

## RE-EVALUATING THE ROLE OF COMPANION ANIMALS IN THE ERA OF THE AGING BOOMER

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I.	Introduction .....	498
II.	Companion Animals in the United States.....	499
	A. Role of Companion Animals in the United States.....	499
	B. The Impact of Companion Animals on Human Health.....	500
III.	Living with Companion Animals .....	505
	A. Acquisition of Animals.....	506
	B. Assistance in Animal Care.....	508
	C. Alternative to Owned Animals .....	510
	D. Companion Animals and Rental Housing .....	511
	E. Assisted Rental Housing for the Elderly or Disabled ...	513
	F. Companion Animals in Care Centers .....	517
	1. Animal Assisted Activities .....	518
	2. Resident Animals .....	519
IV.	Service and Assistance Animals.....	520
	A. Americans with Disabilities Act.....	521
	1. Applicability of ADA to Facilities.....	522
	2. Applicability of ADA to Private Housing .....	523
	B. Fair Housing Act.....	525
V.	Risks of Relationship.....	530
	A. Risks to Humans .....	530
	1. Bites and Other Direct Injuries .....	530
	2. Falls.....	532
	3. Allergies .....	534
	4. Zoonotic Disease.....	535
	B. Risks to Animals (and Humans) .....	536
	1. Selected Environmental Factors .....	537
	2. Selected Issues Relating to Abuse .....	538

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3. Hoarding .....	541
C. Ethical Issues Relating to Companion Animals.....	544
D. Ethical Issues Relating to Animal-Assisted Activities and Service Animals.....	546
VI. Conclusion .....	549

## I. INTRODUCTION

The Census Bureau reports that the number of Americans sixty-five years and older is expected to double to 88.5 million by 2050, and will represent 19% of the population by 2030.<sup>1</sup> Not only is the percentage of the population over sixty-five years of age growing, but the aging population itself is getting older.<sup>2</sup> The growth of the aging population and the “oldest old” will have a significant impact on societal resources and health care costs.<sup>3</sup>

As the percentage of this population increases, it is crucial to consider factors that will contribute to their well-being and health. One of these factors is the role that companion animals have in their lives. One professor of history wrote, “The history of pet keeping is an integral part of the history of everyday life in the United States.”<sup>4</sup> The role that companion animals play in the life of an individual often changes over time.<sup>5</sup> For some older adults, companion animals are a vital part of their daily existence. This Article concludes that the keeping of companion animals by older adults is increasing and that the law currently provides some protection and facilitates resident animal programs. However, greater support for these laws and programs is needed to ensure a positive relationship between humans and their animal companions.

This Article is divided into four substantive parts. Part II considers the role of pets in the United States and the impact of companion

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1. U.S. CENSUS BUREAU, THE NEXT FOUR DECADES: THE OLDER POPULATION IN THE UNITED STATES: 2010–2050, 1, 3 (2010). The current percentage of the population over sixty-five is 13%. *Id.* In this Article, the terms elderly, seniors, older adults, or older Americans will be used interchangeably to mean individuals over sixty-five years of age.

2. U.S. DEP’T HEALTH & HUMAN SERVS. & U.S. DEP’T COMMERCE, 90+ IN THE U.S.: 2006–2008 1 (2011).

3. *Id.*

4. KATHERINE C. GRIER, PETS IN AMERICA: A HISTORY 8 (2006). Professor Grier documents the keeping of pets from the time of European settlement to the present day. *Id.*

5. See generally Rebecca J. Huss, *Separation, Custody, and Estate Planning Issues Relating to Companion Animals*, 74 U. COLO. L. REV. 181, 188–94 (2003) [hereinafter Huss, *Separation*] (discussing reasons for the changing perspective of companion animals in the United States).

animals in the lives of seniors.<sup>6</sup> Part III analyzes issues that the elderly may face in keeping or interacting with companion animals in their residences.<sup>7</sup> Part IV analyzes federal laws that ensure that persons with disabilities using service and assistance animals will have access to public accommodations and housing.<sup>8</sup> Part V of this Article considers risks and ethical issues involved with having animals in the lives of the elderly.<sup>9</sup>

## II. COMPANION ANIMALS IN THE UNITED STATES

This Part will first briefly consider the role of pets in the United States and discuss the extent to which Americans have companion animals in their homes. This Part then analyzes research that considers the impact of ownership of companion animals.

### A. Role of Companion Animals in the United States

From an economic standpoint, companion animals are big business. It is estimated that the amount spent on pets in the United States exceeded fifty billion dollars in 2011.<sup>10</sup> Within this estimate, approximately twenty billion dollars was spent on food and fourteen billion on veterinary care.<sup>11</sup>

The percentage of American households that include a companion animal has been more than 60% for more than a decade.<sup>12</sup> Persons who are married are the most likely to have a pet, followed by individuals who are divorced, widowed, or never married.<sup>13</sup> Older Americans are less likely to have a companion animal than households with children in

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6. *Infra* notes 10–58 and accompanying text.

7. *Infra* notes 59–166 and accompanying text.

8. *Infra* notes 167–236 and accompanying text.

9. *Infra* notes 237–383 and accompanying text.

10. *Industry Statistics & Trends*, AM. PET PRODUCTS ASS'N, [http://www.americanpetproducts.org/press\\_industrytrends.asp](http://www.americanpetproducts.org/press_industrytrends.asp) (last visited Jan. 29, 2013).

11. *Id.* See also Huss, *Separation*, *supra* note 5, at 181–86 (discussing the role of companion animals in the United States and the types of expenditures associated with them).

12. AM. PET PRODUCTS ASS'N, 2011–2012 APPA NATIONAL PET OWNERS SURVEY 4 (2011) [hereinafter APPA]. This comprehensive survey on pet expenditures and ownership takes place every two years. The methodology used by the APPA to create this data is similar to that used by the American Veterinary Medical Association (“AVMA”). See *infra* note 13. A survey of households is used to develop this data; however, it cannot be considered a definitive census of the pet population. Notwithstanding the foregoing, these sources are widely used to estimate the pet population and information regarding pet owners in the United States. It should be assumed that all numbers cited using these sources are estimated even if not denoted as such.

13. AM. VETERINARY MED. ASS'N, U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK 121 (2012) [hereinafter AVMA].

the home; however, the largest growth rate among pet owners is retired older couples.<sup>14</sup> One study estimates a conservative pet ownership rate of 30% for older adults.<sup>15</sup> This would mean that homes with older adults will contain approximately sixteen million companion animals in 2020 and twenty-four million in 2040.<sup>16</sup>

The type of housing an individual lives in also relates to pet ownership. Homeowners are more likely to keep a pet than people who rent their housing.<sup>17</sup> Financial constraints limit the ability of a person to keep a companion animal; as income levels increase, a household is more likely to include a companion animal.<sup>18</sup>

The most common pets are dogs and cats.<sup>19</sup> Much less popular are birds and small animals.<sup>20</sup> The percentage of households with dogs and cats has remained relatively stable over the past decade.<sup>21</sup>

### *B. The Impact of Companion Animals on Human Health*

The therapeutic value of keeping a companion animal was

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14. AM. VETERINARY MED. ASS'N, U.S. PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK 5 (2007) (discussing the demographics of pet-owning households). According to the AVMA more than half of U.S. households defined as older singles (sixty-five years or older) have a companion animal. *Id.* at 131 (stating that 9.1% of households are older singles and 4.9% have a companion animal). Retired older couples are more likely to have companion animals than singles. *Id.* (stating that 9.6% of households are retired couples and 7.4% have a companion animal).

