

# **Implementing Pet-Friendly Policies in Residential Multi-unit Rental Housing**

A Guide by the Healthy Pets, Healthy Families Coalition

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## EXECUTIVE SUMMARY

As the cost of living in Los Angeles County rises, home ownership has become increasingly difficult and more people have come to rely on rental housing. For pet owners, this situation is further complicated when rental properties operate with pet restrictions. It is understandable that housing providers must take necessary precautions to maintain the value of their properties, and to provide a safe and livable environment for all tenants. Some property owners have adopted no-pets-allowed policies, which unfortunately has contributed to a shortage of affordable pet-friendly rental housing, particularly in multi-unit residential buildings.

The Healthy Pets, Healthy Families Coalition (HPPHF) is a multi-disciplinary group consisting of professionals and community members who are working to improve human and animal health in Los Angeles County, and we encourage the acceptance of pets in rental housing. This guide was developed by HPPHF members to present a review of the complex issues associated with allowing pets in multi-unit residential rental housing, and to offer possible ways to reduce the accompanying risks. Housing providers and pet-owning renters can use this guide as a resource to facilitate management of pet-friendly multi-unit rental housing.

### KEY POINTS:

- An estimated 2.9 million Los Angeles County residents are renters with pets.
- Within the last ten years, only 5% of just over 24,000 rental listings through the Los Angeles County Housing Resource Center (LACHRC) were for pet-friendly, apartment-style units.
- Increasing pet-friendly housing can have many benefits, including improved housing marketability, greater occupancy stability, and increased community resilience.
- Many of the concerns associated with allowing pets in residential rental housing can be mitigated with implementation of a comprehensive pet policy that promotes responsible pet ownership.
- Property managers and owners should understand their rights and responsibilities under the federal Fair Housing Act, especially pertaining to assistance and service animals.

## BACKGROUND

Los Angeles County is home to over 10 million residents.<sup>1</sup> Approximately 52% are renters and about 2.9 million people own dogs or cats.<sup>2, 3</sup>

### The Need for Affordable Pet-friendly Housing

Cost of living in Los Angeles County is notoriously high. Affordable housing means a renter should pay no more than 30% of his or her income for housing and utilities costs.<sup>4</sup>



### In Los Angeles County:

- There are around 1.7 million renter-occupied units in the County and median monthly rent is \$1,322.<sup>1, 5</sup>
- Almost 50% of renters dedicate 35% or more of their income to rent.<sup>6</sup>
- In the last 18 years, median rent has increased by 28%, but median household income for people who rent has decreased by 8%.<sup>7</sup>



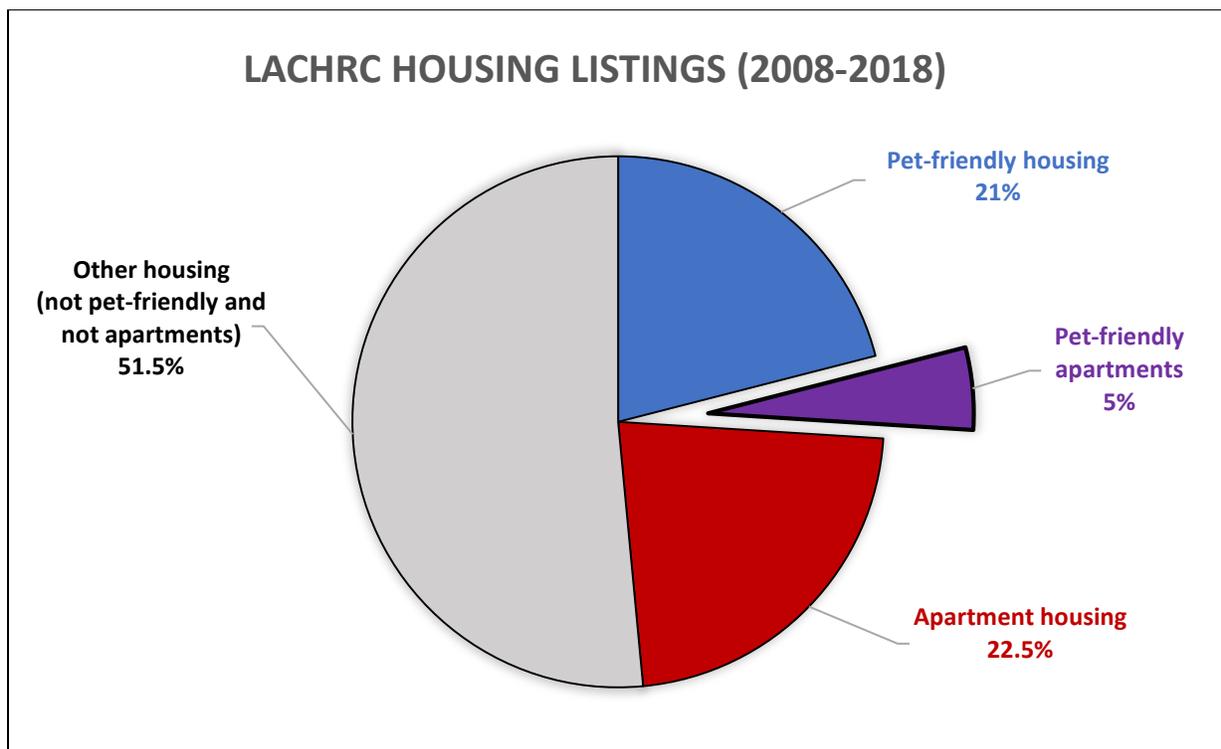
## BACKGROUND (continued)

