conditions. A daily walk can “pay big dividends for mental health,” as exercise has profound effects on brain structure, in addition to providing benefits including heightened focus, a sense of accomplishment, and even social stimulation. Taking a daily walk is essentially unavoidable for someone with a dog in their

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99 Id.
100 See id.
102 See VEHICLES FOR VETERANS, supra note 94.
103 See Holmes, supra note 93.
104 Siri Kvam et al., Exercise as a treatment for depression: A meta-analysis, 202 JOURNAL OF AFFECTIVE DISORDERS 67, 68 (2015). Echoing this, “[a]ccording to statistics from K9s For Warriors, a nonprofit that pairs combat veterans with service dogs, 92 percent of the veterans were able to reduce their medication or stop taking medication altogether within 6 months of graduating from their dog-pairing program,” VEHICLES FOR VETERANS, supra note 94.
105 Holmes, supra note 93.
106 Id.
home, particularly for someone who lives in an apartment without a fenced yard. Not only does dog ownership encourage a person to leave their house, which in itself can be a mood-booster and help avoid the depression trap of staying inside, but getting exercise through walking a dog can improve both physical health and mental health.\textsuperscript{107} Dogs can also help improve a person’s quality of life by providing unconditional love and giving their human companions a sense of protection.\textsuperscript{108}

Because of the significant positive benefits dog companionship has on a person’s mental and physical health, it would not be a stretch to say that dog ownership helps humans live longer. A recent 2022 commercial for Freshpet dog food made this claim.\textsuperscript{109} The commercial features humans enjoying activities such as hiking and yoga alongside their canine companions, as the ages of both the human and the dog appear on the screen while Sonny & Cher’s “I Got You Babe” plays cheerfully in the background.\textsuperscript{110} As Debbie, age 74, and Scout, age 13, appear hiking across the screen, the narrator says, “dogs help us live longer- return the favor with Freshpet.”\textsuperscript{111}

3. Reasonable Accommodation Requests for Dogs as Companions for People With Mental Health Issues

When renters with mental health issues make reasonable accommodation requests to have a dog as a companion that property owners reject, courts consistently find in favor of the renters under the FHA and corresponding state fair housing acts.\textsuperscript{112} However, the renter generally has to have the knowledge of their options and the financial resources to be able to bring a claim. For example, in a 2004 California case, a couple requested permission from their condominium association to keep their terrier, Pooky, as a companion in their home.\textsuperscript{113} The restrictions of the condominium association only allowed for pet birds and domestic house cats, and

\textsuperscript{107} See VEHICLES FOR VETERANS, supra note 94.
\textsuperscript{108} Id.
\textsuperscript{109} Freshpet, Friends for Life, YOUTUBE (Jan. 4, 2022), https://www.youtube.com/watch?v=S__3G3RdtAU [https://perma.cc/N3CM-4NV8].
\textsuperscript{110} Id.
\textsuperscript{111} Id. Freshpet dog food is advertised as “[f]resh, wholesome meats and veggies for the long haul,” id.
\textsuperscript{112} See Auburn Woods I Homeowners Ass’n v. Fair Emp. and Hous. Comm’n, 18 Cal. Rptr. 3d, 669 (2004).
\textsuperscript{113} Id.
specifically prohibited dogs. Both individuals suffered from depression and found that “taking care of a dog alleviated their symptoms and enabled them to function more productively.” When the association refused the wife’s request to waive the prohibition against dogs as a reasonable accommodation for her impairment, the couple filed a claim with the Fair Employment and Housing Commission (FEHC), which found in their favor. The California Court of Appeals affirmed the decision of the FEHC, finding substantial evidence that allowing the dog constituted a reasonable accommodation.

The condominium association argued that a cat would make “just as good a companion” as the dog. The couple provided extensive evidence of their various handicaps, including manic depression and seizure disorder, and the medical advice to keep an in-house pet, along with the specific benefits they had seen since having the dog in their home, including improved concentration and mood, lessened agitation, better sleep, and less severe acts of self-mutilation. The court found that “it was the innate qualities of a dog, in particular a dog’s friendliness and ability to interact with humans, that made it therapeutic here.”

While the couple was eventually allowed to have the dog back in their home, because they could not afford the initial fees imposed by the condominium association, Pooky had to stay with friends for the duration of the litigation, and the absence of having the dog in their home led to a significant decrease in their mental health.

