HOME AWAY FROM HOME: Assistance Animals, Extended-Stay Hotels, and the Fair Housing Act

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I. INTRODUCTION

Dexter is a peacock. But his owner, a photographer and performance artist in New York known as Ventiko, says Dexter is *more* than a peacock—he is an emotional support animal.[1] Dexter and Ventiko jumped into the national spotlight when Ventiko tried to bring her emotional support peacock on a United Airlines flight from Newark to Los Angeles.[2] United Airlines barred Dexter from boarding the flight because he "did not meet guidelines for a number of reasons, including [his] weight and size."[3] Ventiko claimed she had even bought Dexter his own seat on the plane, but a spokesperson for the airline insisted the airline had explained to the customer that the peacock would not be allowed on the plane on three separate occasions before the pair arrived at the airport.[4] Ultimately, Ventiko chose to drive Dexter to Los

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1. *See* Lindsey Bever & Eli Rosenberg, *United Changed Its Policy for Emotional-Support Animals. That Peacock Still Can't Board*, WASH. POST (Feb. 1, 2018), https://www.washingtonpost.com/news/animalia/wp/2018/01/30/a-woman-tried-to-board-a-plane-with-her-emotional-support-peacock-united-wouldnt-let-it-fly/?utm_term=.8b9cedfef4e5.

2. *See id.*; *see also 'Emotional Support Peacock' Barred from United Airlines Plane*, BBC (Jan. 31, 2018), http://www.bbc.com/news/world-us-canada-42880690 [hereinafter BBC, *Emotional Support Peacock*]; Bart Jansen, *An Emotional Support Peacock? Comfort Animal or Not, Some Airlines Saying No as Rules Are Tightened*, USA TODAY (Jan. 31, 2018, 5:55 PM), https://www.usatoday.com/story/travel/2018/01/31/airlines-tighten-rules-comfort-animals-rather-than-wait-dot/1083895001/; Daniella Silva, *Emotional Support Peacock Denied Flight by United Airlines*, NBC NEWS (Jan. 30, 2018, 9:04 PM), https://www.nbcnews.com/storyline/airplane-mode/emotional-support-peacock-denied-flight-united-airlines-n842971.

3. *See* Bever & Rosenberg, *supra* note 1.

4. *See id.*

Angeles,[5] but not before the wild occurrence captured the attention of media outlets across the world.[6]

When discussing emotional support animals, it is often outlandish stories like Dexter the emotional support peacock that come to mind. The idea of an emotional support animal has been colored by outrageous occurrences, leading many people to believe that most of the individuals claiming to need an emotional support animal are insincere, just hoping to dodge pet fees in their housing complex or trying to avoid paying to transport their pets.[7] However, the reality of having an emotional support animal is often much less eccentric than the viral stories making international headlines.

The truth is, having an emotional support animal often means navigating complex laws and regulations, making special arrangements with housing providers or apartment managers, and, in an unfortunate number of instances, disclosing protected mental and emotional health information. Yet on top of the every-day challenges that come with having an emotional support animal, individuals with such assistance animals[8] may also find they face additional bars in times of emergency. For example, after Hurricane Katrina hit the Gulf Coast in 2005, reports estimated that around 600,000 animals either died or were left without shelter.[9] In addition, many pet owners, when faced with the option of evacuating without their pets, chose to disregard their own personal safety in order to remain with their pets.[10] Making such a decision would likely be even more difficult if the animal in question were an emotional

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5. *See id.*

6. *See Dexter the Emotional Support Peacock Barred from Flying*, AUSTRALIAN BROADCASTING CORP. (Jan. 31, 2018), http://www.abc.net.au/news/2018-02-01/dexter-the-emotional-support-peacock-denied-entry-on-flight/9383486; BBC, *Emotional Support Peacock*, *supra* note 2; Erene Oberholzer, *"Emotional Support Peacock" Barred from Boarding a US Flight*, SOUTH AFR. (Jan. 31, 2018), https://www.thesouthafrican.com/emotional-support-peacock-denied-flight-by-united-airlines/.

7. *See* Oberholzer, *supra* note 6.

8. The term "assistance animal" is an umbrella term that includes both service animals and emotional support animals. So while all emotional support animals are assistance animals, not all assistance animals are emotional support animals.

9. Marita Mike, Rebecca Mike & Clark J. Lee, *Katrina's Animal Legacy: The PETS Act*, 4 J. ANIMAL L. & ETHICS 133, 133 (2011).

10. *Id.* at 133–34. In the wake of these tragic consequences, Congress passed the Pets Evacuation and Transportation Standards (PETS) Act, which ensured state and local emergency preparedness plans addressed the needs of pet and service animal owners during times of disaster. Pets Evacuation and Transportation Standards Act, Pub. L. No. 109-308, 120 Stat. 1725 (2006) (amending 42 U.S.C. §§ 5196, 5170). While the PETS Act was a step toward animal safety in times of disaster, it does not explicitly address emotional support animals like it does service animals. *See* Ragan Adams, *In Cities and on Ranches, Planning Is the Key to Protect Animals During Disasters*, CONVERSATION (Sept. 4, 2017, 7:56 PM), http://theconversation.com/in-cities-and-on-ranches-planning-is-key-to-protect-animals-during-disasters-83202.

support animal that the owner relied on for his or her emotional and mental wellbeing. Unfortunately, in times of disaster and emergency, individuals with emotional support animals may be surprised to find that their assistance animals are not welcomed like service animals in places of temporary housing such as shelters or extended-stay hotels.[11] Because of this, in emergency situations, individuals with assistance animals may find they are unable to acquire temporary housing as easily as non-disabled individuals. Furthermore, it is not completely clear which laws should protect individuals with disabilities who face this type of discrimination in places of temporary housing.

The Americans with Disabilities Act ("ADA") protects individuals with disabilities from discrimination in places of public accommodation, like restaurants or hotels. At the same time, the Fair Housing Act ("FHA") protects buyers and renters of a dwelling from discrimination by sellers or landlords. It is unclear which area of the law should govern disability discrimination in types of temporary housing like extended-stay hotels.