### Los Angeles County Housing Resource Center Data

The Los Angeles County Housing Resource Center (LACHRC) was created to help people within the County list and find affordable rental housing. Analysis of LACHRC listings data from 2008-2018 demonstrates the lack of pet-friendly multi-unit rental housing.<sup>8</sup> (Figure 1)

- Out of 24,025 total rental listings, only about one-quarter indicated pets were allowed.
- Apartment housing made up 27.6% (6,635 listings) of the total number of rental listings.
- Only 18.5% of the apartment rental listings were described as pet-friendly.
- In the last 10 years, just 5% (12,28 listings) of the total number of rental listings, were both pet-friendly and apartment-style housing.

It is not surprising that pet-owning renters in Los Angeles County may have significant difficulty finding housing. Many people consider their pets to be an integral part of their family and are unlikely to take a housing opportunity that will not also accept their pets.



**Figure 1:** 2008-2018 housing listings data collected from the LACHRC. Most housing listings from 2008-2018 were not pet friendly (74%). [n=24,025 total listings]

## BACKGROUND (continued)

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### CASE EXAMPLE: City of Los Angeles

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According to the United States Census and the Los Angeles Housing and Community Investment Department, approximately 60% of the nearly 4 million residents of Los Angeles were renters in 2018.<sup>5, 9</sup> By comparison, over half of all rental units in the city do not allow pets. Los Angeles City shelters have reported that rental unit restrictions accounted for about 21% of dog and cat surrenders to the animal shelters. As the City aims to reach “no kill” status for their adoptable animals in their shelters, they hope that increasing the number of pet-friendly housing units may also encourage more pet adoptions from people who are renters. In response to the shortage of pet-friendly rental housing, in 2016, the City of Los Angeles passed a City Council motion asking key stakeholders to come up with possible solutions to this problem.<sup>10</sup> This motion requests that the Los Angeles Department of Animal Services (LAAS), tenant advocacy groups, and organizations representing landlord groups, work together to formulate and make recommendations to the City Council on policies or programs that could facilitate the ability of tenants in residential rental properties to adopt and keep more pets.<sup>11</sup> Currently, LAAS in conjunction with tenant advocacy groups have come together to conduct outreach presentations to landlord groups, providing education on dealing with pet-related housing issues. Later this year, an ordinance is expected to go before the City Council prohibiting developers, owners and managers of apartment buildings built with public funding from banning companion animals.

A similar ordinance has already been filed by the Los Angeles County Board of Supervisors.

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## BENEFITS OF PET-FRIENDLY HOUSING

### ***For property owners/managers: increased marketability and occupancy stability***

Pet-friendly housing is in high demand and offers property owners to widen their pool of potential renters.

- An estimated 56% of renters own pets, and a large portion of these tenants reported difficulties finding a rental unit that would also accept their animals.<sup>12</sup>
- Pet-friendly properties often receive more applicants per available unit, which decreased the time and cost spent on advertising vacancies.<sup>13</sup>

Due to the relative scarcity of pet-friendly housing, 3 out of 5 pet owners are willing to pay pet fees and higher rental costs, which translates to increased revenue for housing providers.<sup>12</sup>

- About 41% of pet owners, as well as renters who hope to have a pet in the future, feel it is worth paying higher rents for pet-friendly housing.<sup>12</sup>
- Pet owners may be on average more financially stable enabling them to pay increased premiums.<sup>12, 14</sup>

Pet-friendly properties have less turnover and lower vacancy rates.<sup>12, 13</sup>

- Renters with pets tend to stay loyal to a property with pet-friendly policies; 20% of renters who are considering moving would renew their lease if their housing facility allowed pets.<sup>12, 13</sup>

### ***For renters: improved human health***

The Centers for Disease Control and Prevention (CDC) recognizes that there are many potential health benefits to pet ownership.<sup>15</sup>

- Owning a dog or cat can be associated with fewer reports of arthritis and lower rates of obesity.<sup>16, 17</sup>
- Owning a pet can help decrease stress, lower blood pressure, and reduce the risk of heart disease.<sup>16, 17</sup>
- Heart attack survivors who own pets tend to live longer than those without pets.<sup>16</sup>
- Pet owners are more likely than people without pets, to engage in exercise behaviors.<sup>17</sup>
- Pet ownership was correlated with fewer physician visits in a population of elderly Medicare patients.<sup>18, 19</sup>



## BENEFITS OF PET-FRIENDLY HOUSING (continued)

### *For the community: better social connectivity and emotional development*

Pets provide important social support for people and encourages human interconnectedness, improving resilience for both individuals and the community.<sup>18</sup>



- Having robust community resiliency can be crucial in situations such as recovery from a disaster.
- Pet owners are found to have stronger social networks, which fosters improved mental health.<sup>16</sup>
- Pet ownership is associated with emotional health benefits, helping to combat loneliness and raise self-esteem.<sup>20</sup>

Pet ownership can have a positive impact on some aspects of social and emotional development, particularly in children and adolescents.