**ANALYSIS**

When renters are prevented from having a pet in their home, they are prevented from enjoying the many benefits of dog companionship available to homeowners. While the FHA includes broad language that includes protections for people with any level

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114 *Id.*
115 *Id.*
116 *Id.*
117 *Id.*
118 *Id.* It should also be noted that one of the major benefits of dog ownership on mental health is the exercise component of dog ownership, and a person does not need to go outside 2-4 times a day to walk a cat, see discussion supra note 105.
119 *Id.*
120 *Id.*
121 *Id.*
of mental health issue to potentially share their home with any animal that would provide assistance, the way the law currently operates does not actually give all renters a realistic ability to recognize their rights to have their animal in their home and have equal access to finding housing that accommodates their entire family.122

IV. **ALL DOGS ARE ASSISTANCE ANIMALS**

In order to bypass property-owner-imposed regulations and share their home with a pet that provides untrained, non-task-specific support for a disability such as a mental health issue, a renter can submit a reasonable accommodation request. This can be either before or after a renter moves in. However, waiting until after a renter signs a lease that specifically says “no pets” can cause friction with the landlord and also puts the renter in danger of eviction. A landlord could also reject the application of a renter because they have a pet, and the renter may need to find an alternative place to live before they would be able to challenge the landlord’s decision. Many people also lack the financial resources to challenge landlord and other property-owner decisions under the FHA. This outcome is another way our current system further discriminates against the poor.123 People who do not have the means to find creative ways to keep their pets are the people who end up having to surrender them, while they are likely the people who need them the most.124

Taking into account the statistics of poverty and housing insecurity on mental health, and reports of the effect of the COVID-19 pandemic on mental health, anyone living in the United States today should qualify for a reasonable accommodation to have an assistance animal under the FHA. Assistance animals only have to have some effect on one element of mental health. People should be allowed reasonable accommodations to help mitigate mental health issues before they rise to a serious level. Additionally, a person

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123 The ways in which our government consistently disenfranchises the poor go beyond the scope of this paper; for a greater discussion, see Daniel M. Weeks, *Democracy in Poverty: A View from Below* (2015) (ebook).
should not have to prove a mental health issue in order to keep their dog.\footnote{Similarly, courts have found that in cases of workplace discrimination, “[d]isabled employees, especially those with psychiatric disabilities, may have good reasons for not wanting to reveal unnecessarily every detail of their medical records because much of the information may be irrelevant to identifying and justifying accommodations, could be embarrassing, and might actually exacerbate workplace prejudice.” Additionally, “an employee with a mental illness may have difficulty effectively relaying medical information about his or her condition, particularly when the symptoms are flaring and reasonable accommodations are needed,” Taylor v. Phoenixville Sch. Dist., 184 F.3d 296 (3rd Cir. 1999).}

Considering the extensive scholarship on the positive effects of dogs on mental and physical health, all dogs should inherently qualify as assistance animals under the FHA because of the support they provide to their human companions, even without any level of training. If anyone would qualify for a reasonable accommodation to have an assistance animal for mental health support, and if all dogs inherently provide the level of support necessary to help with mental health, making a reasonable accommodation request should be unnecessary for a person to live in a rented home or apartment with a canine companion. As the requests should all be considered reasonable and unable to be rejected by a property owner, there should be a new understanding that the FHA blanketly applies to allow dogs in the home despite any potential landlord stipulations. The Department of Justice could issue a new guidance document concerning assistance animals under the FHA.\footnote{See generally U.S. DEPT OF HOUS. AND URB. DEV., supra note 53.} If a new understanding that all dogs are inherently classified as assistance animals under the FHA was recognized by the Department of Justice, this would level the playing field and put lower income people in the same position as homeowners and renters with the monetary resources to challenge a landlord’s denial of their reasonable accommodation request for an assistance animal. Eliminating the current process of making a reasonable accommodation request to have a dog would not only enforce the rights of low-income renters to enjoy the same level of benefits of dog ownership as higher-income renters and homeowners, but would also eliminate the confusion that has come about with the rise in stigma around fraudulent “emotional support animals.”