15. Terry Peak & Frank R. Ascione, *Adult Protective Services and Animal Welfare: Should Animal Abuse and Neglect Be Assessed During Adult Protective Services Screening?* 24 J. ELDER ABUSE & NEGLECT 37, 39 (2012).

16. *Id.*

17. *Id.* It is impossible to know whether persons who rent would own animals if allowed to do so. One study found that if their rental housing allowed animals, 35% of people without a pet would keep a pet. Michelle Cobey, *Pets in Housing Resources*, PET PARTNERS, <http://www.petpartners.org/page.aspx?pid=491> (last visited Nov. 8, 2013) (discussing a study by the National Council on Pet Population and Policy).

18. AVMA, *supra* note 13, at 121, 153 (reporting that “pet ownership was higher among those with higher incomes” and a household income “was only slightly higher for pet-owning households compared to all households”). Fees relating to pets in rental housing differ based on the housing market, but one source reports that flat pet fees range from \$20 to \$700 with monthly surcharges from \$6 to \$25. *No Pets Allowed?*, RENTAL HOUSING ON LINE, <http://www.rhol.com/rental/pets.htm> (last visited Jan. 29, 2013). This site also reports that the Humane Society of the United States estimates that only 5% of rental housing allows animals although 49.4% of U.S. renters have pets. *Id.*

19. APPA, *supra* note 12, at 2 (reporting that 39% of the U.S. population owns a dog and 33% of the population owns a cat). There are more owned cats (86.4 million) versus dogs (78.2 million) because of the higher number of multiple cat households compared to multiple dog households. *Id.* at 9-10.

20. *Id.* at 4 (stating that the percentage of households with birds was 5% and small animals was 4%).

21. *Id.*

promoted as early as 1845.<sup>22</sup> An increasing number of scholars in the social sciences began researching the issue beginning in the 1970s.<sup>23</sup> Many studies have considered the impact of companion animals on human health.<sup>24</sup> For example, physical contact with companion animals has a calming effect on people according to one study.<sup>25</sup> In addition, a variety of social and psychological benefits of pet ownership are supported by numerous other studies.<sup>26</sup> Some studies have found “no related health benefits with pet ownership.”<sup>27</sup> There appears to be greater support for the concept that the ownership of companion animals may have health benefits for particular demographic groups, including the elderly.<sup>28</sup>

Recent studies have acknowledged that much of the prior research in the area is limited in scope and may be methodologically weak.<sup>29</sup> Other concerns about this type of research include the “file drawer effect,” which is the tendency that studies with negative results are less likely to be published, and the fact that many of the studies use self-reporting as their methodology.<sup>30</sup> It is not uncommon to find that multiple studies purporting to research the same or similar issues

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22. GRIER, *supra* note 4, at 179.

23. *Id.* at 180.

24. See generally COMPANION ANIMALS IN HUMAN HEALTH (Cindy C. Wilson & Dennis C. Turner eds., 1998) (discussing a variety of studies done on the impact of companion animals on human health).

25. AARON H. KATCHER, *How Companion Animals Make Us Feel*, in PERCEPTIONS OF ANIMALS IN AMERICAN CULTURE 113, 120 (R.J. Hoage ed., 1989) (discussing how visual and physical contact with animals induces calm).

26. Helen R. Winefield et al., *Health Effects of Ownership of and Attachment to Companion Animals in an Older Population*, 15 INT’L J. BEHAV. MED. 303, 303 (2008) (discussing studies that associated companion animals with a range of benefits).

27. Harold Herzog, *The Impact of Pets on Human Health and Psychological Well-Being: Fact, Fiction or Hypothesis?*, 20(4) CURRENT DIRECTIONS IN PSYCHOL. SCI. 236, 237–39 (2011) [hereinafter Herzog, *Impact*] (discussing reasons why pet effect research is inconclusive); Sara Staats et al., *Teachers’ Pets and Why They Have Them: An Investigation of the Human Animal Bond*, 36 J. APPLIED SOC. PSYCHOL. 1881, 1882 (2006) (reviewing mixed results of research in this area); Hal Herzog, *Fido’s No Doctor, Neither is Whiskers*, N.Y. TIMES, Jan. 4, 2011 (discussing studies that did not find health benefits relating to pet ownership).

28. P. ELIZABETH ANDERSON, THE POWERFUL BOND BETWEEN PEOPLE AND PETS: OUR BOUNDLESS CONNECTIONS TO COMPANION ANIMALS 137 (2008) (stating that “animals seem to have significant beneficial effects in certain unique populations” including the elderly). Anderson reports on studies that show benefits to the elderly but also notes “some studies with the elderly report marginal or nonexistent benefits.” *Id.* at 138. See also Staats, *supra* note 27, at 1882.

29. Winefield, *supra* note 26, at 304.

30. Herzog, *Impact*, *supra* note 27, at 238. It is common for studies that show a benefit of pet ownership to receive media attention. See, e.g., Tara Parker-Pope, *Forget the Treadmill. Get a Dog*, N.Y. TIMES, Mar. 3, 2011, at D6 (reporting on a study on dog walking discussed *infra* notes 46–52 and accompanying text).

contradict each other.<sup>31</sup> The following provides a limited example of some recent research in the area.<sup>32</sup>

The studies explaining the relationship between companion animals and human health can be divided into three theories.<sup>33</sup> The first theory is that cofactors, such as economic or health status, impact the pet-owning decision and that there is only an apparent link between pet ownership and health-promoting attributes.<sup>34</sup> Researchers in the United Kingdom found that “evidence was lacking that any of these cofactors account for both health-promoting attributes and propensity to own pets.”<sup>35</sup>

The second theory is that companion animals enhance social interaction with other people, a long-recognized benefit, as it can alleviate feelings of social isolation and thus indirectly promote well-being.<sup>36</sup> This theory could be especially meaningful for the population that is the subject of this Article, as some older adults lack opportunities for social interaction compared to people who are more active.<sup>37</sup>

The final theory is that the nature of the relationship with a companion animal may directly impact well-being by providing social support.<sup>38</sup> A recent study focused on the role that pets may play in providing social support.<sup>39</sup> The first part of the study was designed to determine whether pet owners tended to have relatively healthy or

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31. *E.g.*, Bruce Headey & Markus M. Grabka, *Pets and Human Health in Germany and Australia: National Longitudinal Results*, 80 SOC. INDICATORS RES. 297, 307 (2007) (finding in a longitudinal study that Australian pet owners were significantly healthier than non-owners in the medium term); Ruth A. Parslow et al., *Pet Ownership and Health in Older Adults: Findings from a Survey of 2,551 Community-Based Australians Aged 60–64*, GERONTOLOGY, Jan/Feb. 2005, at 40, 44–45 (finding that pet owners reported significantly more depressive symptoms in direct contradiction to a prior study and the persons designated as “pet carers” reported poorer physical health).

32. An inclusive discussion of the studies relating to the benefits of pet ownership is beyond the scope of this Article. *See generally* Sandra B. Barker, *Benefits of Interacting with Companion Animals: A Bibliography of Articles Published in Referred Journals During the Past 5 Years*, AM. BEHAV. SCI., Sept. 2003, at 94 (providing a listing of eighty-four citations from referred journals published between 1996–2001).

33. June McNicholas et al., *Pet Ownership and Human Health: A Brief Review of Evidence and Issues*, 331 BRIT. MED. J. 1252, 1252–53 (2005).

34. *Id.* at 1253. This would make logical sense given that pet-owning households in the United States have slightly higher incomes than non-pet-owning households. AVMA, *supra* note 13, at 158.

35. McNicholas, *supra* note 33, at 1253. This suggests that reported health benefits may be attributed to “some aspect of pet ownership.” *Id.*

36. *Id.* at 1253.