This Comment suggests that for the purposes of service and emotional support animals, extended-stay hotels should be governed by the Fair Housing Act, which allows for more broad inclusivity of assistance animals. In support of this proposal, this Comment proceeds as follows. Part II begins by explaining the protections the Americans with Disabilities Act provides to individuals with disabilities in places of public accommodation, including a discussion on what types of structures are defined as "public accommodations." Next, it recounts how the ADA treats assistance animals in places of public accommodation, including the protection of rights to have a service animal in public places, and the limitation of rights to have an emotional support animal in public. The section then turns to an explanation of what types of structures are covered under the Fair Housing Act. Part II concludes by explaining the protections offered both to service animals and emotional support animals in structures covered by the FHA.

Because of ambiguity over where temporary housing options like extended-stay hotels fit under the ADA or FHA, Part III analyzes a typical, and hypothetical, disaster-misplacement and emotional support animal case under both the ADA and FHA. After such analysis, this Comment argues that for the purpose of emotional support animals, extended-stay hotels should be covered under the FHA. Because the goal of disability legislation is to provide individuals who have physical, mental, and emotional disabilities with full and equal access to society, the FHA, which allows for broader protections of assistance animals, is the preferable governing law for

11. *See* Mike, Mike & Lee, *supra* note 9, at 133–34.

extended-stay hotels. However, because the ADA offers more expansive accessibility and construction standards, this Comment also suggests that the best solution would be a statutory amendment to the ADA allowing for emotional support animals in semi-public places like temporary housing.

II. BACKGROUND

Extended-stay hotels are a form of temporary housing that is becoming increasingly common in society.[12] For people traveling during business, students studying abroad, or even individuals displaced by natural disasters, extended-stay hotels offer a sort of home away from home, complete with kitchens and other amenities not generally offered in normal hotels.[13] Normal hotels are explicitly denoted as places of public accommodation covered by the ADA.[14] While the ADA requires service animals be allowed in hotels, it offers no similar protections for emotional support animals.[15] On the other hand, the FHA offers protections for individuals with disabilities in the sale and rental of housing.[16] In addition, while extended-stay hotels have never been addressed in any FHA case law, other forms of temporary housing have been found to be covered structures under the FHA.[17] The FHA offers protections both for individuals with service animals as well as individuals with emotional support animals.[18]

A. The Americans with Disabilities Act

The Americans with Disabilities Act was enacted in 1990 to protect the rights of individuals with disabilities and ensure these individuals have full access to all aspects of society.[19] It prevents discrimination based on disability

12. *See* Brendan Manley, *US Extended-Stay Hotels Thrive in Face of Supply Growth*, HOTEL NEWS NOW (June 26, 2017, 8:34 AM), http://hotelnewsnow.com/Articles/147706/US-extended-stay-hotels-thrive-in-face-of-supply-growth.

13. *See id.*

14. 42 U.S.C. § 12181(7)(A) (2018).

15. *See* 28 C.F.R. §§ 36.302(c)(1), 36.104 (2018).

16. *See* 42 U.S.C. § 3604(f) (2018).

17. *See, e.g.*, Schwarz v. City of Treasure Island, 544 F.3d 1201, 1215 (11th Cir. 2008) (identifying halfway-houses used for drug rehabilitation as dwellings covered by the Fair Housing Act).

18. OFFICE OF FAIR HOUS. & EQUAL OPPORTUNITY, U.S. DEPT. OF HOUS. & URBAN DEV., SERVICE ANIMALS AND ASSISTANCE ANIMALS FOR PEOPLE WITH DISABILITIES IN HOUSING AND HUD-FUNDED PROGRAMS 1 (2013) [hereinafter HUD, ASSISTANCE ANIMALS].

19. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as amended at 42 U.S.C. §§ 12101–213 (2018)).

in areas of employment, transportation, communication, and public accommodation, as well as ensuring all individuals have access to governmental programs and services.[20] In places of public accommodation specifically, the ADA outlines accessibility requirements for facilities and sets up standards to prevent discrimination against individuals with disabilities, including standards applicable to assistance animals.

1. Public Accommodation Requirements Under Title III of the ADA

Title III of the ADA protects the rights of individuals with disabilities in places of public accommodation.[21] A place of "public accommodation" is defined by statute as a privately owned entity whose operations affect commerce.[22] In conjunction with this broad definition, the ADA specifies that a public accommodation includes places like restaurants, theaters, clothing stores, laundry mats, barbershops, banks, hospitals, transportation terminals, museums, amusement parks, homeless shelters, health spas, and most places of private education, just to name a few.[23] The ADA also specifies that "an inn, hotel, motel, or other place of lodging" is a public accommodation to be governed by the standards set forth in the ADA.[24]

A large portion of Title III sets up construction guidelines that allow individuals with disabilities greater access to places of public accommodation.[25] The ADA has stricter requirements for accessibility in

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20. 42 U.S.C. §§ 12111–213 (2018).

21. *Id.* §§ 12181–89. A disability is defined as "a physical or mental impairment that substantially limits one or more major life activities." *Id.* § 12102.

22. *Id.* § 12181(7).

23. The ADA sets out quite an extensive list of retail locations, places of recreation, and other service establishments that qualify as places of public accommodation. *See id.* § 12181(7)(B)–(L).

24. *Id.* § 12181(7)(A). Accessibility claims against hotels are quite common. Consider, for example, the claims of Theresa Brooke, a wheelchair-bound Arizona woman who has filed hundreds of ADA lawsuits against hotels in Arizona and California in the past three years for not having wheelchair accessible pools, Jacuzzis, and spas. *See* Skip Descant, *Why an Arizona Woman Sued More Than 30 Hotels Where She Hadn't Stayed*, DESERT SUN (July 12, 2016, 3:40 PM), http://www.desertsun.com/story/money/business/tourism/2016/07/12/why-arizona-woman-sued-more-than-30-hotels-where-she-hadnt-stayed/86875122/; *see, e.g.*, Brooke v. Capitol Regency, LLC, No. 2:16–cv–02070–JAM–EFB, 2017 WL 2165866 (E.D. Cal. May 17, 2017); Brooke v. D S Hospitality, LLC, No. 16-cv-06750-VC, 2016 WL 7366103 (N.D. Cal. Dec. 15, 2016); Brooke v. Kalthia Group Hotels, No. 15-cv-1873-GPC(KSC), 2015 WL 7302736 (S.D. Cal. Nov. 18, 2015); Brooke v. Apache Hospitality, LLC, No. 2:15-cv-1296-HRH, 2015 WL 5285926 (D. Ariz. Sept. 10, 2015).