A. The Fallacy of the “Emotional Support Animal”
Over the past few years, there has been a rise in discussion around so-called “emotional support animals,” or ESAs. Many online agencies exist that claim to provide the service of registering an animal as an ESA, for a fee averaging $40-80.\(^{127}\) There is a prevalent problem with people using these ESA letters as justification to bring their pets into public places.\(^{128}\) States including Virginia and Indiana have even passed legislation to combat this problem, criminalizing the actions of people who misrepresent their dogs to be service animals and health service providers who charge a fee to provide written verification for an individual’s disability status and need for an emotional support animal.\(^{129}\) However, one of the problems with new laws penalizing people for fraudulently claiming an assistance animal, in addition to being difficult to enforce, is that these laws will result in a reduction of people with credible claims exercising their rights to have an assistance animal under the FHA. While these laws can be helpful to combat the problem of people obtaining these letters for the purpose of bringing their pets into public places, it needs to be recognized that the standards for certifying the need for an assistance animal that can access places that pets cannot under the ADA are different than the standards for certifying the need for a reasonable accommodation to have a pet in the home under the FHA.

The conversation around the legitimacy of service animals and support animals is wrapped in controversy not solely because of the media’s focus on people abusing the system, but due to the discrepancies in the definition of assistance animal that exist within the law inherently.\(^{130}\) The concept of bringing an ESA into a public space has become conflated with having an ESA in the home despite restrictive property-owner-imposed pet rules.\(^{131}\) Arguments surrounding the rise in “falsified” ESAs center around people who irresponsibly bring the animals they claim to be ESAs into public spaces, such as airplanes.\(^{132}\)

As a result of people abusing the system and a rise in animals on airplanes, airlines are no longer required to accommodate emotional

\(^{127}\) See Schoenfeld-Techer et al., supra note 41.
\(^{129}\) See VA. CODE ANN. § 51.5-44.1 (2022); see IND. CODE § 22-9-7-12 (2022).
\(^{130}\) Schoenfeld-Techer et al., supra note 41.
\(^{131}\) See generally Grellas, supra note 128.
\(^{132}\) Id. at 721.
support animals that are not classified as service animals. The Air Carrier Access Act (ACAA) used to allow for support animals to have protected access to flights, almost to the same level as trained service animals under the ADA. The United States Department of Transportation issued a revision to the Air Carrier Access Act in January 2021 limiting special accommodations for traveling animals to service dogs, reclassifying emotional support animals as pets that airlines can choose to accommodate. This updated definition of service animals mirrors the language of the ADA.

Some people who argue for tighter restrictions on what qualifies an animal as an ESA or an assistance animal have used anecdotes about “fraudulent ESA” animals attacking or bothering service animals while they are in shared public spaces, such as an apartment elevator. However, the instance of one dog attacking a service dog has nothing to do with the fact that the dog was an “illegitimate ESA,” and the dog’s owner would still be liable for consequences. A dog being an ESA does not make them any less liable for damage they cause. A dog being a service animal does not make them any less liable for damage they cause. ESAs are not given a free pass to behave in any manner in public spaces; people are still held accountable to keep them under whatever level of control, for example, on a leash, required by the laws of the state or specific rules of the public space, and to do otherwise would make them liable for any damages caused by their negligence, no matter what label is used to identify the dog. There is a stark difference between fake service dogs in public places, an actual issue with potential criminal penalties in many states, and “fake emotional support animals” living with their owners in their own homes.

Attenuating the issue of “fraudulently registering” pets as ESAs in order to bring them into public spaces with the issue of landlord liability is damaging to the rights of people who require the assistance of animals to go about their daily lives. A recent article attempted to make the claim that, “[f]or federal law to

134 Id.
135 Id.
136 Id.
137 Grellas, supra note 128 at 704.
138 See id. at 721.
139 See id. at 705.
simultaneously limit landlords’ liability while protecting the rights of those with disabilities, Congress should consider the loopholes in the FHA that allow tenants to fraudulently register their pets as ESAs.” In reality, all ESAs are fraudulently registered. A dog cannot be an authentically registered ESA, as an assistance animal under the FHA requires no certificates, registration, or training. It is a misconception that a dog must be a registered emotional support animal in order for a person to make a reasonable accommodation request under the FHA. The language of the Act says only that to be an assistance animal, the animal has to “provide emotional support.” While qualifying as a service animal concerns the training of the specific dog, qualifying for an assistance animal that provides support concerns the mental health condition and needs of the person. An individual animal cannot be a registered emotional support animal, as documentation required under the FHA is intended to provide proof to a property owner of the mental health needs of the person, not the supportive qualities of the animal.