37. *Id.*

38. *Id.*

39. Allen R. McConnell et al., *Friends with Benefits, On the Positive Consequences of Pet Ownership*, 101 J. PERSONALITY & SOC. PSYCHOL. 1239, 1239 (2011).

unhealthy personalities.<sup>40</sup> It found that for half of the measures of well-being; for example, greater self-esteem, greater levels of exercise and physical fitness, and a tendency to be less lonely, that pet owners did better than non-owners.<sup>41</sup>

In the second part of the study, the researchers evaluated the fulfillment of dog owners' social needs from their dogs and other people.<sup>42</sup> This part of the study found that the "well-being benefits were more pronounced for owners whose dogs filled social needs more effectively," and it provided more evidence that "the social needs pets fulfill is not used to supplement unsatisfied human social needs."<sup>43</sup> The third part of the study "demonstrated that one's pet can offset negativity resulting from a rejection experience."<sup>44</sup> The researchers concluded that their work "presents considerable evidence that pets benefit the lives of their owners, both psychologically and physically by serving as an important social support."<sup>45</sup>

It is not unexpected that healthy behaviors associated with companion animals may have benefits for humans. A 2011 study focused on the impact of dog walking on adults.<sup>46</sup> The study found that

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40. *Id.* The study assessed well-being measures such as self-esteem, depression, loneliness, and physical illness. *Id.*

41. *Id.* at 1243. The differences in the remainder of the measures of well-being were not deemed reliable. *Id.*

42. *Id.* at 1240, 1245-48 (recognizing that the literature on animal personality is in its nascent stages, this part of the study also attempted to take into account pets' individual differences and whether differences in the dog's personality, such as a dog being less aggressive, may better fulfill the owner's social needs).

43. *Id.* at 1248. Essentially, the social support that the dogs provide is "distinct and independent from the support they receive from key people in their lives." *Id.*

44. *Id.* at 1250.

45. *Id.* But see Krista Marie Clark Cline, *Psychological Effects of Dog Ownership: Role Strain, Role Enhancement and Depression*, 150(2) J. SOC. PSYCHOL. 117, 126 (2010) (finding "no main effects of dog ownership on depression," but did find support for a more beneficial effect of dog ownership on single persons and women).

46. Matthew J. Reeves, *The Impact of Dog Walking on Leisure-Time Physical Activity: Results from a Population-Based Survey of Michigan Adults*, 8 J. PHYSICAL ACTIVITY & HEALTH 436, 436 (2011) (reporting on a survey of adults who walked their dogs for a minimum of ten minutes at a time). See also Haley E. Cutt et al., *Does Getting a Dog Increase Recreational Walking?*, 5 INT'L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY, 9 (2008), <http://www.ijbnpa.org/content/5/1/17> (last accessed Feb. 12, 2013) (concluding that dog acquisition leads to an increase in walking); Katherine D. Hoerster et al., *Dog Walking: Its Association with Physical Activity Guideline Adherence and Its Correlates*, 52 PREVENTIVE MED. 33, 37 (2011) (finding that dog walkers were more likely to meet physical activity recommendations, but that one-third of the study participants were not walking their dogs at all); Roland J. Thorpe, Jr., *Dog Ownership, Walking Behavior, and Maintained Mobility in Late Life*, 54 J. AM. GERIATRICS SOC'Y 1419, 1421 (2006) (finding health benefits for dog walkers who walk at least 150 minutes per week).

the prevalence of dog walking decreased with age.<sup>47</sup> However, the frequency of dog walking increased noticeably in persons aged sixty-five years or older compared to middle-aged persons.<sup>48</sup>

Only 27% of the dog walkers in the group walked long enough to accrue at least 150 minutes of walking each week, which is a common benchmark for moderate physical activity, meeting minimal public health recommendations.<sup>49</sup> A previous study of elderly adult dog walkers in the United States found that they were more than twice as likely to meet this benchmark of activity as non-dog walkers.<sup>50</sup>

This study also found other benefits to being a dog walker include the fact that dog walkers walk about an hour more per week than non-dog-walking dog owners, and they walk about a half-hour more per week than non-dog owners.<sup>51</sup> The study concluded by suggesting that one mechanism to increase leisure time physical activity would be to support “public health campaigns that promote the appropriate and responsible acquisition of a dog along with promotion of dog walking.”<sup>52</sup>

Surveys indicate it is a widely held belief that there are health benefits of companion animal ownership regardless of whether there is demonstrable proof.<sup>53</sup> Pet owners report that they believe that companion animals are good for their family’s health and that the presence of the animals reduces their stress.<sup>54</sup> When older adults were surveyed, 63% of pet owners reported feeling that “their pet brightens their mood” and 54% said “their pets help them feel less stress.”<sup>55</sup>

One study theorizes, “the belief that a pet improves one’s health is a coping mechanism of note and that this belief, *per se*, may convey health

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47. Reeves, *supra* note 46, at 438. Dog walking increased with higher education and income. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* A survey by a pet food manufacturing company of 405 older Americans found that 52% reported exercising daily, 60% said they play with their pets, and 53% said they walk or jog with their pets outdoors. Kristen Levine, *Animals Make Elders Healthier*, TAMPA TRIB., Nov. 4, 2006, at 5.

51. Reeves, *supra* note 46, at 438.

52. *Id.* at 443.

53. Staats, *supra* note 27, at 1889.

54. APPA, *supra* note 12, at 49 (reporting that 67% of dog owners and 60% of cat owners say a benefit of ownership is relaxation and stress relief, and that 63% of dog owners and 39% of cat owners report that they believe the animals are “good for my health or my family’s health”). Another study of university faculty members found that most faculty reported “some degree of belief that pets are beneficial to their health.” Staats, *supra* note 27, at 1889.

55. Levine, *supra* note 50, at 5. Fifty-four percent reported that pets “give them a feeling of being needed and loved.” *Id.*



benefits.”<sup>56</sup> In addition, for both the general population and for persons with disabilities, “animals seem to improve social interactions and promote social happiness and harmony.”<sup>57</sup> One fact that appears to be uncontroverted is that, for individuals who wish to keep a companion animal, being forced to relinquish an animal is a stressful event and one that people will take steps to avoid. One source states “reports abound of older people avoiding medical care through fear of being admitted to . . . residential care as this often means giving up a pet.”<sup>58</sup>

Rather than requiring that companion animals provide a scientifically demonstrable health benefit for those individuals who choose to have a companion animal in their life, perhaps the question should be: how can society ensure that it is a safe and rewarding experience for both humans and companion animals?

### III. LIVING WITH COMPANION ANIMALS

Many people think of companion animals as owned animals in private housing.<sup>59</sup> This Part of the Article will explore issues that older adults face in connection with animals when they are living in the community. There has been limited research concerning the reasons adults choose to own pets.<sup>60</sup> There appears to be even less research concerning the reasons adults choose not to own a pet.<sup>61</sup> One study examined the reasons given by elderly non-pet owners for not owning a

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56. Staats, *supra* note 27, at 1889.

57. Sarah J. Brodie et al., *An Exploration of the Potential Risks Associated with Using Pet Therapy in Healthcare Settings*, 11 J. CLINICAL NURSING 444, 445 (2002).

58. McNicholas, *supra* note 33, at 1253–54. This article also reported “some sources estimate that 70% of pet owners would disregard advice to get rid of a pet owing to allergies.” *Id.* at 1253. See also Barbara W. Boat & Juliette C. Knight, *Experiences and Needs of Adult Protective Services Case Managers When Assisting Clients Who Have Companion Animals*, 12 J. ELDER ABUSE & NEGLECT 145, 149, 152–53 (2000) (reporting on case managers who have had clients who refused medical treatment unless their animals were cared for and the clients could regain custody of the animals after treatment).