25. 42 U.S.C. §§ 12183, 12204 (2018).

newly constructed facilities than it does in facilities that were built before applicable portions of the ADA were passed.[26] New facilities must be designed and constructed to be "readily accessible to and usable by individuals with disabilities," and in full compliance with *all* applicable ADA standards.[27] The only exception to strict compliance is if it would be "structurally impracticable[,] . . . in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features."[28] In contrast, previously existing facilities must be made to conform to the ADA standards "to the maximum extent feasible" when any alterations to the facility are made.[29] Existing facilities must also "remove architectural barriers . . . where such removal is readily achievable," or if the removal of barriers is not readily achievable, "make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable."[30]

Title III also outlines provisions to protect individuals with disabilities from discrimination in places of public accommodation.[31] At its core, Title III requires that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[32] Specific requirements include allowing individuals with disabilities the opportunity to participate equally in programs or activities, as well as giving individuals with disabilities access to goods and services in an appropriately integrated setting.[33] These requirements seek to fulfill the public policy goal that individuals with disabilities be granted participation in or benefit from goods, services, or facilities that is equal to the participation or benefit granted to non-disabled individuals.[34] In addition, individuals with

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26. *See* 28 C.F.R. § 35.151(c) (2018).
27. *Id.* § 35.151(a)(1).
28. *Id.* § 35.151(a)(2)(i). Structural impracticability often results from barriers inherent in the land. For example, in *Coppi v. City of Dana Point*, certain portions of the Dana Point Headlands facilities in Southern California, including public trails and parks along ocean bluffs, were inaccessible to individuals using wheelchairs; however, the court found that modifications to these facilities would be structurally impracticable because of ecological concerns—endangered species of animal and plant life living there—and geological concerns—frequent landslides throughout the area. 88 F. Supp. 3d 1122, 1130 (C.D. Cal. 2015).
29. 28 C.F.R. § 35.151(b)(1) (2018).
30. 42 U.S.C. § 12182(b)(2)(A)(iv)–(v) (2018); *see also* 28 C.F.R. §§ 36.304–05 (2018).
31. *See* 42 U.S.C. § 12182 (2018).
32. *Id.* § 12182(a).
33. *Id.* § 12182(b)(1)(B)–(C).
34. *See id.* § 12182(b)(1)(A)(ii).

disabilities must not be made to use different or separate facilities.[35] Part of this guarantee for equal and integrated participation of individuals with disabilities includes guaranteeing that individuals with service animals have equal access to places of public accommodation.

2. Treatment of Assistance Animals Under the ADA

Allowing individuals with disabilities equal access to places of public accommodation often requires allowing service animals like seeing-eye dogs or mobility animals to have full access to facilities. As federal administrative guidelines set out, "[A] public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability."[36] However, modifications are not required if they would "fundamentally alter" the nature of the service.[37] Still, the presence of a service animal should not limit individuals with disabilities from accessing all areas, goods, and services that are open to non-disabled individuals, including areas where animals would not normally be permitted. The law makes clear that "[i]ndividuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go."[38] A simple way to understand the access granted to service animals is to liken the animal to other mobility aids, like a wheelchair or white cane. In most cases, anywhere an individual could use a wheelchair, crutches, or a cane, an individual may also bring his or her service animal. Access of a service animal may be limited, however, if the animal is not housebroken or if the animal's handler is not able to maintain control over the animal.[39]

Because service animals are granted extensive access in places of public accommodation, it is necessary that owners and employees of covered

35. *Id.* § 12182(b)(1)(A)(iii).

36. 28 C.F.R. § 36.302(c)(1) (2018).

37. *Id.* § 36.302(a). In addition to modifications to policies to permit the use of service animals, facilities must also modify policies regarding surcharges for animals. The administrative regulations require that "[a] public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets"; however, facilities may charge a service animal owner for any damage caused by his or her service animal. *Id.* § 36.302(c)(8).

38. *Id.* § 36.302(c)(7).

39. *Id.* § 36.302(c)(2).

facilities be able to differentiate service animals from normal pets.[40] While many websites boast national service animal registries, in actuality, these sites sell meaningless credentials, IDs, and service animal tags, often to non-disabled individuals who want to keep a non-working pet with them in public places.[41] In reality, there is no official national service animal registry. Federal regulations instruct that places of public accommodation "*shall not* require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal" in order to verify if an animal is a service animal.[42] Instead, owners and employees may ask two questions to determine if an animal qualifies as a service animal: (1) Is this animal required because of a disability? and (2) What work or task has the animal been trained to perform?[43]

Federal regulations also limit what types of animals may be considered service animals. Prior to 2010 when revised standards for public accommodations under the ADA were adopted, federal regulations explained

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40. Some lawmakers have even proposed laws to make it illegal for an individual to misrepresent their pet as a service animal. *See, e.g.*, Howard Fischer, *Arizona Lawmaker Wants to Tighten Leash on 'Fake' Service Dogs*, TUCSON.COM (Dec. 26, 2017), http://tucson.com/news/local/arizona-lawmaker-wants-to-tighten-leash-on-fake-service-dogs/article_d2b6732f-8ca9-5d55-8470-3187357ce68a.html. Around twenty states already have civil or criminal penalties in place for individuals who misrepresent their animals as service animals. *See, e.g.*, Colo. Rev. Stat. Ann. § 18-13-107.7 (2018).