Under this new proposed understanding that dogs should be automatically considered assistance animals under the FHA, and consequently, dog owners would not need to make a reasonable accommodation request to their property owners in order to live with their dog in an otherwise not pet-friendly dwelling, the concept and problem of fake emotional support dogs would no longer exist.

B. Just Dogs?

Dogs have already been acknowledged in the law as having the capacity for service that other animals cannot match. The ADA only recognizes dogs and the occasional miniature horse as service animals. Because of a dog’s loving nature and the human-dog relationship, dogs inherently provide a variety of characteristics that

140 Id. at 714.
141 See Assistance Animals, supra note 53.
142 Id.
143 Or miniature horse. See Wisch, supra note 46.
144 Another consequence of the rise of the term “ESA” in common vernacular when referring to emotional support animals is that previously, “ESA,” particularly within the context of animal law, has been understood to refer to the Endangered Species Act. An animal protected under the Endangered Species Act receives a very different set of protections than an animal protected under the Fair Housing Act as an “emotional support animal.” See generally Endangered Species Act, 16 U.S.C. § 1531-1544 (2021).
give assistance to humans by improving their mental health.\textsuperscript{145} Improved mental health is something that all humans deserve access to. It is possible for a non-canine animal such as a chameleon to help minimize the limits that a person’s depression has on their ability to perform major life activities such as taking care of themselves.\textsuperscript{146} Having to provide even a minimal level of care for an animal, such as cleaning their enclosure and feeding them in order to keep them alive, can give a person a sense of purpose and help them get into a routine that can help them care not only for their animal, but for themselves as well. If a person’s anxiety makes it difficult for them to communicate with others, having a living thing occupying the same space can give them a feeling of social support and an opportunity to talk to a living creature and habitually practice and improve their social communication skills.

Dogs inherently help humans with mental health. All pets might help in some way. The current standards under the FHA for a person to have to prove to their landlord in their request for a reasonable accommodation should still apply to all other animals. There should still be requirements for people who want to bring animals other than dogs into their homes despite property-owner restrictions to qualify their need for them, as it should be recognized that there are legitimate reasons to not allow pets in homes. For example, a 50-gallon fish tank in an apartment might break and leak water through the downstairs neighbor’s ceiling. Considerations of the potential risks of having animals in the home and in shared spaces are covered under the FHA, which provides an exception to granting reasonable accommodation requests if the housing provider demonstrates that the specific assistance animal in question would pose a direct threat to the safety of others, despite any other reasonable accommodations that could eliminate or reduce the threat.\textsuperscript{147} For example, while a 100lb mastiff dog may look threatening to some people, as long as the owner was able to control the dog on a leash, the dog would not pose a threat to the safety of others. On the other hand, a large snake

\textsuperscript{145} See Nickel, supra note 98. As the court reasoned in Auburn Woods, “the innate qualities of a dog, in particular a dog’s friendliness and ability to interact with humans,” make a dog therapeutic. Auburn Woods I Homeowners Ass’n v. Fair Emp. & Hous. Comm’n, 18 Cal. Rptr. 3d 669, (Ct. App. 2004).
\textsuperscript{146} In 2014, a college student was able to get special permission from the University of North Texas to have her chameleon, Toby, in her dorm room with her because of a note from her therapist who assisted her with her various mental health issues. Interview with Katie Bywaters, Student, Univ. of N. Tex. (Sept. 14, 2022).
\textsuperscript{147} Assistance Animals, supra note 53; Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act, supra note 55.
could be considered inherently dangerous, and a renter’s reasonable accommodation request to keep a boa constrictor as an assistance animal that provides emotional support could be fairly rejected.\textsuperscript{148}

Some have taken issue with idea that the FHA falls short of “protecting the interests of people with legitimate mental and emotional needs” because the Act “fail[s] to include examples of accommodations for persons with mental and emotional health conditions.”\textsuperscript{149} But what the language of the FHA has really done is legally acknowledge the fact that animals, particularly dogs, can positively contribute to mental health in a way that is so significant it can outweigh certain property-owner rights. The existence of assistance animals, including emotional support animals, does not represent a “loophole” in landlord-tenant law.\textsuperscript{150} It represents an actual consideration of tenant rights by not allowing property owners to completely ban all animals in living spaces.