59. The term “owned animal” is used to reflect companion animal’s current legal status as property. Polls indicate that many people do not view companion animals in this way. In “dog only” households, 67.2% of people consider their pets to be family members, 31.2% as pet/companion, and only 0.6% as property. The percentages for “dog and cat only” households are similar at 64.9% as family members, 34.3% as pet/companion, and 0.7% as property. “Cat only” households had slightly different rates of 54.5% as family members, 42.9% as pet/companion, and 1.7% as property. AVMA, *supra* note 13, at 11.

60. Staats, *supra* note 27, at 1889.

61. Anna Chur-Hansen et al., *Reasons Given by Elderly Men and Women for Not Owning a Pet, and the Implications for Clinical Practice and Research*, 13(8) J. HEALTH PSYCHOL. 988, 989 (2008) (stating that “a systematic search of the literature identified no research that considers people who do not own pets of any age group as the sole subject of enquiry”).

pet.<sup>62</sup> This small study of eight people provided emotional and pragmatic reasons for not owning a pet.<sup>63</sup> Pragmatic reasons were provided more than emotional reasons.<sup>64</sup> The reason given that is most applicable to the topic of this Article is that living arrangements would not allow for a pet.<sup>65</sup> Various issues arise relating to the acquisition and ownership of pets in private housing.

#### A. Acquisition of Animals

Although it is still common to purchase dogs from breeders, a significant portion of the population acquires their dogs from animal shelters or rescue organizations.<sup>66</sup> Cats are more likely to be adopted from an animal shelter than purchased; however, more people acquire cats that are strays or found outside than any other method.<sup>67</sup>

Given that the estimated number of animals euthanized in the United States remains between three million and four million, it is only logical to encourage the adoption of appropriate animals rather than the purchase of an animal that may encourage irresponsible breeding.<sup>68</sup> The Pets for the Elderly Foundation pays a portion of the adoption fee if a person aged sixty or above adopts a pet from one of the participating shelters in its network.<sup>69</sup> The company that produces Purina dog food has a similar program supporting animal shelters that provide for the adoption of animals to qualified persons over fifty-five years of age at no cost.<sup>70</sup>

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62. *Id.* at 988.

63. *Id.* at 990.

64. *Id.* at 993. Pragmatic reasons include convenience, cleanliness, and competing demands on their time. *Id.*

65. *Id.* at 991, 993 (including restrictions on ownership or the lack of sufficient space).

66. APPA, *supra* note 12, at 16 (reporting that 32% of dogs are acquired from a breeder, 21% from an animal shelter, and 7% from a rescue group).

67. *Id.* (reporting that 34% of cats are strays or found outside, 21% are from an animal shelter, and 5% from a rescue group).

68. Rebecca J. Huss, *Rescue Me: Legislating Cooperation Between Animal Control Authorities and Rescue Organizations*, 39 CONN. L. REV. 2059, 2062–77 (2007) [hereinafter Huss, *Rescue Me*] (discussing issues relating to the euthanization of animals and adoption of animals from animal control facilities); *Top Five Reasons to Adopt*, HUMANE SOC'Y OF THE UNITED STATES, [http://www.humanesociety.org/issues/adopt/tips/top\\_reasons\\_adopt.html](http://www.humanesociety.org/issues/adopt/tips/top_reasons_adopt.html) (estimating the number of cats and dogs euthanized in the United States each year).

69. *Home*, PETS FOR THE ELDERLY, <http://petsfortheelderly.org/index.html> (last visited Jan. 29, 2013). Pets for the Elderly reported that it assisted with the adoption of 5770 animals in 2010 and is working with fifty-eight shelters in thirty states. *FAQ*, PETS FOR THE ELDERLY, <http://petsfortheelderly.org/FAQ.html> (last visited Jan. 29, 2013).

70. PURINA PETS FOR PEOPLE, BENEFITS FOR PEOPLE 55+, <http://www.petsforpeople.com/petsfor55plus> (last visited Dec. 6, 2013) (describing partnership program with animal welfare

Individual shelters and rescue organizations also have programs to facilitate the adoption of animals to seniors.<sup>71</sup> It is common to have a “senior-for-senior” program that provides reduced fees for the adoption of older animals to older people.<sup>72</sup> One organization, which has a veterinary center, provides for continuing benefits to those adopters, including free vaccinations and wellness exams, grooming, and reduced pricing for other veterinary care and supplies.<sup>73</sup>

It is common to have a provision in rescue organization adoption agreements that requires a person to return the animal to the organization if he or she is unable to keep the animal.<sup>74</sup> Similarly, one senior-for-senior program emphasizes that the animal could come back to the organization in the event the individual is no longer able to care for it.<sup>75</sup>

Responsible rescue organizations attempt to place an appropriate animal with an individual.<sup>76</sup> In the case of placing an animal with an elderly person, a rescue organization may decline to place a very young animal or an animal that it believes is not a good fit for the household because of activity level or other reasons.<sup>77</sup>

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organizations).

71. Robert Kelly-Goss, *Seniors for Seniors: Program Brings Older People Together with Older Animals*, THE DAILY ADVANCE, Aug. 14, 2011, at C1 (discussing program with Northeast North Carolina SPCA that matches senior citizens with older pets for reduced adoption fees).

72. E.g., *Adoption Program for Seniors & Veterans*, ORANGE CNTY. ANIMAL CONTROL, <http://media.ocgov.com/gov/occr/animal/adopt/seniors.asp> (last visited Feb. 4, 2013) (providing for a reduced adoption fee for the adoption of dogs over five years old to people over sixty-five years old); *Senior for Seniors*, PAWS COMPANIONS, <http://www.paws.org/seniors-for-seniors.html> (last visited Jan. 29, 2013) (providing for a reduced adoption fee of \$35 for the adoption of dogs and cats over seven years old to people over sixty years old).

73. *Senior Adoption Benefits*, NORTH SHORE ANIMAL LEAGUE, <http://www.animalleague.org/adopt-a-pet/pet-adoption-services/seniors-for-seniors/senior-adoption-benefits.html> (last visited Jan. 29, 2013) (providing for benefits for persons over sixty years of age who are adopting adult animals).

74. E.g., *Cat Adoption Agreement*, BEST FRIENDS ANIMAL SOC'Y, [http://bfla.bestfriends.org/uploads/9/0/2/2/9022162/cat\\_adoption.pdf](http://bfla.bestfriends.org/uploads/9/0/2/2/9022162/cat_adoption.pdf) (last visited Jan. 29, 2013) (providing that an adopter must agree that if he or she is unable to care for the cat for the cat's lifetime that the adopter will return the cat to a location specified by Best Friends).

75. *Seniors for Seniors Program*, MASS. HUMANE SOC'Y, INC., <http://www.masshumane.org/seniors.htm> (last visited Jan. 29, 2013) (stating that “if for any reason, such as you become unable to take care of your cat or dog, due to long-term hospitalization or stay in a nursing facility, you and your family may contact Massachusetts Humane Society to make arrangements in returning the animal back”). This organization's adoption agreement provides that adopted animals are not allowed to be transferred to third parties and must be returned to the organization if the individual is no longer able to care for the animal. *Adoption Contract for Dog/Puppy*, MASS. HUMANE SOC'Y, INC., available at <http://www.masshumane.org/forms.htm> (last accessed Jan. 29, 2013).

76. Interview with Helen LaBuda, Vice-President, Midwest Dachshund Rescue, Inc., in Cedar Lake, Ind. (Dec. 18, 2011) [hereinafter LaBuda Interview] (discussing adoption process).