41. Examples of sites that sell national "registration" or "certification" for service animals include: www.usdogregistry.org, www.usserviceanimals.org, www.registerservicedogs.com, www.registermyserviceanimal.com, www.nsarco.com, www.usservicedogregistry.org, usaservicedogregistration.com, www.servicedogregistration.org, usdogregistry.org, www.registermyserviceanimal.com, www.officialservicedogregistry.com, and countless others. The biggest threat that stems from these sites is not that these sites scam individuals with disabilities who have genuine service animals. While certainly some individuals with disabilities fall prey to websites such as these, the majority of individuals with disabilities who require a service animal are aware of their legal rights and understand that there is no official registration required for a service animal. In reality, the largest threat that has developed as fake service animal registration sites have become more prevalent is that business owners and employees, if not properly trained, may expect or require proof of registration for service animals. These inaccurate perceptions lead to greater hardships and discrimination for individuals with disabilities who genuinely require the help of a service animal.

42. 28 C.F.R. § 36.302(c)(6) (2018) (emphasis added). Certainly, there are valid organizations that train service animals; however, standardized training is likely not required because of the widespread variation in disabilities, which requires an equally wide variation in the tasks service animals might be trained to perform.

43. *Id.* Federal regulations specify that business owners or employees "may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability." *Id.* For example, a trained service animal may be "readily apparent" when a dog is observed guiding an individual who is blind or pulling a person's wheelchair. *Id.*

that a service animal was "any guide dog, signal dog, *or other animal* individually trained to do work or perform tasks for the benefit of an individual with a disability."[44] From a service parrot trained to help agoraphobia[45] to a seeing-eye miniature horse, this broad definition allowed a variety of animal species to function as service animals.[46] However, the expansiveness of this definition fell into the public spotlight with the case *Rose v. Springfield-Greene County Health Department*, in which a woman with anxiety disorder and agoraphobia brought a discrimination complaint after she was denied entry and services because of her service animal: a ten-year-old Bonnet Macaque monkey.[47] In ruling on this case, the judge determined that Plaintiff's monkey was not a service animal under the ADA; however, this decision was not based on the fact that the animal was a monkey, but rather on the fact that there was "insufficient evidence indicating the monkey was specifically trained to perform any 'tasks' related to Plaintiff's disorders."[48] Despite the fact that the judge's ruling did not rest on the fact that the service animal was a monkey, this did not stop media outlets from highlighting Plaintiff's monkey as an example of the broad definition

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44. *Id.* § 36.104 (2010) (amended 2011) (emphasis added).

45. Agoraphobia is an anxiety disorder often associated with a fear of being in public places. *See Agoraphobia*, MAYO CLINIC (Nov. 18, 2017), https://www.mayoclinic.org/diseases-conditions/agoraphobia/symptoms-causes/syc-20355987. Generally, individuals with agoraphobia fear or avoid places and situations where they feel they might be trapped, helpless, or embarrassed. *Id.* Typical fears associated with agoraphobia include fear of: leaving home alone, standing in large crowds, waiting in lines, being in enclosed spaces like elevators or open spaces like parking lots, and using public transportation. *Id.*

46. *See* Rebecca Skloot, *Creature Comforts*, N.Y. TIMES (Dec. 31, 2008), http://www.nytimes.com/2009/01/04/magazine/04Creatures-t.html?em.

47. Rose v. Springfield-Greene Cty. Health Dept., 668 F. Supp. 2d 1206, 1208 (W.D. Mo. 2009).

48. *Id.* at 1215–16. The judge found that the majority of the "tasks" the monkey had been trained to perform amounted to no more than the comfort or reassurance a normal house pet would provide. *Id.* at 1215. Touching the plaintiff's hair or face to calm her down or sitting on her lap to relieve her from emotional overload were not tasks under the ADA. *Id.* Other tasks the monkey performed, like bringing Plaintiff her cellphone, toothbrush, or remote may have constituted tasks if Plaintiff were mobility impaired, but in this case the judge found that the plaintiff failed to explain how these tasks related to her disability. *Id.* In addition, the judge found that other tasks the monkey performed, like the monkey giving "a direct look with an open mouth" or a "gentle push" to keep strangers away, actually contributed to health and safety concerns surrounding the monkey. *Id.*; *see also* Pruett v. Arizona, 606 F. Supp. 2d 1065, 1071 (D. Ariz. 2009) (finding a chimpanzee that "sits with [the plaintiff] when she is home alone, retrieves candy or a beverage with sugar for her on command, turns lights on for her, picks up remote controls and telephones, sleeps with her, and gives her mental stimulation" did not qualify as a service animal because the tasks were unrelated to the plaintiff's diabetic disability).

of service animal being abused.[49] Then, just a year after the court's ruling in *Rose*, an amended definition of the term "service animal" took effect, specifying:

> Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.[50]

In addition to this stricter definition of what constitutes a service animal, federal regulations also added an explicit exception for miniature horses, explaining that places of public accommodation should "make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability."[51] Miniature horses are allowed as a special exception to the narrowed definition of a service animal[52] because they are one of the few viable service animal options for individuals with disabilities who also have dog allergies, or individuals whose religion precludes the use of dogs.[53] In addition, horses live much longer and thus, on average, are able to provide a handler with almost thirty years of service while a dog generally provides around seven years.[54] Finally, because of their strength, miniature horses can pull much heavier loads than a dog.[55] Under current federal law,

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49. *See, e.g.*, Chad Garrison, *Judge to Missouri Woman: Your Monkey Is Not a Service Animal*, RIVERFRONT TIMES (Oct. 23, 2009, 10:07 AM), https://www.riverfronttimes.com/newsblog/2009/10/23/judge-to-missouri-woman-your-monkey-is-not-a-service-animal; *Judge: Woman's Monkey Is Not a Service Animal*, UNITED PRESS INT'L (Oct. 23, 2009, 4:47 PM), https://www.upi.com/Judge-Womans-monkey-not-a-service-animal/25611256330874/.

50. 28 C.F.R. § 36.104 (2018).

51. *Id.* § 36.302(c)(9)(i).