- Children who grow up with pets have increased social competence, better social networks, and better social interaction and play behaviors.<sup>20</sup>
- Owning a pet can also influence emotional development, helping reduce general and separation anxiety in young children, and reducing depressive symptoms in adolescents.

### *For pets: reduced pet relinquishment.*

Rental housing issues and no-pets-allowed policies can play an important role in the decision to surrender a pet.<sup>21, 22</sup>

- A 2015 survey of individuals surrendering their pets to Los Angeles County shelters found that 22.2% referenced housing and landlord issues as the main motivation for pet relinquishment.<sup>21</sup>



## REDUCING THE RISKS OF PETS IN RENTAL HOUSING:

The following sections describe four of the most common categories of concern that property managers and owners may have with allowing pets in multi-unit residential rental housing: 1) financial concerns, 2) health concerns, 3) behavioral concerns, and 4) fraudulent assistance and service animals. Each section summarizes some specific points of concern within each category and then presents possible steps that can be taken mitigate these pet-associated risks.



## Reducing the Risks of Pets in Rental Housing FINANCIAL CONCERNS

**Property damage.** Over half of property managers surveyed in one study cited property damage as the biggest deterrent to allowing pets.<sup>23</sup> As high as 85% of pet-friendly properties have, at some point, reported pet-related damage.<sup>12</sup> However, data suggests that there is very little significant difference in property damage between pet-owning tenants and those who do not own pets. Pet-owning tenants cause an average of \$362 of property damage, compared to \$323 caused by tenants without pets.<sup>24</sup> Furthermore, the costs to repair pet-related property damage on average, does not exceed the amount collected in pet fees and deposits, negating any substantive loss for the housing provider.<sup>12</sup>

### **HOW TO ADDRESS RISKS**

#### **Consider implementing a pet fee or deposit.**

- The rental agreement should clearly explain that tenants are liable for all damages caused by their pet.
- The additional income can be used to offset costs incurred from pet-related property damage.
- A tiered sequence of pet fees can be used in situations where a pet's negative behavior repeats.

#### **Encourage tenants to purchase renter's insurance.**

- Many insurance companies include coverage of pet damage or injury at part of their renter's insurance policy or offer separate pet liability insurance.
- From a property manager's perspective, having renter's insurance can also make a prospective tenant a more desirable candidate.

#### **Have a clearly written pet policy.**

- The pet policy should be provided to and reviewed with the tenant at the time the rental agreement is signed.
- Clearly delineate consequences for noncompliance with written pet policies, including criteria for eviction.
- As part of the pet policies, property owners and managers can outline requirements for responsible pet ownership in tenants (e.g. require pets to be spayed or neutered, unless otherwise recommended by a veterinarian).

## Reducing the Risks of Pets in Rental Housing HEALTH CONCERNS

**Zoonotic disease.** Zoonoses are diseases that can be spread between animals and humans. Disease transmission can occur by direct or indirect contact with an animal. Direct contact includes touching an animal or coming into contact with an animal's body fluids, such as urine, fecal matter, or saliva.<sup>25</sup> Indirect contact involves transference of disease from contamination in the environment where animals live and frequent, for example pet food dishes or the soil in shared areas.<sup>25</sup> Pets can also spread disease via insect vectors they carry, such as fleas or ticks. Pet food being left outdoors also increases the chances of interactions with wildlife and feral animal populations which may introduce additional disease risk into the housing complex.

**Animal allergies.** Approximately three in ten people with allergies in the United States are allergic to cats and dogs.<sup>26</sup> Although pet hair itself is not an allergen, pets can carry dander, urine and saliva on their fur, as well as other environmental allergens, like pollen and dust. These allergens can adhere to clothing or household surfaces and can remain suspended in the air for long periods of time, which may be problematic for a new tenant moving into a unit that previously housed pets.<sup>26</sup> Despite concerns of pet allergies, raising young children in a household with pets may decrease their risk of developing animal allergies later in life. One study found that adults who were raised with a dog in the house during their infancy were half as likely to have pet allergies at age 18 when compared to those who did not have an indoor dog in their first year of life. A similar overall decreased risk in allergy development is also seen with indoor cat exposure.<sup>27</sup>

### **HOW TO ADDRESS RISKS**

#### **Promote responsible pet ownership.**

- Know how to contact your local animal shelter and animal control to help with managing stray/feral animals and wildlife on the property.
- Consider designating a pet-friendly area on the property and providing pet waste receptacles. Consult waste disposal and landscaping vendors for management, collection, and disposal of pet waste.

#### **Have a clearly written pet policy.**

- As part of the pet policies, property owners and managers can outline requirements for responsible pet ownership in tenants (e.g. picking up and disposing of pet waste properly, not leaving food out for feral cats or wildlife, etc.).
- Request prospective tenants provide documentation supporting their pet's health status, such as veterinary records of vaccinations, flea and tick prevention, spay/neuter status, etc.

#### **Consider implementing a pet fee or deposit.**

- The additional income can be used to offset the cost of cleaning a unit after a tenant has left to remove allergens for the next tenant.