77. *Id.* (discussing adoption process in connection with older adults).

### B. Assistance in Animal Care

Once an animal is acquired, some communities provide assistance programs for individuals to help care for their animals. Programs supporting older adults with their pets, with some utilizing young people as volunteers, have been available for many years.<sup>78</sup> Some of these programs provide the services for free, while others have a cost. The Seniors Pet Assistance Network (“SPAN”) in Dallas County, Texas, illustrates one free program.<sup>79</sup> SPAN assists low-income seniors over the age of sixty-seven with companion animals by providing basic veterinary care and pet food.<sup>80</sup> In addition to food, some programs provide other supplies.<sup>81</sup> Programs that do not restrict their assistance to seniors may require, as one way to qualify for the program, that the individual is receiving Social Security.<sup>82</sup> An organization may have other restrictions on receiving assistance, such as requiring all animals enrolled in the program to be spayed or neutered.<sup>83</sup>

Many communities have a program associated with the Meals on Wheels Association of America.<sup>84</sup> The programs are identified in

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78. ODEAN CUSACK & ELAINE SMITH, PETS AND THE ELDERLY: THE THERAPEUTIC BOND 175–92 (1984) (describing several programs providing supportive services in connection with the placement of companion animals with older adults in the community beginning in the 1970s).

79. *About Us*, SENIORS PETS ASSISTANCE NETWORK, <http://www.seniorspets.org/aboutus.htm> (last visited Jan. 29, 2013) (stating that the mission of SPAN is to serve low-income seniors with basic veterinary care and pet food).

80. *Id.* The basic veterinary care is defined as annual shots, preventive heartworm and flea medication. *Id.* Additional veterinary services may be provided on a case-by-case basis if funds are available. *Id.*

81. *E.g.*, *Q&A for Assistance*, THE KIBBLE KITCHEN PET PANTRY, INC., <http://www.thekibblekitchen.com/donate/needs-wish-list/> (last visited Jan. 29, 2013) (listing collars, leashes bedding, toys and treats as some of the supplies available).

82. *E.g.*, *Letter from the Founder*, THE KIBBLE KITCHEN PET PANTRY, INC., July 5, 2012, <http://www.thekibblekitchen.com/letter-from-the-founder/> (last visited Jan. 30, 2013) (discussing recipients as including persons with income sources of Social Security, public assistance, or unemployment benefits). The stated mission of this organization is to keep pet-owners suffering from economic crisis from relinquishing their pets by providing free pet food until the pet-owners are once again able to afford to care for their pets. *Our Mission and Goals*, THE KIBBLE KITCHEN PET PANTRY, INC., <http://www.thekibblekitchen.com/about-us/mission-vision/> (last visited Jan. 29, 2013).

83. *How to Apply*, THE KIBBLE KITCHEN PET PANTRY, INC., <http://www.thekibblekitchen.com/apply/> (last visited Jan. 29, 2013) (providing proof of spay/neuter for each pet or providing assistance to have such sterilization completed).

84. *We All Love Our Pets (WALOP)*, THE MEALS ON WHEELS ASS'N OF AM., <http://www.mowaa.org/page.aspx?pid=326> (last visited Jan. 29, 2013) (discussing the national initiative to unite the local programs that provide food for pets). A large veterinary hospital group has supported these initiatives for several years with a program called Season of Suppers through its charitable trust. *7th Annual Pet Food Drive Launched to Fight Pet Hunger*, BANFIELD CHARITABLE TRUST, <http://www.banfieldcharitabletrust.org/pet-food-assistance/7th-annual-pet-food-drive->

various ways in different communities, including terms like “Animeals,” “Pets Eat Too!,” or “Meals for Companion Pets.”<sup>85</sup> The common theme triggering the initiation of a supplemental program or division was reports that seniors were sharing their meals with their pets.<sup>86</sup> Some people who do not receive human food from Meals on Wheels are clients of the associated pet programs.<sup>87</sup>

Another type of program focuses on providing a variety of services to assist seniors in staying in their homes. An example of a subscription program is Canopy of Neighbors, Inc., located in Buffalo, New York.<sup>88</sup> Canopy of Neighbors is associated with the “villages movement,” which is designed to help the elderly stay in their homes.<sup>89</sup> Canopy of Neighbors and similar programs charge a yearly subscription to access their services.<sup>90</sup> Among the volunteer services, and linkages to paid services, are pet services that include “walking, feeding, vet and grooming appointments.”<sup>91</sup> In addition, Canopy of Neighbors has assisted a subscriber in adopting a cat.<sup>92</sup>

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launched-to-fight-pet-hunger/ (last visited Jan. 29, 2013) (describing ways that it funds pet programs for Meals on Wheels programs and other pet food banks and stating that it had distributed eighty-five tons of pet food and over a half a million dollars in pet food grants since 2005).

85. *Help ‘Pets Eat Too!’ Program*, THE SUN-CHRONICLE, Oct. 31, 2011, [pet\\_day/help-pets-eat-too-program/article\\_57430903\\_ff5c\\_5e1b-bb72-dd213b209411.html](http://pet_day/help-pets-eat-too-program/article_57430903_ff5c_5e1b-bb72-dd213b209411.html) (describing Pets Eat Too! program); *Meals on Wheels Steps in to Help Feed Pets of Owners in Need*, SUN SENTINEL, Nov. 24, 2011, at 1B [hereinafter *Meals on Wheels*] (describing Meals for Companion Pets).

86. *E.g.*, Steve Dale, *Pet Food Programs Help Needy Feed Furry Companions*, ORLANDO SENTINEL, Dec. 27, 2011, at E3 (stating that a “surprising number of recipients share their Meals on Wheels food with their pets”); *Meals on Wheels*, *supra* note 85 (describing how volunteers noticed that some seniors were feeding their meals to their pets).

87. *Meals on Wheels*, *supra* note 85 (describing clients who do not receive Meals on Wheels for themselves but use the pet program).

88. *Home*, CANOPY OF NEIGHBORS, <http://canopy.clubexpress.com/> (last visited Jan. 29, 2013).

89. Haya El Nasser, *‘Villages’ Let Elderly Grow Old at Home*, USA TODAY, July 26, 2010, [http://usatoday30.usatoday.com/news/nation/2010-07-26-aging26\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/nation/2010-07-26-aging26_ST_N.htm) (reporting on the grass roots villages movement); Martha Thomas, *Villages: Helping People Age in Place*, AARP THE MAG., May–June 2011, <http://www.aarp.org/home-garden/livable-communities/info-04-2011/villages-real-social-network.html> (reporting on the village movement and reporting that joining a village can ease the resistance for seniors who do not want to ask for assistance).

90. *Why Should I Join?*, CANOPY OF NEIGHBORS, [http://canopy.clubexpress.com/content.aspx?page\\_id=22&club\\_id=745653&module\\_id=73383](http://canopy.clubexpress.com/content.aspx?page_id=22&club_id=745653&module_id=73383) (last visited Jan. 29, 2013) (discussing the subscription rates of \$400 a year for a one-person home and \$600 a year for a two-person home); Thomas, *supra* note 89 (reporting that the average annual fee is \$600, but some villages have annual dues approaching \$1,000, although many villages offer discounts for low-income households).

91. *Benefits*, CANOPY OF NEIGHBORS, [http://canopy.clubexpress.com/content.aspx?page\\_id=9&club\\_id=745653](http://canopy.clubexpress.com/content.aspx?page_id=9&club_id=745653) (last visited Jan. 29, 2013).