V. \textbf{WHAT PROPERTY OWNERS REALLY HAVE TO LOSE BY RENTING TO PEOPLE WITH DOGS}

Essentially the only risk property owners take on by renting to someone with a dog is potential monetary loss, in the form of damages to the property or potentially damages due to liability for the behavior of the dog, though the latter is extremely uncommon. Additionally, even if the understanding of assistance animal under the FHA shifts to automatically include all dogs, landlords will still not be left without rights or recourse to protect themselves or their property from liability or damages.

A. Dog Damage

One potential safeguard in helping landlords feel more at ease about the transition to the classification of all dogs as assistant animals under the FHA could be changing required renters’ insurance policies to cover pet damages. However, costs of pet damage are generally not nearly as high as damage due to

\textsuperscript{148} See Sullivan, supra note 6, at 22:48.
\textsuperscript{149} Grellas, supra note 128, at 714.
\textsuperscript{150} Cf. id. at 718 (arguing that ESA prescriptions from physicians should be limited as many patients are attempting to exploit the FHA).
unforeseen events such as flood or fire damage.\textsuperscript{151} To her surprise, after her dog chewed through an entire interior door in her one bedroom Texas apartment, the author still ended up getting back $150 of her $400 refundable pet deposit at the end of her two-year lease in 2021, with the extensive damage to the door, carpet, and walls only amounting to $250 as charged by her apartment complex management. Even the maximum cost of repairing the most extreme dog-inflicted damage would not outweigh the cost of prohibiting people from experiencing the many benefits dog companionship can offer.

B. Dog Bite Liability

Premises liability is a form of negligence action that holds property owners liable for injuries incurred by people lawfully on their property.\textsuperscript{152} Premises liability actions are typically seen for slip and fall claims, but they can potentially involve a dog bite by a tenant’s animal on a landlord’s property.\textsuperscript{153}

In every state, liability for dog bites rests with the dog’s owner. However, dog owners themselves are not even consistently considered strictly liable for their dog biting someone.\textsuperscript{154} In many states, trespass and contributory negligence are considered defenses to the strict liability of the owner for damages caused by a dog bite.\textsuperscript{155} In the District of Columbia, considered to be one of the most dog-friendly places in the United States,\textsuperscript{156} a dog bite victim is barred from recovery if it is found that their conduct is even minimally responsible for the incident. Many state laws also include liability on

\textsuperscript{151} Just one inch of floodwater can cause up to $25,000 in damage. Flood Insurance, FEMA (last visited Aug. 8, 2022), https://www.fema.gov/flood-insurance. The total cost to replace an interior door is reported to cost between $226 to $824. How much does it cost to install or replace a door?, HOME GUIDE (Sept. 8, 2023), https://homeguide.com/costs/door-installation-cost [https://perma.cc/KK83-XL94].

\textsuperscript{152} Id.

\textsuperscript{153} Id.

\textsuperscript{154} Id.

\textsuperscript{155} Id.

the part of the dog owner if the owner allowed the dog to “run at large” without a leash or under the control of the owner, or otherwise failed to confine the dog. In Texas, dog bites are regulated under the Texas Health and Safety Code, which reads, “[d]og owner will be liable if the victim can prove that the owner had knowledge of the dog’s dangerous propensities, was negligent, a leash law was violated, or the owner caused the injury intentionally.”

A property owner in Texas, like many other states, would not be held liable for the actions of a dog owned by another on their property without further involvement. Consequently, fear of liability for dog bites is not a compelling reason for a property owner to prevent a person from having a dog in their home. While a plaintiff might bring the landlord or property owner into a dog bite cause of action, it is extremely rare for a landlord to be found liable for injuries inflicted by a dog owned by a tenant. In every state, the mere act of leasing to a tenant with a dog is not sufficient to incur liability for a dog bite. The deciding factor for dog bite liability is often if the person in question exercised control over the dog; without that, even previous knowledge of a dog’s dangerous behavior may not be sufficient.