## Reducing the Risks of Pets in Rental Housing

### BEHAVIORAL CONCERNS

**Animal bites.** Animal bites to humans occur frequently in Los Angeles County, with over 9,000 bites reported to the Los Angeles County Veterinary Public Health Program each year.<sup>28</sup> A property owner or manager may incur a substantial liability cost in allowing pets due to the possibility of injury to another resident, visitors, or another pet on the property.<sup>29</sup> Insurance rates are usually higher for housing providers that allow pets, averaging \$150 more annually.

**Nuisance complaints.** Some pets can be disruptive to other tenants by displaying undesirable behaviors, such as barking, inappropriate urine marking, and aggression. Pets that exhibit aggressive behaviors towards people or other pets can pose serious safety concerns if these pets have access to communal spaces. Excessive barking can become a significant noise nuisance, which is the second-most common concern listed by property owners with regard to allowing pets.<sup>23</sup> There can additionally be conflict between tenants if a pet owner is not demonstrating responsibility in cleaning up after or controlling their pet. However, one study found that less than half of property managers reported receiving animal related complaints, and only approximately one third had ever received noise complaints.<sup>24</sup> Property managers also reported that the time spent resolving pet-related complaints was less than the time spent responding to complaints involving children.<sup>12</sup>

#### **HOW TO ADDRESS RISKS**

##### **Promote responsible pet ownership.**

- Have clearly written pet policies that outline requirements for responsible pet ownership in tenants (e.g. stipulations for leash requirements in shared spaces).
- Adopt policies that address behavioral issues and bite risk factors to improve resident safety.
- Require pets to be spayed or neutered, unless otherwise recommended by a veterinarian. Neutered males may be less inclined to behaviors such as roaming, territoriality and fighting.
- Clearly delineate consequences for noncompliance with written pet policies, including criteria for fines and eviction.

##### **Utilize a screening process for prospective pet owning tenants.**

- Conduct in-person interviews to meet with the prospective tenant and their pets prior to accepting a rental application to evaluate pet behavior and tenant interaction with their animals.
- Ask for references from former housing providers that include a description of the housing provider's experience with the pet and the pet owner as tenants.
- Request prospective tenants to provide documentation supporting their pet, such as a pet resume, proof of training certifications, licensure information, and veterinary records of vaccinations and overall health status.

## Reducing the Risks of Pets in Rental Housing FRAUDULENT ASSISTANCE AND SERVICE ANIMALS

Concerns about the fraudulent use of assistance and service animals are common and legitimate. Service dog vests and harnesses are readily available for purchase, and “emotional support animal certification” letters can be obtained online without any actual visit to a mental health professional.

Members of the public often disbelieve claims that a dog is a service animal if the dog is misbehaving in public, barking incessantly, or even defecating indoors. Although these are unacceptable behaviors, a service dog who is trained to perform a task for a person with a disability can also be an ill-behaved dog.

Additionally, many people mistakenly believe that a letter verifying their pet as an “emotional support animal” gives them permission to bring that pet to any public place. They do not realize that there is a difference between service animals and assistance animals, and assistance animals, including emotional support animals, are not allowed in public places that otherwise do not permit pets.

### **HOW TO ADDRESS RISKS**

#### **Understand the definitions of assistance and service animals.**

- An assistance animal, is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.
- A service animal is trained to do work or perform a specific task for an individual living with a disability and must be under their handler's control at all times.
- Assistance and service animals must still follow the required local vaccine, registration, and licensing laws.

#### **Know your rights and responsibilities under the federal Fair Housing Act (FHA) and the Americans With Disabilities Act (ADA).**

- Acceptance of assistance and service animals is required regardless of breed and size.
- The U.S. Department of Housing and Urban Development (HUD) regulations allow housing providers to engage in the interactive process with the tenant and request additional verification from different sources to reliably establish the disability and/or need for an assistance animal.
- Assistance or service animals that pose a direct and immediate threat to the health and safety of people, or cause significant damages to the property, can be evicted.

**See Appendix D for more detailed information.**

## CONCLUSION

We hope this guide will encourage more property managers and owners of multi-unit housing spaces to become pet-friendly. A substantial number of Los Angeles County residents are pet-owning renters and represent a large potential market for those willing to offer affordable pet-friendly housing. Although allowing pets in rental properties can create risks, there are many steps property managers and owners can take to mitigate these risks. Pets can have many positive impacts, not only on revenue and occupancy stability for rental properties, but also on the overall health and well-being of communities and the people who live in them.

