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The Lack of Clarity Around Extended Lodging, Emotional Support Animals, and the Fair Housing Act

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The Fair Housing Act of 1968 (“FHA”) prevents discrimination in renting a dwelling due to a renter’s handicap or disability. The rented home can be something other than the occupants' only or permanent residence for the FHA to apply. Further, discrimination under the FHA includes refusing to make reasonable accommodations in any rules, policies, practices, or services when such accommodations are necessary to give a person equal opportunity to use and enjoy a dwelling. An example of a reasonable accommodation that can be made is an adaptation of a no-pets policy.

The U.S. Department of Housing and Urban Development (“HUD”) is the government department that administers federal housing and urban development laws such as the FHA. According to HUD, an emotional support animal is any animal that offers an emotional connection to its owner, is prescribed by a licensed medical professional, and supports an individual with a mental illness or disability. HUD has accepted the adaptation of no-pet policies as a reasonable accommodation under the FHA regarding the use of emotional support animals. Further, federal courts have applied HUD’s guidance to recognize emotional support animals as reasonable accommodations and that no special training is required to qualify as a support animal for FHA purposes.

However, the FHA’s protection of emotional support animals only extends as far as the definition of “dwelling” allows. The FHA defines a dwelling as a building “occupied as, or designed or intended for occupancy as, a residence by one or more families.” The first analysis used by courts is to examine the plain definition of “residence” in Webster’s Third New International Dictionary. The basic meaning of a residence is “a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit.” The Third Circuit Court of Appeals built on this approach and asks whether a building is first intended or designed for occupants who remain for a significant period and whether occupants would view the building as a place to return during that period.

While courts have declined to apply the FHA to motels and bed and breakfast establishments because these provide lodging to transient guests who do not intend to return and thus are not dwellings, extended-stay hotels

present a more difficult distinction. Extended-stay hotels differ from motels and bed and breakfast establishments as occupants often intend to stay for a significant period. Further, the Eleventh Circuit Court of Appeals has provided guidance regarding when a building is viewed as a place to return. The court states that cooking your meals, cleaning your room, doing your laundry, and spending time in the common space all lend themselves to a suggestion that a building is viewed as more of a dwelling than not. Extended-stay hotels are often equipped and designed to allow occupants to engage in these activities. Therefore, while it is unclear that extended-stay hotels would be classified as dwellings under the FHA and receive the applicable protections for emotional support animals, persuasive arguments can be made that the same would be classified as such.