92. *Lawyers Giving Back*, ABA J., Nov. 2011, at 66 (discussing a lawyer who helped form Canopy of Neighbors who helped a woman adopt a cat after her previous cat passed away). When contacted, the lawyer involved reported that the organization “responds to the members requests as

### C. *Alternative to Owned Animals*

Acting as a foster home for one or more animals is an alternative for individuals who may wish to have a companion animal or animals in their lives, but do not want to make a permanent commitment or assume the full financial responsibility for an animal. In addition, foster programs help the community by providing interim care for animals outside of the shelter environment prior to the animal's placement in a permanent home.

There are programs that focus on matching up the elderly with foster pets. One example is the Atlanta Animal Rescue Friends, Inc. Silver Paws Program.<sup>93</sup> Recognizing the benefits of pets for mature adults and the difficulty in finding placements for mature animals at local shelters, the program places animals in foster homes.<sup>94</sup> The foster parents in the Silver Paws Program participate in orientation and training.<sup>95</sup> The Silver Paws Program provides veterinary care, food, and supplies for the foster home.<sup>96</sup> In some cases, the foster home can become a permanent placement for an older animal for the remainder of the pet's life or until the foster home is no longer able to care for the animal.<sup>97</sup>

Regardless of whether the animal is owned or fostered, in many communities, subject to limited exceptions, there are enforceable restrictions on the number and type of animals that may be kept on private property.<sup>98</sup> These limitations are equally applicable to older

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to what they would like help with in their lives" and, for this member, it was important for her to be able to have and take care of a cat. E-mail from Gayle L. Eagan, Partner, Jaeckle Fleischmann & Mugel, LLP, to Rebecca Huss, Professor of Law, Valparaiso University Law School (Jan. 12, 2012, 17:05 CST) (on file with author).

93. E-mail from Susan Leisure, Executive Director, Atlanta Animal Rescue Friends, Inc. to Rebecca Huss, Professor of Law, Valparaiso University Law School (Feb. 13, 2013, 12:59 CST) (on file with author) (confirming details of the Silver Paws program).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 *ANIMAL L.* 69, 109–15, 119–24 (2005) [hereinafter Huss, *No Pets Allowed*] (discussing local ordinances regarding the keeping of animals on private property). Common-interest developments, such as condominiums, may also have restrictions on the keeping of animals within the individually-owned unit. *Id.* at 103–09 and accompanying text. In California, new common-interest developments and those that amend their governing documents (and mobile home parks) are required to allow one common household pet per unit. CAL. CIV. CODE §§ 1360.5, 793.33 (2012) (mandating allowing one household pet for common-interest developments and mobile home parks respectively). See *infra* notes 167–233 and accompanying text (discussing federal laws protecting individuals with disabilities).

adults. Similarly, other local ordinances, such as nuisance laws, can be imposed on anyone.<sup>99</sup> Additional restrictions usually apply if a person is living in rental housing.

#### *D. Companion Animals and Rental Housing*

One of the issues that many seniors face is whether they should transition from owned housing to rental housing.<sup>100</sup> With the very few statutory exceptions discussed below,<sup>101</sup> the owners of the rental housing may determine whether tenants are allowed to keep companion animals in their units.<sup>102</sup>

This is especially problematic given that moving is often cited as a reason for relinquishment of animals to shelters. According to one study, “moving was the most often cited of seventy-one reasons for relinquishing dogs and the third most common reason for relinquishing cats.”<sup>103</sup>

A specific complication for older adults relates to the decision to move to a continuing care community. Continuing care communities, or continuing care retirement communities, provide a continuum of care.<sup>104</sup> Often a resident will begin in an independent living facility and then transition to an assisted-living facility or to a nursing home.<sup>105</sup> State regulation of these communities varies widely and potential residents should be aware of the effect that contractual provisions may have on companion animals.<sup>106</sup> Individuals considering this option should ensure that they understand whether a companion animal that may be kept in a unit at the independent living level would be allowed at the assisted living or nursing home level.<sup>107</sup>

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99. Huss, *No Pets Allowed*, *supra* note 98, at 115–19 (discussing nuisance laws and companion animals).

100. See generally LAWRENCE A. FROLIK & LINDA S. WHITTON, *EVERYDAY LAW FOR SENIORS* 101–35 (2010) (discussing housing options for seniors).

101. See *infra* notes 114–48 and accompanying text (discussing the Pets in Elderly and Handicapped Housing provision).

102. See Huss, *No Pets Allowed*, *supra* note 98, at 98–103 (discussing companion animals in rental housing generally).

103. John C. New, Jr. et al., *Moving: Characteristics of Dogs and Cats and Those Relinquishing Them to 12 U.S. Animal Shelters*, *J. APPLIED ANIMAL WELFARE SCI.* 2(2), 83, 84 (1999). See also Huss, *No Pets Allowed*, *supra* note 98, at 99 (discussing studies showing why people relinquish animals).

104. FROLIK & WHITTON *supra* note 100, at 123.

105. *Id.* As an individual needs additional supportive services, he or she would transition to assisted living or the skilled nursing facility. *Id.* at 124.

106. *Id.* at 124–25 (discussing continuing care community contractual provisions).

107. *Id.* (reporting that the contract of admission may permit the community to move the

Some communities encourage human animal interaction; however, many are restrictive.<sup>108</sup> A unique approach is found at TigerPlace, a retirement housing facility in Missouri that is described as a “pet-encouraging” facility.<sup>109</sup> The apartments have a pet-friendly design with outside doors for each unit, screened porches, wide windowsills, and walking trails.<sup>110</sup> In addition, a veterinary exam room on the premises allows pets to be treated on site.<sup>111</sup> TigerPlace is not alone in providing a pets-welcome policy. Alta Vista Retirement Community in Arizona provides private gated patios, a fenced dog park, and a policy that allows pets on leashes in common areas.<sup>112</sup> With sufficient funds, older adults are likely to find suitable housing that will allow their companion animals, but many people may not be as fortunate.

A recommendation from the National White House Conference on Aging in 1981 directly addressed the issue of the elderly having to choose between affordable housing and their companion animals by stating:

[T]he forced separation of older persons from their companion animals upon entering housing projects for the elderly inflicts immeasurable emotional suffering and often leads to severe psychological trauma and consequent mental and physical deterioration, including the loss of the will to live. The comfort of a companion animal is a civil right not to be denied to responsible pet owners.<sup>113</sup>

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resident to assisted living or nursing home without the resident’s consent).

108. *E.g.*, *Atria Assisted Living Weston Place Allows Residents to Have Pets*, ASSISTED LIVING CTR., <http://www.assistedlivingcenter.com/news/2011/11/10/atria-assisted-living-weston-place-allows-residents-to-have-pets/> (last visited Jan. 29, 2013) (stating that all Atria properties in twenty-three states allow pets with a one-time fee and rules relating to vaccinations and clean up); *Pets at Sunrise Communities*, SUNRISE SENIOR LIVING, <http://www.sunriseseniorliving.com/the-sunrise-difference/sunrise-signatures/pets-are-good.aspx> (last visited Jan. 29, 2013) (describing the pet-friendly environment with at least one resident pet and that residents have the ability to bring their own pets with them if they are able to care for the animals); *but see* Telephone Interview with Neah Jackson (Jan. 13, 2012) (discussing eighty-four-year-old woman’s stress over having to find an appropriate placement for her dog because the independent living facility that she was planning to enter did not allow individuals to bring their own pets).

109. University of Missouri, *College of Veterinary Medicine, Research Center for Human-Animal Interaction, ReCHAI Community Programs*, <http://rechai.missouri.edu/community-programs> (last visited Jan. 29, 2013) (describing TigerPlace).