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## Appendix A

### Considerations for Responsible Pet Ownership: How to be a Responsible Pet-Owning Renter

1. Spay/neuter your pet
  - Spaying/neutering helps prevent animal overpopulation
  - Spaying/neutering may help to decrease nuisance behaviors like urine marking and roaming
2. Keep your pet up to date on vaccinations (deworming?) and flea/tick prevention
  - Some vaccinations are required by local and/or State law
  - Fleas and ticks can bite and cause illness in people and pets
  - Regular vaccinations (deworming?) and flea/tick prevention help prevent the spread of diseases to people and other animals
3. Obtain a pet license (laws for dogs and cats may vary by city and county)
4. Keep some form of visible identification on your pet (e.g. collar with ID tag)
5. Do not leave pet food and water outdoors overnight
  - Leaving pet food and water outside can attract unwanted wildlife and feral animals that may be a threat to human and pet health and safety
6. Keep pet cats indoors
  - Keeping cats indoors decreases their risk of exposure to predators, diseases, toxins and other environmental hazards such as traffic
  - Outdoor cats may also become a nuisance to neighbors and can threaten local wildlife by hunting
7. Keep dogs on a leash when outdoors and in common areas
  - A leash allows you to have control of your dog and reduces the risk of bites and nuisance behaviors
  - Remember, some people and some other pets may not be comfortable around dogs
8. Clean up and properly dispose of pet waste immediately
  - Pet waste can harbor and contribute to the spread of intestinal parasites and other diseases affecting pets and people
9. Check in with neighbors regarding any nuisance behaviors from your pet
  - Early identification of issues can prevent small problems from become big problems

**APPENDIX B****Pet Resumé**

A pet resumé is most often a collection of documents that can provide landlords and property owners with information to determine if a pet owner and their pet would make good tenants. It is not only an opportunity for the pet owner to present positive attributes about their pet, but it is also a way for the prospective tenant to demonstrate that they are a responsible pet owner. An example of a pet resume checklist is provided below.

===

**Pet Resumé Packet Checklist**

- Pet photo
- Completed Pet Information Sheet
- References from previous landlords and/or neighbors
- Copy of health records, such as:
  - Pet vaccination records
  - Pet sterilization certificate (spay/neuter)
  - Record of flea and tick prevention
- Proof of pet licensure
- Any training certificates or behavioral evaluations
- Disclosure of any previous incidents involving the pet

**APPENDIX C****Pet Information Sheet**

Name: \_\_\_\_\_

Age: \_\_\_\_\_ Weight (lbs): \_\_\_\_\_

Sex: M / F Spayed/neutered: Y / N

Breed: \_\_\_\_\_

Pet Photo

**Renter/pet owner information**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Text okay? Y / N

Email: \_\_\_\_\_

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Text okay? Y / N

Email: \_\_\_\_\_

**Emergency contact (if owner/renter cannot be reached)**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Text okay? Y / N

Email: \_\_\_\_\_

**Please provide any additional information you would like us to know on the back of this sheet.**

**APPENDIX D:****Legal Considerations Regarding Assistance and Service Animal in Housing**  
**Summary by: Abby Volin, Esq.**

Both property owners and managers have legal obligations, under federal and state law, to make reasonable accommodations for individuals living with disabilities so that they may use and enjoy the premises in the same manners as others.<sup>i</sup> One such reasonable accommodation is the use of an assistance animal or service animal, depending on the disability and type of aid needed. This means that housing providers must allow animals on the premises, regardless of the property's specific pet policies.

*1. Federal law*

The Fair Housing Act (FHA) protects individuals living with a disability, among other protected classes, from discrimination as it pertains to renting and purchasing dwellings.<sup>ii</sup> While there are some narrow exceptions, the vast majority of public and private housing is subject to the provisions of the FHA.<sup>iii</sup>

For purposes of this White Paper, we are going to discuss the sections of the Americans With Disabilities Act (ADA) that protect individuals living with a disability from discrimination in state and local government programs (Title II) and in places of public accommodation (Title III).<sup>iv</sup>

Both the FHA and ADA, use the same definition of disability for an individual,<sup>v</sup> which is “a physical or mental impairment that substantially limits one or more major life activities of such individual.”<sup>vi</sup> This is a broad definition that encompasses a significant number of individuals. In fact, according to the Center for Disease Control and Prevention, 22% of adults are living with a disability and other studies have found that this definition includes approximately 40 million Americans.<sup>vii</sup>

While many states have enacted their own housing and public access anti-discrimination laws to protect individuals living with a disability, it is important to note that to the extent that any of them conflict or otherwise limit the rights afforded to individuals living with disabilities under the FHA and ADA, such as breed bans,<sup>viii</sup> the federal law will prevail. However, provisions that provide broader protections than federal law are valid in that state.<sup>ix</sup>

It is vital that housing providers understand and adhere to the FHA and ADA regulations regarding service and assistance animals. The U.S. Department of Housing and Urban Development (HUD) does not shy away from enforcing these laws and investigations and resultant lawsuits are costly, time consuming, and damage a housing provider's reputation. Moreover, if found liable, recent penalties have been in the tens and even hundreds of thousands of dollars.<sup>x</sup>

**Assistance animals.** Pursuant to the FHA, assistance animals are permitted as a reasonable accommodation for individuals living with a disability within the individual’s dwelling and other areas in the premises where residents have access, such as resident common areas. It is notable that assistance animals are not granted access to places of public accommodation outside of residential areas.

According to HUD, an assistance animal “is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.”<sup>xi</sup>

Assistance animals can be any type of species and are not limited to common companion animals. They do not need to be trained to perform a specific task, however there still needs to be an identifiable link between the individual’s disability and the manner in which the animal alleviates a symptom or effect of the individual’s disability.<sup>xii</sup>

Emotional support animals are the most commonly known type of assistance animal, however the range of disabilities with which animals can provide aid are significantly broader, and therefore the more general term, assistance animals, is appropriate. Some examples of assistance animals are:

- A bird who alerts his owner with hearing loss when someone knocks at the door,
- A chinchilla that helps an individual living with depression maintain a normal routine,
- A cat who eases her person’s pain from cancer treatment,
- A pot-bellied pig who has been trained to detect seizures,
- A dog who helps lower his owner’s blood pressure by compelling the owner to walk every day.