While it is very rare, landlords have in the past been found liable because they had specific knowledge of the animal’s dangerous behavior. In a 1976 New York case, the court found a landlord liable for an injury to a third party because the landlord had previous

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158 In Rhode Island, the law reads “[d]og owner will be held liable for all damages unless the dog was confined.” 4 R.I. Gen. Laws § 4-13-16 (2023); id.

159 Tex. Health & Safety Code Ann. § 822.005 (West 2001); id.


161 See id.

162 See Criswell v. Brewer, 741 P.2d 418 (Mont. 1987). In this Montana case, a landlord knew that the tenant’s dog had bitten someone in the past, and had an agreement with the tenant that the dog would stay contained in a fenced area, but the landlord failed to maintain the fence. The landlord was ultimately found not liable for the dog biting a visiting electrician after the dog escaped through the large gap in the fence, as the landlord was found not to be the “keeper” of the dog, and did not own, have possession of, manage, control, or care for the dog.

knowledge of a dog’s “vicious propensities,” as his tenant kept the dog tied up outside on the property as a guard dog. Due to current changes in animal cruelty law and standards for the care and keeping of dogs, such situations are not likely to recur. The majority of dog bites occur when a dog is unleashed and out of its owner’s control. Additionally, unneutered dogs account for over 70% of dog bite incidents. Considering this, property owners can avoid liability by requiring dogs to be leashed in common areas of the property, prohibiting people from leaving dogs unattended and tied up in their yards, and requiring dogs to be spayed or neutered. These standards will not only enable property owners to avoid liability, but will also provide better living situations for the dogs themselves.

C. Prohibited Breeds

Another fear property owners might have is that classifying all dogs as assistance animals means that under the FHA, a property owner will no longer be able to reject a dog based on size or breed. Despite anti-breed specific legislation in many states, including Texas, many apartments currently have long lists of prohibited breeds. However, countless studies by the American Veterinary Medical Association have proven that breed does not predict behavior. The AVMA continues to advocate for responsible ownership to prevent dog bites.

D. Effective Controls on Potential Negative Consequences of “All Dogs Allowed”

164 Id.
165 See Hauser, discussion infra note 184.
167 See A Community Approach to Dog Bite Prevention (abstract), supra note 17.
168 For further discussion on the issue of breed-specific legislation, see Ann L. Schiavone, Barking Up the Wrong Tree: Regulating Fear, Not Risk, 22 ANIMAL L. REV. 9 (2015).
169 See Ward, supra note 1.
171 Id.
Property owners still have many rights to control how dogs are kept by renters on their property. Under the ADA, even service animals must still be under the control of the handler in common semi-public areas of apartment buildings and other shared spaces. Under the FHA, it is not required to make a dwelling available to an individual “whose tenancy would constitute a direct threat to the health or safety of other individuals . . . ” Property owners can still require all dogs to be kept on a leash or otherwise within the owner’s control in common areas of rental properties, require owners to pick up and remove pet waste, and require that any dog over 6 months of age be spayed or neutered. Rules such as requiring that a dog be restrained, such as in a kennel or another room, when the landlord or maintenance personnel must enter the dwelling, can also protect against potential issues. Leash laws in particular have been proven effective in protecting other people from dogs, in addition to protecting the owner of the dog and protecting the dog itself. Laws and regulations for keeping dogs instead of property-owner-imposed regulations prohibiting dogs in homes altogether can protect property owners from liability while promoting responsible pet ownership.

E. How to Manage Dogs in Semi-Public Spaces on Shared Rental Properties

Part of the reason for the distinction of when the FHA applies and when the ADA applies is the difference in expectations of privacy in the home compared to expectations of privacy in places open to the public. One place where the FHA and the ADA overlap is for semi-public spaces on shared rental properties, such as elevators, hallways, courtyards, and pools. Property owners can still ensure a safe and pleasant living experience for their non-dog-owning tenants by keeping semi-public, multi-resident use spaces, such as courtyards and pools, dog-free, with the exception of service

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172 The animal must be “harnessed, leashed, or tethered, unless the individual’s disability prevents using these devices or these devices interfere with the service animal’s safe, effective performance of tasks.” Service Animals, supra note 45.


animals, as the ADA would still apply to those spaces. To keep order in the connected areas outside of individual homes, such as elevators and hallways, property owners can impose rules with fines concerning keeping dogs on a leash or otherwise within the control of the owner, such as being held securely within a carrier, while the dog is with the owner in these transitional spaces where other residents still have rights to safely enjoy their property.