110. *Id.* TigerPlace is described as an aging in place facility. *Id.*

111. *Id.* The initiative also provides foster care and adoption services when owners can no longer care for the pets. *Id.*

112. Carolyne Kennedy, *Senior Living Communities Make Room for Pets*, LIVING WELL, Aug. 20, 2011, <http://www.livingwellmag.com/alta-vista-retirement-community-senior-living-communities-room-pets-living-magazine/> (reporting on senior living options and that more communities are allowing pets).

113. FINAL REP. THE 1981 WHITE HOUSE CONF. ON AGING, VOL. 3, 127 (1981) (quoting



It was with this recommendation in the background that the federal government considered the issue as it related to federally-financed rental housing.

*E. Assisted Rental Housing for the Elderly or Disabled*

In 1983, Congress adopted a provision titled Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped (“POEH”).<sup>114</sup> POEH provides that owners and managers of federally assisted rental housing for the elderly or handicapped cannot prohibit or prevent a tenant from owning common household pets.<sup>115</sup> The regulations clarify that the POEH does not apply to health care facilities such as nursing homes or intermediate care facilities.<sup>116</sup>

An absolute no-pets policy had been widely practiced in federally assisted rental projects even though the Department of Housing and Urban Development (“HUD”) had not issued regulations governing the keeping of companion animals.<sup>117</sup> The Senate Report by the Committee on Banking, Housing and Urban Affairs stated:

Evidence from numerous studies show that pets provide substantial physical and mental benefits to older persons, particularly those who live independently. It is the Committee’s view that these benefits war-

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Recommendation Number 244).

114. 12 U.S.C. § 1701r-1 (2006). Housing program is defined as “housing programs administered by the Assistant Secretary for Housing–Federal Housing Commissioner” and other programs that assist rental projects that meet the definition of projects for the elderly or persons further defined in subpart C. 24 C.F.R. Subtitle A § 5.306(2) (2012). Public Housing includes any project assisted under Title I of the United States Housing Act excluding certain other projects. *Id.* It is important to note that a senior living in other types of federally financed housing would not be covered by POEH. See Letter from David R. Cooper, Assistant General Counsel, Multifamily Mortgage Division, Department of Housing and Urban Development to Elizabeth V. Morrison (Mar. 11, 1992), available at <http://www.hud.gov/offices/adm/hudclips/lops/GHM-0027LOPS.pdf> (advising a senior citizen living in a 929 House, a Section 236, non-insured state agency financed project that that POEH regulations would not apply to her residence). Another law provides for public housing residents to have common household pets. Huss, *No Pets Allowed*, *supra* note 98, at 93–97 (discussing the Pet Ownership in Public Housing law providing that residents of public housing may keep a household pet).

115. 12 U.S.C. § 1701r-1(a) (2006). The definition of common household pet is “[a] domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes.” 24 C.F.R. Subtitle A § 5.306(1) (2012).

116. 24 C.F.R. Subtitle A § 5.306(2) (2012). These facilities could have otherwise been included in the definition due to the facilities’ use of mortgage insurance under the National Housing Act. *Id.*

117. S. REP. NO. 98-142, at 39 (May 23, 1983) (reprinted in 1983 U.S.C.C.A.N. 1770, 1812). The Committee on Banking, Housing and Urban Affairs believed that such a blanket policy was inappropriate for projects designed for the elderly and handicapped. *Id.*

rant Congressional action to prevent arbitrary rule-making in Federally-assisted projects.<sup>118</sup>

POEH allows for the removal of pets constituting a nuisance and provides regulations creating guidelines for owners and managers with reasonable rules established by HUD.<sup>119</sup> The extensive regulations require tenants to be given notice of the rights they have under the law and to be given access to any pet rules developed in accordance with the regulations.<sup>120</sup> The pet rules are divided into mandatory and discretionary rules.<sup>121</sup>

The mandatory rules include the following. First, pets must be licensed in accordance with state and local laws.<sup>122</sup> Second, sanitary standards governing the disposal of pet waste, including specific limitations on the number of times a day that a pet owner is required to change the litter in a litter box, must be set.<sup>123</sup> Third, pets are required to be “restrained and under the control of a responsible individual while on the common areas.”<sup>124</sup> Fourth, the pet owners must initially register their pets, and update their registration at least annually.<sup>125</sup> This pet registration includes contact information for “one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet.”<sup>126</sup>

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118. *Id.* As discussed above, there has been a significant amount of research specifically focused on the benefits of companion animals and human health. *Supra* notes 22–64 and accompanying text. At the time of the adoption of this law, there was not the criticism of the research we see today. *Supra* notes 29–31 and accompanying text. Thus, it was likely easier from a legislator’s perspective to adopt this law based on the belief that companion animals had a positive impact on the health of older Americans, as supported by the research to date. *See, e.g.*, H. Marie Suthers-McCabe, *Take One Pet and Call Me in the Morning*, 25 GENERATIONS 93 (2001) (discussing the studies that show a positive influence of pets on the health of the elderly). Recommendation Number 244 from the 1981 National White House Conference on Aging also states, “the companionship of animal pets is a source of security, helps to keep aged persons physically active and responsible through caring for their pet, fulfills their need for giving and receiving affection, and has been proven to have measurable therapeutic effects on their physical and emotional health.” FINAL REP. THE 1981 WHITE HOUSE CONF. ON AGING, *supra* note 113, at 127.

119. 12 U.S.C. § 1701r-1(b) & (c) (2006).

120. 24 C.F.R. Subtitle A § 5.312 (2012).

121. *Id.* § 5.318, 5.350. *See also* HUD OCCUPANCY HANDBOOK 4350.3 REV-1, at Exhibit 6-4 Mandatory and Discretionary Pet Rules, available at [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_35713.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35713.pdf) (setting forth in table form the rules).

122. 24 C.F.R. § 5.350(a) (2012). Pet rules may require pet owners to license their pets in accordance with state and local law under the Discretionary standards. *Id.* § 5.318(f).

123. 24 C.F.R. § 5.350(b).

124. 24 C.F.R. § 5.350(c).

125. 24 C.F.R. § 5.350(d).

126. 24 C.F.R. § 5.350(d)(iii).

Discretionary pet rules include limiting the number of pets per unit to one four-legged, warm-blooded animal.<sup>127</sup> The pet rules may place reasonable restrictions on the size, weight, and type of animals in each project.<sup>128</sup> Depending on the type of housing, pet deposits are limited to the equivalent of one month's rent or an amount periodically set by HUD.<sup>129</sup>

Allowable standards of pet care are also established by discretionary pet rules.<sup>130</sup> A tenant may be required to sterilize his or her companion animal, but the pet rules cannot require removal of a pet's vocal cords.<sup>131</sup> Specific common areas may be off limits to pets, unless doing so would deny a pet "reasonable ingress and egress to the project or building."<sup>132</sup> A pet owner must control the noise and odor caused by the pet.<sup>133</sup> Finally, the pet rules may also "limit the length of time a pet may be left unattended in a dwelling."<sup>134</sup>

If a tenant violates a pet rule, a procedure in the regulations sets forth minimum notice and meeting requirements before steps can be taken to remove a pet or terminate a pet owner's tenancy.<sup>135</sup> Under specified circumstances, the regulations also provide for the removal of the pets covered by this law.<sup>136</sup> If the health or safety of a pet is threatened by the death or incapacity of the pet owner, the project owner can contact the responsible party named in the registration.<sup>137</sup> If the named responsible party is unwilling or unable to care for the pet, or cannot be found, the project owner may contact the appropriate state or local authority to request removal of the pet.<sup>138</sup> If the lease agreement allows, the project owner may enter the unit, remove the pet, and place it in a facility that will provide care for a period of time not exceeding thirty days; the pet owner is responsible for costs.<sup>139</sup>

In 2008, HUD issued a final rule revising the POEH regulations

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127. 24 C.F.R. §5.318(b).