52. 28 C.F.R. pt. 36 app. A (2018) (giving federal guidance on revisions to ADA regulation on nondiscrimination on the basis of disability by public accommodations and commercial facilities).

53. Many Muslims consider dogs to be unclean, therefore precluding them from keeping a dog as a service animal. *See* Ben Leubsdorf, *Seeing-Eye Horse Guides Blind Muslim Woman*, NBC NEWS (Apr. 10, 2009, 2:19 PM), http://www.nbcnews.com/id/30155540/ns/health-health_care/t/seeing-eye-horse-guides-blind-muslim-woman/#.Wqtl0pPwaHo. For many Muslims, a miniature horse is the only alternative available for a service animal. *See id.*

54. 28 C.F.R. pt. 36 app. A (2018) (giving federal guidance on revisions to ADA regulation on nondiscrimination on the basis of disability by public accommodations and commercial facilities).

55. *Id.*

no other species of animal past a dog or miniature horse may be a service animal.[56]

In addition to species restrictions, federal regulations also set guidelines on what sort of work or tasks qualify an animal as a service animal. Service animals must be individually trained to work or perform tasks that assist "an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability."[57] The tasks performed must be directly related to the individual's disability, including tasks like guiding individuals who are blind, pulling a wheelchair, or providing physical support for an individual with a mobility disability.[58] The guidelines make clear that "[t]he crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks" that would qualify an animal as a service animal.[59] Thus, emotional-support animals that provide comfort to combat emotional problems like depression or anxiety do not qualify as service animals under the ADA and cannot enter places of public accommodation.[60]

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56. *See* 28 C.F.R. § 36.104 (2018).

57. *Id.*

58. *Id.* In full, the federal regulations explain:

> Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

Id. These examples constitute common work, but the list should not be considered comprehensive. Service animals are trained to provide innumerable tasks that vary based on the specific handler and the circumstances of the disability.

59. *Id.*

60. *See* Baird v. 1600 Church Rd. Condo. Ass'n, No. 17-4792, 2017 WL 5570333, at *4 (E.D. Pa. Nov. 17, 2017) ("[E]motional support or emotional therapy dogs do not qualify as service animals under the ADA."); Houston v. DTN Operating Co., LLC, No. 17-00035, 2017 WL 4653246, at *6 (E.D. Tex. Oct. 17, 2017) ("An animal that simply provides comfort or reassurance is equivalent to a household pet, and does not qualify as a service animal under the ADA." (quoting Rose v. Springfield-Green Cty. Health Dep't, 668 F. Supp. 2d 1206, 1215 (W.D. Mo. 2009))); Lerma v. Cal. Exposition & State Fair Police, No. 2:12–CV–1363, 2014 WL 28810, at *5 (E.D. Cal. Jan. 2, 2014) (finding a puppy was not a service animal because it only received obedience training and was used only to help the plaintiff "get through the day and feel better, a type of emotional support and comfort, which is exactly the type of aid specifically excluded as work or tasks under" ADA regulations).

B. The Fair Housing Act

The Fair Housing Act was enacted as part of the Civil Rights Act of 1968.[61] Its purpose is to protect buyers and renters from discrimination by sellers and landlords based on the buyer or renter's race, color, religion, sex, familial status, national origin, or disability.[62] The FHA covers a variety of structures and dwellings, including many types of temporary housing. The FHA also regulates the presence of assistance animals in housing.

1. Structures Covered by the Fair Housing Act

The FHA protects against discrimination in advertising, negotiating, and otherwise transacting in the "sale or rental of a dwelling."[63] While "dwelling" is a fairly broad term, the FHA clarifies:

> "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.[64]

Despite this clarification, there remained some confusion over what it meant to be "occupied as . . . a residence."[65] A court first defined "residence" as it is used under the FHA in *United States v. Hughes Memorial Home*.[66] The *Hughes* court reasoned that because the term was not given a definition by the FHA, it should be accorded its ordinary meaning.[67] Therefore, the court adopted the then-current Webster's Dictionary definition of a residence: "a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit."[68] Later, courts further developed guidance on how to distinguish a "temporary dwelling place" from a "place of temporary sojourn or transient visit."[69] After considering the reasoning of other courts in similar cases, the court in *United States v. Columbus Country Club* found that the

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61. Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§ 3601–19, 3631 (2018)).
62. *See* 42 U.S.C. §§ 3601, 3604 (2018).
63. *Id.* § 3604.
64. *Id.* § 3602(b).
65. *Id.*
66. United States v. Hughes Mem'l Home, 396 F. Supp. 544, 549 (W.D. Va. 1975).
67. *Id.*
68. *Id.*
69. *See, e.g.*, United States v. Columbus Country Club, 915 F.2d 877, 881 (3d Cir. 1990).

central inquiry in determining whether a location is a temporary residence is twofold, asking: (1) whether the individual intends to remain at the location for any significant period of time and (2) whether the individual views the location as a place to return to.[70] Since then, courts have also considered some additional factors in this determination, including: whether the facility is designed for people to remain for a significant period of time and whether the occupant has an alternative place of residence.[71]

Through case law, the FHA was expanded to cover various types of temporary housing. In *Hughes*, the court determined that a Virginia children's home was covered under the FHA after concluding that the home was "far more than a place of temporary sojourn to the children who live[d] there" and was where the children returned home to after leaving to go to school or other outside activities.[72] The Third Circuit solidified these factors in *Columbus Country Club* when it ruled that a number of summer homes owned by a private country club were "residences" covered under the FHA because members were not "mere transients," considering the length of members' stays (up to five months each year) and that the majority of members retuned annually.[73] A court in the Eastern District of Illinois used the *Columbus* factors in determining that homeless shelters are covered under the FHA.[74] The court concluded that although the facility was not meant as a permanent residence, homeless individuals could stay in the facility for long amounts of time because those individuals had no other home to return to, making the facility more of a dwelling than a place of "temporary sojourn."[75]

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70. *Id.* at 881 (considering the reasoning in Patel v. Holley House Motels, 483 F. Supp. 374, 381 (S.D. Ala. 1979) and Baxter v. City of Belleville, 720 F. Supp. 720, 731 (S.D. Ill. 1989)).