Building pet rules, including municipal breed bans (such as “no pets,” breed or size restrictions) and pet fees (such as pet deposits or pet rent) may not be applied to assistance animals.<sup>xiii</sup> If the housing provider assesses a fee to all tenants for premises damage, the handler will also be responsible for any damage the assistance animal causes.<sup>xiv</sup>

While there are no species, breed, or size requirements, or other restrictions on assistance animals, the animal must follow the required jurisdiction’s local vaccine, registration, and licensing laws, but the handler does not have to register the animal as an assistance animal under federal law. Moreover, there is no legally sanctioned vest, identification tag, or special harness certifying an assistance animal as such.<sup>xv</sup>

A housing provider may ask for verification of a disability or related need for an assistance animal only in cases where that particular factor is not readily apparent or known.<sup>xvi</sup> In such instances, a housing provider may request reliable documentation, which usually comes in the form of a letter from a “medical professional, a peer support group, a non-medical service

agency [such as a social worker], or a reliable third party who is in a position to know about the individual's disability."<sup>xvii</sup> While the document must establish the disability and related need for an assistance animal (or whichever prong is unknown), a housing provider may not request medical records, permission to speak with medical providers if it is not freely offered, or other detailed information about the individual's disability such as a specific diagnosis.<sup>xviii</sup>

A request for a reasonable accommodation for an assistance animal may be denied or rescinded if the individual does not have a disability or there is no disability-related need for the animal, if the accommodation would impose an undue financial or administrative burden for the housing provider<sup>xix</sup>, if the accommodation would fundamentally alter the nature of the provider's operation, if the animal poses a direct and immediate threat to the health and safety of others (which is not based on stereotypes or fears, or allergies<sup>xx</sup>), or if the animal would cause substantial physical damage to property.<sup>xxi</sup> Allergies are treated as another disability needing a reasonable accommodation, not as a reason to deny a request for an assistance animal.

**Service animals.** Under the ADA, "state and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go."<sup>xxii</sup> This is relevant in the housing context as leasing offices and other similar areas are considered places of public accommodation.

Service animals are dogs or miniature horses that are trained to do work or perform a specific task for an individual living with a disability.<sup>xxiii</sup> Some examples of services animals are:

- A miniature horse who is trained to guide an individual who is blind,
- A dog who is trained to remind an individual with depression to take her medication,
- A dog who is trained to take specific steps to keep his person safe when she has a seizure.

Service dogs need not be professionally trained (and in fact, they can be trained by the individual using the service animal) nor are they required to wear a vest, identification tag, or specific harness indicating that the dog is a service animal.<sup>xxiv</sup> Moreover, there are no government official certifications or registries for service animals and mandatory registration of service animals is not permitted.<sup>xxv</sup>

Similar to assistance animals, service animals are not subject to breed, weight, or size restrictions nor are they subject to any pet fees, however the dogs are required to follow local vaccination and licensing laws. Service animals must be under their handlers' control at all times – this usually means they must have on a harness or leash while in public or under voice control if those devices interfere with the service animal's work.<sup>xxvi</sup>

Service animals may be denied access or removed from the premises if admitting the animal “would fundamentally alter the nature of a service or program,” the animal is out of control and the handler is unable to control him, the animal poses a direct threat to the health and safety of others (not based on fears, stereotypes, or allergies), or the animal is not housebroken. The handler is responsible for damages the service animal causes if it is the practice of the establishment to hold all patrons responsible for any damages.<sup>xxvii</sup>

Only when an individual’s disability or related need for a service animal is not obvious, property managers may ask two questions: “(1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform.” It is not permissible to inquire about an individual’s disability, ask for medical records, or require the service animal to perform the task.<sup>xxviii</sup>

In many instances, service animals also qualify under the definition of assistance animals and are granted access to dwellings. The only difference is the type of verification the individual would be required to produce if the disability or related need for an animal-aid is not obvious.

## 2. State law

In its current codification, some of the California regulations pertaining to assistance animals are more restrictive while others provide additional protections than the federal standard, meaning that the FHA and ADA apply when the California law is more restrictive, and the California standard applies when the law provides broader protection.