VI. OTHER INCONSISTENCIES OF DOGS IN THE LAW

Dogs are considered almost equivalent to children under certain areas of the law, such as in divorce proceedings, and yet are still able to be prevented by property owners from sharing a home with their families. This inconsistency must be addressed. The FHA prohibits discrimination based on family status in housing-related transactions. Property owners cannot refuse to rent to someone because they have a child. However, children can be just as, if not more, destructive than animals. A three-year-old child might scream all day and write in permanent marker all over the walls of an apartment, while a dog may spend their days lying on a soft bed inside. Additionally, millennials specifically are delaying having children in favor of having pets, and consequently have a difficult time finding housing for what they consider to be their entire family.

The last few years have seen a rise in new laws protecting animals, particularly in areas of animal cruelty regarding dogs. While California has led the charge through passing laws such as the Pet Rescue and Adoption Act, Texas also recently saw a major

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177 “Because pets are becoming such a big part of our lives, some courts are... willing to treat pets more like children. To date, this has primarily occurred with dogs. Courts have considered the best interest of the pets in determining who gets custody of them. They have also awarded shared custody, visitation, and alimony payments to the owners.” Tabby McLain, Brief Summary of Pets in Divorce/Custody Issues, MICH. STATE UNIV. COLL. OF L. ANIMAL LEGAL & HIST. CTR. (2009), https://www.animallaw.info/intro/custody-pets-divorce[https://perma.cc/G6HJ-NABT].
178 Fair Housing Act, 42 U.S.C. § 3604(b).
179 See id.
180 See Sullivan, supra note 6, at 04:59.
181 California was the first state in the U.S. to bar pet stores from selling dogs and other animals unless they come from shelters or rescues, a law intended to target the cruel
victory for animal rights by passing the Safe Outdoor Dogs Act, which imposes criminal penalties for failing to provide adequate shelter for dogs and keeping them tethered outside on a short or heavy chain.\textsuperscript{182}

Another significant shift in recent years has come from corporations. Corporations have significantly increased their mental health assistance programs, recognizing the need in correlation with the rise in mental health issues.\textsuperscript{183} Additionally, corporations have acknowledged the trend of dogs rising in importance as members of the family, particularly among millennial workers. Some corporations even cover pet insurance, and some have gone as far as to make their offices dog-friendly, encouraging people to bring their dogs to work, regardless of their level of training or status as a service dog or assistance animal.\textsuperscript{184}

\textbf{VII. PROPOSALS FOR CHANGE}

While the array of problems caused by the current interpretation of the FHA is extensive, the solution is relatively simple. Dogs inherently meet the standards for an assistance animal through their fundamentally therapeutic nature, and with the current understanding of the decline of mental health in the United States, everyone should meet the required standards for having the


\textsuperscript{184} It should be noted however that this trend has not been interpreted by workers as entirely positive and worker-supporting; practices such as making the office dog-friendly and offering three free meals a day have been interpreted to be corporate ploys to get people to work longer hours. See Ellen Coughlan, \textit{How companies like Google get staff to ‘work more for less’: Former employee blasts ‘dark’ methods such as offering free meals, dog-friendly offices and transport with wifi}, DAILY MAIL (Mar. 28, 2022), https://www.dailymail.co.uk/femail/article-10652017/Google-employee-reveals-free-perks-trick-workers-doing-more.html [https://perma.cc/Q2TT-88L8].
right to an assistance animal under the FHA. It is not necessary to significantly alter the law in order for these problems to be solved. The Department of Justice could issue a new guidance document memo clarifying that reasonable accommodation requests are not necessary for dogs. However, to further strengthen the renter case against property owners, an addition to the definition of assistance animal could be added to the FHA, or the phrase “record of having such an impairment” could be removed in the FHA as it applies to dogs.