71. *See* Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp., 455 F.3d 154, 158–60 (3d Cir. 2006); Villegas v. Sandy Farms, Inc., 929 F. Supp. 1324, 1327–28 (D. Or. 1996).

72. *Hughes*, 396 F. Supp. at 549.

73. *Columbus Country Club*, 915 F.2d at 881. Other seasonal facilities have also been found to be "residences" covered under the FHA. A court in the District of Oregon found that summer cabins used by migrant farm workers and their families were "residences" under the FHA because the workers stayed in the cabins for up to five months of the year and because the workers had no other place to return to while living in the cabins, as their actual homes were far removed from their place of employment. *Villegas*, 929 F. Supp. at 1328. A court in the District of Louisiana made a similar determination when it found that timeshare resort units were covered as residences under the FHA because there was no limit to the number of weeks a purchaser could buy, and owners possessed the right to return every year. Louisiana Acorn Fair Hous. v. Quarter House, 952 F. Supp. 352, 359–60 (E.D. La. 1997).

74. Woods v. Foster, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995).

75. *Id.* A court in the Southern District of Illinois ruled similarly when it found that a hospice center for individuals with AIDS/HIV was covered under the FHA. *Baxter*, 720 F. Supp. at 731. Though residents in the facility would be there for an indeterminate amount of time, the facility was covered because it was "to be a home for HIV victims in need of a place to live." *Id.*

In more recent years, the Eleventh Circuit Court of Appeals held that a "halfway house" serving individuals with chemical dependencies qualified as a dwelling under the FHA, despite the fact that residents stayed only a short time and that most residents had some other home to return to after they completed their treatment.[76] In this determination, the court set forward two conditions it found relevant: whether the occupants treat the building like their own home (e.g. cooking their own meals or washing their own clothes) and the average length of time an occupant lives in the building.[77] The court found that the halfway house residents shared common areas, like kitchens and family rooms, that allowed them to function almost as a family, and that residents stayed there six to ten weeks (significantly longer than the average hotel stay, which is only one to two nights).[78]

Despite the extensions that have been made to cover *temporary* residences under the FHA, places of *transient* lodging continue to be designated as places of public accommodation, to be governed by the ADA rather than the FHA. In *Patel v. Holley House Motels*, a court in the Southern District of Alabama concluded that a motel was not a dwelling under the FHA because it was not "occupied, designed or intended for occupancy as a residence," but rather, was a "commercial venture" established to "provide[] lodging to 'transient' guests" and not a residence for the plaintiff."[79] Similarly, in *Amazing Grace Bed & Breakfast v. Blackmun*, the court found that a bed and breakfast that "would allow six people to stay for a maximum of three days

76. Schwarz v. City of Treasure Island, 544 F.3d 1201, 1215–16 (11th Cir. 2008).

77. *Id.* at 1214–15.

78. *Id.* at 1214–16. The standards used in *Schwarz* to determine whether the facility was a residence were largely adopted from the Third Circuit's ruling in *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154 (3d Cir. 2006). There, the court concluded that a drug and alcohol treatment center was covered as a dwelling under the FHA because residents generally stayed at the facility for around two weeks and "treated [the center] like a home for the duration of their stays." *Id.* at 160. Similar reasoning was used in a court in the District of Connecticut to determine that outpatient halfway houses for recovering substance abusers were covered under the Fair Housing Act. Conn. Hosp. v. City of New London, 129 F. Supp. 2d 123 (D. Conn. 2001). In that case, residents lived in the facility for one to three months and individuals were "generally self-governing." *Id.* at 125. The court concluded the group homes were dwellings under the FHA because "plaintiffs' occupancy 'resemble[d] that of a resident far more than that of a hotel guest.'" *Id.* at 135 (quoting *Villegas*, 929 F. Supp. at 1328).

79. Patel v. Holley House Motels, 483 F. Supp. 374, 381 (S.D. Ala. 1979) (referencing the "transient visit" standard applied in United States v. Hughes Mem'l Home, 396 F. Supp. 544, 549 (W.D. Va. 1975)). A court in the District of Maryland similarly ruled that a room in a motel is not generally covered under the FHA because guests have no intention to return. *See* Moore v. Red Roof Inn, No. HAR 87-2134, 1989 WL 85364, at *2 (D. Md. July 27, 1989). The court does, however, suggest that "it is possible to use a hotel, motel or inn room as a residence. A residence or dwelling, however, differs from a place of temporary or transient lodging by suggesting an intention to return." *Id.*

at the three-bedroom house . . . . is the archetype of a 'transient visit,'" and so was not covered as a dwelling under the FHA.[80] Despite the clear designation of hotels as transient lodging not covered under the FHA, extended-stay hotels have received very limited treatment in courts and have never been clearly held as residences covered under the FHA. The closest a court has ever come to considering the question of whether an extended-stay hotel might be covered under the FHA was in *Doohan v. Doohan*, where a district court in Georgia "assum[ed], without deciding, that . . . Efficiency Lodge[, an extended-stay hotel, was] a dwelling within the meaning of the FHA."[81] Unfortunately, *Doohan* did not result in clear guidance on whether an extended-stay hotel is covered as a residence under the FHA—the plaintiff in the case failed to prove any discrimination occurred and thus, summary judgment was granted for the defendant.[82]

2. Treatment of Assistance Animals Under the FHA

The FHA allows for much broader coverage of various assistance animals in order to allow all individuals, regardless of disability status, to use and enjoy a residence. Originally, courts contemplated the FHA covering many different species of assistance animals. For example, when a court in the Northern District of California considered whether two birds and two cats could potentially be assistance animals for the purposes of the state housing statute, the court suggested that, based on federal regulations, "there is no indication that accommodation of other animals [besides dogs] is per se unreasonable."[83] However, this broad allowance was based on the federal regulations in effect at the time allowing "other animal[s] individually trained to do work or perform tasks for the benefit of an individual with a disability" to qualify as service animals.[84] As previously discussed, these regulations

80. Amazing Grace Bed & Breakfast v. Blackmun, No. 09–0298–WS–N, 2009 WL 4730729, at *4 (S.D. Ala. Nov. 30, 2009). Another proposed bed and breakfast did not qualify as a dwelling under the FHA, according to a court in the Northern District of Illinois, because the owner of the facility used a separate residence than those transient guests who were staying in the bed and breakfast. *See* Schneider v. Cty. of Will, 190 F. Supp. 2d 1082, 1087 (N.D. Ill. 2002).