In California a person is considered “disabled” if s/he has (i) a mental disability, defined to include a mental or psychological disorder or condition that limits one or more major life activities or that requires special education or required services,<sup>xxix</sup> or (ii) a physical disability, defined as any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that both limits one or more major life activities and affects one or more specified body systems.<sup>xxx</sup> This is notable in that, as the California Legislature expressly acknowledged in the California Fair Employment and Housing Act, it is a broader standard than the definition of disability under the federal standard, which requires that the impairment *substantially* limit an individual’s major life activities (emphasis added).<sup>xxxi</sup>

California regulations currently allow access in housing for animals that provide assistance to individuals living with disabilities only in limited circumstances: dogs trained to guide the blind, dogs trained to alert individuals who are deaf, and dogs trained to aid disabled individuals in other discrete, specific tasks.<sup>xxxii</sup> The regulations do not account for other types of disabilities nor do they account for other types of animals. They also require that the animals are trained before designating them as a disability aid, in contradiction with federal standards. California requires guide dogs serving the blind to be trained by a person licensed under the applicable provisions of the Business and Professions Code, and signal dogs and other service dogs to be specifically trained for the assistance provided.<sup>xxxiii</sup> In addition, such dogs are required to be on

a leash and tagged as a guide dog, signal dog or service dog with an identification tag issued by the county clerk, animal control department or other authorized governmental agency.<sup>xxxiv</sup> This condition, however, conflicts with federal law, which does not require service animals to be trained by a professional.<sup>xi</sup>

As of the time of this writing, the California Department of Fair Housing and Employment has been fervently working on drafting updated regulations that meet and even surpass the protections afforded to individuals living with disabilities under the federal standard.<sup>xxxv</sup> Although it is unknown when the regulations will be codified, it is important to recognize that until such regulations are adopted, the protections afforded by the FHA and the ADA described above apply.

### *3. Concerns of Fraud*

Concerns about the fraudulent use of assistance and service animals are pervasive across the country.<sup>xxxvi</sup> Service dog vests and harnesses are easily available for anyone to purchase. Nevertheless, a cottage industry has cropped up of businesses offering individuals “emotional support animal certification” letters by using online assessments and submitting them to mental health professionals (who never meet the customer) for review.<sup>xxxvii</sup> With verification of service animals essentially being on the “honor system” and the dubious nature of “emotional support animal certification” letters, it is no wonder that the public is wary about the validity of service and assistance animals.

However, actual data establishing the fraudulent use of assistance and service animals does not exist and instead, the issue is identified by anecdotes and intuition. That does not mean that we do not have a problem. Instead, it means we need to reframe our approach.

**Problematic verification.** When tenants produce “emotional support animal certification” letters from suspicious sources, it does not mean that they do not have a legitimate disability or legitimate need for an assistance animal; it means that the verification letter is not reliable.

HUD regulations already provide housing operators with a way to manage such situations – they can engage in the interactive process with the tenant and request additional verification from a different source that reliably establishes the disability and/or need for an assistance animal.<sup>xxxviii</sup> If the tenant fails to produce reliable verification, the housing operator can deny the reasonable accommodation for failure to establish a disability or the need for an assistance animal.

**Misrepresenting service animals.** Members of the public often disbelieve claims that a dog is a service animal if the dog is misbehaving in public, barking incessantly, or even defecating indoors. Although these are unacceptable behaviors for canines in public, they are not necessarily evidence of a fraudulent service animal. An individual can have a disability, a service dog who is trained to perform a task that alleviates a symptom or effect of that disability, and an ill-behaved service dog. All three things can be true.

To address potential misrepresentations of assistance dogs, California law requires a person applying for an assistance dog identification tag to specifically acknowledge that any intentional and fraudulent representation as an owner or trainer of a licensed or qualified assistance dog is a crime punishable by imprisonment and/or a fine.<sup>xxxix</sup>

Additionally, some individuals bring untrained animals to public places to serve as an aid to their disability because of an innocent ignorance of the law. For example, not understanding the nuances between the FHA, ADA, and the Air Carrier Access Act (which concerns the use of animals as aids on airplanes), many people will mistakenly believe that a letter verifying their cat as an “emotional support animal” gives them permission to bring their cat to any place of public accommodation. They simply do not realize that there is a difference between service animals and assistance animals and that assistance animals (which include emotional support animals) are not allowed in public places that otherwise do not permit pets.

The ADA already provides property managers tools for curbing fraudulent use of service animals – they can ask an individual (who does not have an obvious disability or need for a service animal) the two verification questions (if the dog is required because of a disability and what the dog is trained to do). If those questions are not answered satisfactorily, the property manager does not need to permit the animal access to the property. Even if those questions have acceptable answers, property managers can still evict a misbehaving service dog from the premises, while offering their goods or services to the individual without the service dog present.<sup>xl</sup>

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<sup>i</sup> 2004 Joint Statement of HUD and DOJ: Reasonable Accommodations Under the FHA; Available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf), accessed on Nov. 13, 2017

<sup>ii</sup> 42 U.S.C. § 3601-3619

<sup>iii</sup> The FHA does not apply to (a) owner-occupied buildings with no more than four units; (b) single family housing sold or rented without the use of a broker if the owner does not own more than three single-family homes at one time; or (c) housing operated by organizations and private clubs that limit occupancy to members. 42 U.S.C. § 3603(b), 3607

<sup>iv</sup> 42 U.S.C. § 12102; 28 C.F.R. § 35-36

<sup>v</sup> 42 U.S.C. § 12102(1); 42 U.S.C. § 3602. The full definition is: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

<sup>vi</sup> 42 U.S.C. § 12102(2) – Examples of major life activities include “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 major bodily functions such as “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

<sup>vii</sup> CDC Disability Impacts Us All; Available at: <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>, accessed on Nov. 13, 2017; Erickson, W., Lee, C., von Schrader, S. (2017). Disability Statistics from the American Community Survey (ACS). Ithaca, NY: Cornell University Yang-Tan Institute (YTI). Retrieved from Cornell University Disability Statistics website: [www.disabilitystatistics.org](http://www.disabilitystatistics.org), accessed on Nov. 13, 2017.