Some people have made the argument that to combat the current problem of people registering their pet online as an ESA and then bringing them into a public place where the pet wreaks havoc in some way, there should be mandatory training for animals in order for them to be considered ESAs. However, not only would requiring mandatory training be essentially impossible to regulate, but dogs in particular do not all require the same level of training. Some dogs require no training at all to behave calmly in a public space, and other dogs will always remain reactive and bark at other dogs no matter how much training they receive throughout their lives. Some dogs bred specifically to be service dogs still ultimately fail out of service dog training, for reasons including being too friendly with strangers. Additionally, imposing consequences for irresponsible pet owners, such as fines for having a pet off-leash in apartment common areas and other public spaces, would effectively achieve the same result of ensuring that animals that have access to accompany their owners in public spaces do not interfere with the safety and enjoyment of others.

With this change, property owners will no longer be able to reject an applicant or evict a tenant for having a dog. This proposal is to keep the same standards as they apply to other pets, but through acknowledging the significant benefits to mental health that dogs inherently provide to their human companions, allow anyone to

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186 See Assistance Animals, supra note 53.
187 Cf. Grellas, supra note 128.
190 See Sullivan, supra note 177.
have a dog in their dwelling without having to prove or disclose the specific mental health issue that the dog helps them with. Not only will this help destigmatize mental health, but it will help provide many more homes for dogs that would otherwise have to be surrendered to or remain in overcrowded shelters.

Some may argue that states should be able to decide if dogs should be understood to inherently be assistance animals under their own fair housing acts, as opposed to issuing a change at the federal level. States can still set standards for how animals are owned, such as specifying where leash laws apply. However, the current problem of strict property-owner-imposed pet restrictions, leading to discrimination against poor people and high levels of dog abandonment, is widespread across the United States, and the effects of this problem are not isolated state by state. For example, many rescues in states with higher stray dog populations work with rescues in other states to transport animals where there is a higher demand, such as rescues in Texas partnering with rescues in New York. If New York laws on dogs in rented apartments are overly strict, fewer people will be able to adopt dogs in New York from Texas.

A. Is This Really a Radical Idea?

While it may seem on its face to be too radical to claim that every dog should be classified as an assistance animal under the law and thus allowed within any dwelling with their human companions, the law has already been moving towards this recognition. When failures to grant reasonable accommodation requests to have a dog as an assistance animal in housing have been challenged in court, courts have consistently found in favor of the tenant. Additionally, university student housing is one of the most restrictive housing situations, and yet the Justice Department still reached a settlement with Kent State University in 2017 to resolve allegations that the university had maintained a policy of not allowing students with psychological disabilities to keep emotional

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191 See Rescue Transport Adopt Program, SPCA WESTCHESTER (last visited Aug. 8, 2022), https://spcawestchester.org/programs-and-services/rescue-transportation [https://perma.cc/GKD7-ML5Y]. Many over-crowded shelters are located in areas with less spayed and neutered pets and lax leash laws; Id.
support animals in university-operated student housing.\textsuperscript{193} Another restrictive housing situation is public housing. In Texas, a proposed state law would prohibit breed-based pet restrictions in public housing.\textsuperscript{194} Animal advocates have pushed for this law considering that there are over 100,000 more pets in shelters today than there were just two years ago, the primary reason people surrender their dogs is because of housing barriers, and people consider pets to be part of their families.\textsuperscript{195}

CONCLUSION

With recent heightened legal protections for dogs, the pandemic’s effect on mental health and financial circumstances, the recent rise in eviction rates and housing insecurity, and the current state of overcrowding in animal shelters across the United States, time is of the essence to acknowledge that all people, particularly poor people, should have the right to have a dog in their home. Instead of the current web of property-owner-imposed restrictions on who can own and enjoy dogs, restrictions should focus on how people can own and enjoy dogs. To allow property owners to reject housing for someone because of their companion animal, who is so important to them that they share their bed every night, puts a monetary limit on the value of the human-dog bond, which cannot be measured.

The intention of the Fair Housing Act is not to provide rights for property owners, but to provide equal access to housing for all people.\textsuperscript{196} This equal access includes giving people the ability to move and live with their pets. This proposed change in understanding the Fair Housing Act will not only address the current bias against renters and people in poverty having a right to benefit from dog companionship, help destigmatize mental health,


\textsuperscript{195} Id.

\textsuperscript{196} “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” Fair Housing Act, 42 U.S.C. § 3601.
and pave the way for more regulations promoting responsible pet ownership, but it will also have a significant impact on the number of dogs surrendered to shelters.