81. Doohan v. Doohan, No. 4:09-CV-20 (CDL), 2010 WL 3123080, at *2 (M.D. Ga. Aug. 9, 2010).

82. *See id.*

83. Janush v. Charities Hous. Dev. Corp., 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000).

84. 28 C.F.R. § 36.104 (2000) (amended 2011).

have now been amended to include only dogs and miniature horses as qualifying service animals.[85]

Despite the narrowing of this definition in federal regulations, the U.S. Department of Housing and Urban Development ("HUD") has since released administrative guidance calling for greater inclusion of species covered as assistance animals under housing law, explaining that "[w]hile dogs are the most common type of assistance animal, other animals can also be assistance animals."[86] HUD further clarifies that an assistance animal for the purposes of housing law is "not a pet" but rather 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."[87] In providing examples of the work an animal might perform, many of the tasks HUD identifies align with examples given by the ADA;[88] however, HUD makes two important additions to the examples of qualifying tasks—"providing protection" and "providing emotional support"—that differentiate its requirements from those of the ADA.[89] By adding these actions as qualifying tasks, HUD clarified that a broader definition of assistance animal applies to housing providers, explaining:

> [Title] III of the ADA limit[s] the definition of "service animal" under the ADA to include only dogs, and further define[s] "service animal" to exclude emotional support animals. This definition, however, does not limit *housing providers'* obligations to make reasonable accommodations for assistance animals under the FHA . . . including [] emotional support animal[s] . . . .[90]

According to the FHA, it is unlawful to refuse to "make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a] person [with disabilities]

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85. *See id.* §§ 36.104, 36.302(c)(9)(i) (2018). See *supra* Part II.A.2 for a discussion of how the language of the regulation changed after being amended.

86. HUD, ASSISTANCE ANIMALS, *supra* note 18, at 2.

87. *Id.*

88. *Compare* HUD, ASSISTANCE ANIMALS, *supra* note 18, at 2 (identifying "guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures or providing emotional support to persons with disabilities who have a disability-related need for such support" as examples of qualifying tasks an assistance animal might perform), *with* 28 C.F.R. § 36.104 (2018) (outlining examples of work or tasks that might qualify an animal as a service animal for the purposes of the ADA).

89. HUD, ASSISTANCE ANIMALS, *supra* note 18, at 2.

90. *Id.* at 1 (emphasis added).

equal opportunity to use and enjoy a dwelling."[91] Taking the HUD guidelines into account, this means that even when a housing provider has a policy banning pets, the provider must allow both service animals *and* emotional support animals as a reasonable accommodation for individuals with disabilities.[92] In addition, individuals with assistance animals cannot be required to pay extra fees, like a pet deposit, in order to keep their animal(s).[93]

When reviewing a request for accommodation to keep an assistance animal, housing providers may consider: (1) Does the person requesting to keep the animal have a disability?[94] and (2) Does the work the animal provides help alleviate one or more symptoms of the individual's disability?[95] If both of these considerations are met, the assistance animal must be allowed unless the specific animal presents a direct threat to the health or safety of others or would cause substantial physical damage to the property of others.[96]

III. ANALYSIS

Because of the variation in allowances for assistance animals between the ADA and FHA, it becomes necessary to classify forms of temporary housing like extended-stay hotels in order to determine what protections are available to individuals with disabilities. The ADA's designation that "an inn, hotel, motel, or other place of lodging" is a public accommodation might lead individuals to automatically assume that an extended-stay hotel should be governed by the ADA.[97] After all, as both a "hotel" and a "place of lodging," extended-stay hotels seem to fit into the statutory definition of qualifying

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91. 42 U.S.C. § 3604(f)(3)(B) (2018).

92. *See* 24 C.F.R. § 100.204(b) (2018). Other restrictive pet policies, like breed, size, or weight limitations, may not be applied to assistance animals. HUD, ASSISTANCE ANIMALS, *supra* note 18, at 3.

93. *See* U.S. DEPT. OF JUSTICE & U.S. DEPT. OF HOUS. & URBAN DEV., REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT 9 (2004) [hereinafter HUD, REASONABLE ACCOMMODATIONS]. Although housing providers may not require a pet fee as part of a reasonable accommodation for assistance animals, providers *may* charge a tenant for the cost of any repairs resulting from damage caused by the animal to the housing unit or common areas. HUD, ASSISTANCE ANIMALS, *supra* note 18, at 3 n.6. *See also* HUD, REASONABLE ACCOMMODATIONS at 9 (explaining that a tenant who uses a mobile scooter within a housing unit as a reasonable accommodation would still be required to pay for any damage to walls or doors caused by the scooter).

94. While a housing provider should not request medical information about the individual's disability, the provider may request the individual submit reliable documentation of their "disability-related need for an assistance animal." HUD, ASSISTANCE ANIMALS, *supra* note 18, at 3.

95. *Id.*

96. *Id.*

97. 42 U.S.C. § 12181(7)(A) (2018).

locations. If extended-stay hotels were designated as public accommodations, individuals with disabilities would likely be benefitted by the stricter construction and renovation standards applied by ADA regulations. On the other hand, individuals with emotional support animals would be guaranteed no protection for their assistance animals based on the ADA's clear guidelines that emotional support animals do not qualify as service animals.