viii See *Warren v. Delvista Towers Condo. Ass'n, Inc.*, 49 F. Supp. 3d 1082 (S.D. Fla. 2014)

ix FHA: “[A]ny law of a state, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.” 42 U.S.C. §

ADA: “Title III [of the ADA] does not disturb other Federal laws or any State law that provides protection for individuals with disabilities at a level greater or equal to that provided by the ADA. It does, however, prevail over any conflicting State laws.” ADA Title III Technical Assistance Manual, III-1.8200; ADA Requirements: Service Animals, U.S. DEP’T OF JUSTICE, [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm).

x <https://www.housingwire.com/articles/40951-california-landlords-settle-over-alleged-fair-housing-violation>; <http://www.mpamag.com/news/hud-settles-nevada-housing-discrimination-case-70041.aspx>; <https://www.justice.gov/opa/pr/department-justice-settles-civil-rights-lawsuit-alleging-discriminatory-assistance-animal>; <https://www.justice.gov/opa/pr/justice-department-obtains-167500-discrimination-settlement-reno-nev-apartment-complex>

xi US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed on Nov. 13, 2017

xii *Id.*

xiii *Id.*

xiv *Id.*

xv *Id.*

xvi *Id.*

xvii 2004 Joint Statement of HUD and DOJ: Reasonable Accommodations Under the FHA; Available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf), accessed on Nov. 13, 2017; US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed on Nov. 13, 2017

xviii US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed on Nov. 13, 2017

xix This is a high standard to prove. See 2004 Joint Statement of HUD and DOJ: Reasonable Accommodations Under the FHA at #7, Available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf), accessed on Nov. 13, 2017; See also 2006 Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation memo, Available at: <http://www.hdli.org/noteworthy/201411.HUD.Memo.Insurance.Breed.Restrictions.pdf>, accessed on Nov. 13, 2017.

xx Examples of animals that would pose a direct threat to the safety of others are a dog with a bite history or someone trying to claim a tiger as an assistance animal.

xxi 2004 Joint Statement of HUD and DOJ: Reasonable Accommodations Under the FHA; Available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf), accessed on Nov. 13, 2017; US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed on Nov. 13, 2017. Note: In situations where you have an individual with an assistance animal and another individual nearby with a severe allergy to that animal, the allergy is treated as another disability needing a reasonable accommodation. One type of disability does not necessarily trump another.

xxii US Department of Justice. Service Animals. July 2011. Available at: [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm). Accessed on Nov. 13, 2017

xxiii US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed on Nov. 13, 2017; US Department of Justice. Frequently Asked Questions about Service Animals and the ADA. July 2015. Available at: [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html). Accessed on Nov. 13, 2017

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<sup>xxiv</sup> US Department of Justice. Frequently Asked Questions about Service Animals and the ADA. July 2015. Available at: [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html). Accessed on Nov. 13, 2017

<sup>xxv</sup> *Id.*

<sup>xxvi</sup> *Id.*

<sup>xxvii</sup> *Id.*

<sup>xxviii</sup> US Department of Justice. Frequently Asked Questions about Service Animals and the ADA. July 2015. Available at: [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html). Accessed on Nov. 13, 2017

<sup>xxix</sup> Cal. Government Code § 12926(j)(1)

<sup>xxx</sup> Cal. Government Code § 12926(m)(1)

<sup>xxxi</sup> 42 U.S.C. § 12102(1); Cal. Government Code § 12926.1(c)

<sup>xxxii</sup> West's Ann. Cal. Civ. Code § 54(b)(6)

<sup>xxxiii</sup> Cal. Civ. Code §54.1(b)(6)(C)

<sup>xxxiv</sup> Cal. Civ. Code §54.1(c)

<sup>xxxv</sup> <https://www.dfeh.ca.gov/fehouncil/previous-meetings-and-agendas/>

<sup>xxxvi</sup> Loopholes in ADA Law Make "No Pets" Clauses Nearly Impossible to Enforce, East Bay Express, Aug. 1, 2012. Available at <https://www.eastbayexpress.com/oakland/loopholes-in-ada-law-make-no-pets-clauses-nearly-impossible-to-enforce/Content?oid=3301049>. Accessed on Nov. 14, 2017.

<sup>xxxvii</sup> Certapet is an example of one such online service providers. Available at: [www.certapet.com](http://www.certapet.com). Accessed on Nov. 14, 2017.

<sup>xxxviii</sup> 2004 Joint Statement of HUD and DOJ: Reasonable Accommodations Under the FHA; Available at: [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint\\_statement\\_ra.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf), accessed on Nov. 13, 2017

<sup>xxxix</sup> Cal. Food and Agriculture Code § 30850 (2004)

<sup>xl</sup> US Department of Justice. Frequently Asked Questions about Service Animals and the ADA. July 2015. Available at: [https://www.ada.gov/regs2010/service\\_animal\\_qa.html](https://www.ada.gov/regs2010/service_animal_qa.html). Accessed on Nov. 13, 2017