Despite the ADA definition that might seem to qualify an extended-stay hotel as a place of public accommodation, FHA case law regarding temporary housing has progressed past mere delineation based on definitions and into more of a factors test, seeking to differentiate places of temporary lodging from places of transient visit. The key to this distinction is intent—intent of both residents and builders of temporary housing. Courts commonly consider a combination of the following factors in determining whether a location is a residence: (1) whether the individual intends to remain at the location for any significant period of time, (2) whether the individual views the location as a place to return to, (3) whether the occupant has an alternative place of residence, (4) whether the occupant treats the location as their home, and (5) whether the facility is designed for people to remain for a significant period of time.[98]

With these factors in mind, it is possible that extended-stay hotels could qualify as residences under the FHA. While qualifying extended-stay hotels as residences under the FHA might be unfavorable in some ways for individuals with disabilities because it would subject extended-stay hotels to less stringent construction and renovation standards, designating extended-stay hotels as residences would allow for much broader coverage of assistance animals. Such coverage is vital for individuals who are forced to reside in an extended-stay hotel based on circumstances outside their own control, like displacement by a natural disaster. When such displacement occurs, individuals should not have to be parted from their assistance animals.

Although designating extended-stay hotels as dwellings under the FHA might be better for individuals with emotional support animals, could extended-stay hotels actually qualify according to the factors applied by courts? Let's return to the common circumstances forcing many individuals to reside in extended-stay hotels: natural disasters. Imagine a young woman, Jane Doe, forced to evacuate her town because of a forest fire. Jane leaves her house with just a few suitcases and her emotional support animal: a beagle that helps her calm down when she is feeling severe anxiety. After evacuating, Jane learns that the forest fire has destroyed her house. She arranges to stay in an extended-stay hotel until she can secure a new

98. *See supra* Part II.B.1.

residence. However, the extended-stay hotel will only allow service animals and makes no allowance for emotional support animals.

A court considering the above facts would likely try to determine whether the extended-stay hotel was a covered dwelling based on the factors identified by other courts in temporary housing cases. First, the court might ask whether the woman intended to remain at the location for a significant period of time. Because Jane was displaced by a natural disaster that could affect her town and the surrounding area for an indefinite amount of time, it is likely she will stay at the extended-stay hotel for a significant period of time. Surely her stay would be more substantial than the "temporary sojourn" common to most hotel guests.[99]

Next, would the woman view the extended-stay hotel as a place to return to? Certainly Jane would view this location, where she has all the possessions that she was able to save when evacuating, as a place to return to each day. She would bring her groceries home to the location. She would return there after work. This analysis would also go hand in hand with the next factor: whether the woman has an alternative place of residence. Because the fire destroyed Jane's original home, she has no alternate residence where she could go. The extended-stay hotel would be the home she returned to, not as a vacation or place to visit, but as her one and only residence.

After, the court would likely consider whether the woman treats the location as her home. Jane cooks her meals in her extended-stay hotel. She does her laundry there. She sleeps there each night. In all of these actions, she is treating the extended-stay hotel as her home. Finally, the court would consider whether the facility was designed for people to remain for a significant period of time. Assume the facility where Jane is staying equips every unit with a kitchen and laundry closet. She also gets special, discounted rates the longer she stays at the location.[100] Such policies are specifically designed to persuade residents to stay at the location for a significant period of time. Based on the analysis of these factors, it is likely that the court would find extended-stay hotels to be covered as dwellings under the FHA, thereby extending the protections guaranteed for emotional support animals and allowing Jane to keep her beagle.

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99. *See* United States v. Hughes Mem'l Home, 396 F. Supp. 544, 549 (W.D. Va. 1975).

100. Extended-stay hotels often offer weekly and monthly rates that are cheaper than normal, daily hotel rates, encouraging guests to stay for a longer period of time. Consider Extended Stay America, a popular extended-stay location, which offers "affordable weekly, biweekly and monthly rates" and advises, "[T]he more you stay, the more you save!" *Stay More, Save More*, EXTENDED STAY AMERICA, https://www.extendedstayamerica.com/rewards-promotions/stay-more-save-more.html (last visited Jan. 12, 2019).

While the analysis above was only theoretical, there may come a time in the near future where a case similar to this hypothetical arises. When it does, a court will go through a similar analysis to the one above. Eventually, a court ruling could help overcome the ambiguity identified in this Comment surrounding extended-stay hotels.[101] Because of the public policy interests society holds in protecting rights of access for individuals with disabilities, any court faced with this dilemma should rule that extended-stay hotels be covered under the FHA, thus ensuring greater access for assistance animals in temporary housing.

A goal of both the ADA and the FHA is to provide people with disabilities greater access to locations and services, free from unfair discrimination. While classifying extended-stay hotels as public accommodations under the ADA would heighten required construction and design standards, it would offer no protections for emotional support animals. On the other hand, classifying extended-stay hotels as residences under the FHA would afford individuals with assistance animals greater freedom and protection in the temporary housing industry, while still maintaining the general accessibility standards applied to housing complexes. Overall, the broader protections guaranteed make the FHA the more favorable governing law for protection of emotional support animals. However, the best-case solution to this ambiguity would be a statutory exception to the ADA's hardline rule against emotional support animals in places of public accommodation. Such an exception could allow assistance animals full access to semi-public areas like extended-stay hotels when such a location was functioning as a temporary residence. Alternatively, responsible business owners operating extended-stay hotels could ensure compliance with the high construction and accessibility standards set forth in the ADA, while still making exceptions in pet policies that would allow emotional support animals.

IV. CONCLUSION

Nearly one in five people in the U.S. have a disability,[102] yet navigating the intricacies of disability legislation can be a daunting process. In particular, the differing rights of access granted to service animals versus emotional support animals are often particularly confusing both for animal owners and

101. There is also the possibility that legislators will make statutory changes that impact treatment of and access granted to emotional support animals. Such statutory changes may also make this discussion of ADA versus FHA obsolete.

102. *Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports*, U.S. CENSUS BUREAU (July 25, 2012), https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html.

the owners of public accommodations or housing properties. Ultimately, legislation surrounding assistance animals must be focused on granting equal access and opportunities to individuals with physical, mental, or emotional disabilities. In places of temporary housing, valid emotional support animals should be guaranteed broad protections in order to ensure that all individuals with emotional or mental health problems can enjoy full and equal access to society.