128. 24 C.F.R. § 5.318(c).

129. 24 C.F.R. § 5.318(d) (2012). The pet deposit cannot exceed \$300. HUD OCCUPANCY HANDBOOK 4350.1 REV-1, Chapter 32, at 32-13, available at <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.1/43501c32HSGH.pdf> [hereinafter HUD, OCCUPANCY HANDBOOK].

130. 24 C.F.R. § 5.318(e) (2012).

131. *Id.*

132. 24 C.F.R. §5.318(e)(1).

133. 24 C.F.R. § 5.318(e)(2).

134. 24 C.F.R. § 5.318(e)(3).

135. 24 C.F.R. § 5.356 (2012).

136. 24 C.F.R. § 5.363.

137. 24 C.F.R. § 5.363(a).

138. 24 C.F.R. § 5.363(b).

139. 24 C.F.R. § 5.363(c)-(d).

relating to assistance animals.<sup>140</sup> The new rule makes the language used for animals assisting persons in the POEH regulations consistent with the language used for other HUD programs.<sup>141</sup> The regulations now state that POEH “does not apply to animals that are used to assist, support, or provide service to persons with disabilities.”<sup>142</sup>

A few states have passed laws providing similar provisions relating to pets in state-supported public housing.<sup>143</sup> The problems that HUD expected apparently have not arisen, and housing providers have reported that the senior tenants “take excellent care of their pets.”<sup>144</sup> However, just as with other populations, irresponsible owners may cause tension at properties designated for seniors.<sup>145</sup>

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140. Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63874 (Oct. 27, 2008) (announcing final rule).

141. *Id.*

142. 24 C.F.R. § 5.303(a) (2012). The exclusion applies to resident animals in addition to animals that visit the properties. *Id.* See also *infra* notes 213–24 and accompanying text (discussing the definition of assistance animal under the Fair Housing Act).

143. *E.g.*, ARIZ. REV. STAT. § 36-1409.01 (2012) (providing that public agencies that operate rental housing “shall not prohibit elderly or handicapped tenants from keeping pets in their dwelling units”); CAL. HEALTH & SAFETY § 19901 (2012) (stating “[n]o public agency which owns and operates rental housing accommodations shall prohibit the keeping of not more than two pets by an elderly person or person requiring supportive services in the rental housing accommodations”); CONN. GEN. STAT. § 8-116(b) (2012) (providing that if the residents of a project, by majority vote determine that pets should be allowed in the project the project may not prohibit the keeping of one pet); D.C. STAT. § 8-2031 *et seq.* (2012) (providing that locally assisted housing accommodations for the elderly or persons with disabilities shall not prohibit a resident from owning a common household pet in the rental unit); MASS. LAWS CH. 23B § 3, 760 CODE OF MASS. REGS. § 6.07 (2012) (providing for pet ownership in elderly and handicapped housing); N.H. REV. STAT. § 161F:30 *et seq.* (2012) (allowing residents in public housing facilities for the elderly to vote on allowing common domesticated animals); N.J. STAT. ANN. § 2A:42-103 to 111 (2012) (providing that persons in senior citizen housing projects in New Jersey are permitted to own a domestic animal while residing in those projects). Note that the definition of senior citizen housing projects under the New Jersey statutes would extend to private housing providers as well. *Id.* at § 2A:42-103.

144. *CHA Pet Policy*, CHI. TRIB., Mar. 26, 1998, at 20 (citing to letter by John Freeman, President of the American Veterinary Medical Association, who stated that “the Department of Housing and Urban Development recently admitted that problems they foresaw never materialized”); Diane C. Lade, *Sticking Together*, S. FLA. SUN-SENTINEL, Feb. 6, 2002, at 1B (reporting on the application of POEH in selected Florida housing complexes and stating that managers have found that “their senior tenants take excellent care of their pets; neither has had to remove an animal because it was neglected or a nuisance . . . and they also don’t get complaints from the petless tenants”).

145. Yolanda Putman, *Senior Public Housing Residents Paying More for Animal Companion*, CHATTANOOGA TIMES, Feb. 28, 2009, <http://www.timesfreepress.com/news/2009/feb/28/chattanooga-senior-public-housing-residents-paying/> (reporting on the increase of the one-time fee for a housing authority’s high rise buildings for the elderly to be raised from \$100 to \$150 and interviewing a resident who said that some people were not cleaning up after their pets). A representative of the housing authority was quoted as saying “after hearing from a lot of residents in our senior community . . . we wanted to institute the provision of a \$150 nonrefundable, one-time

HUD did have to “remind” property owners of the provisions of the POEH after a phone survey of several properties within one jurisdiction resulted in site management informing the callers that no pets were allowed on the premises.<sup>146</sup> HUD referred housing providers to a handbook that works through the regulations discussed above.<sup>147</sup> HUD recognized that there are “potential downfalls for allowing pets on the premises,” but said that “well written house rules that are enforced consistently” would offset those issues.<sup>148</sup>

#### *F. Companion Animals in Care Centers*<sup>149</sup>

Older adults who are no longer able to live independently may still be able to have companion animals in their lives to some degree. The ability to have a visiting animal or resident animal in an assisted-living facility or nursing home depends on state law.<sup>150</sup> It is common for state laws to allow for companion animals in facilities subject to provisions, such as requirements to keep the animal clean and current on vaccinations, and exclude animals from food preparation and dining areas.<sup>151</sup>

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pet fee to deter residents from adopting stray dogs, cats, etc.” *Id.*

146. *Pets in Properties that Serve the Elderly or Handicapped*, U.S. DEP’T OF HOUS. & URBAN DEV., portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/mf/pepolicy (last visited Jan. 29, 2013) [hereinafter HUD, *Pets in Properties*] (reporting on a phone survey of several properties in Region X).

147. HUD OCCUPANCY HANDBOOK 4350.1 REV-1, Chapter 32, *supra* note 129.

148. HUD, *Pets in Properties*, *supra* note 146.

149. The generic term “Care Centers” is deliberately used in this subtitle as Animal-Assisted Activity and resident animal programs are utilized in a variety of group housing settings, such as assisted-living communities and skilled nursing care facilities. The percentage of seniors living in skilled nursing homes is decreasing while assisted-living and at-home care programs are increasing. Haya El Nasser, *Fewer Seniors Live in Nursing Homes*, USA TODAY, Sept. 27, 2007, <http://abcnews.go.com/Health/ActiveAging/story?id=3659448&page=1> (discussing the fact that there is no federal definition of assisted living and census data reflects a decreasing number of seniors in skilled nursing homes). See also Eunice Park-Lee et al., *Residential Care Facilities: A Key Sector in the Spectrum of Long-Term Care Providers in the United States*, 78 NCHS DATA BRIEF (Dec. 2011), at 1, available at <http://www.cdc.gov/nchs/data/databriefs/db78.pdf> (providing a national estimate of the type and capacity of residential care facilities, which are not regulated by federal law but are regulated by states using a variety of approaches).

150. ROBERT K. ANDERSON, *Pets in Nursing Homes — A Comparison Between 1981 and 1986*, in THE LOVING BOND: COMPANION ANIMALS IN THE HELPING PROFESSIONS 123, 123 (Phil Arkow ed., 1987) (discussing the laws allowing for pets in nursing homes and the changes in the law during the early 1980s that resulted in all states allowing companion animals in nursing homes).

151. E.g., UTAH ADMIN. CODE R432-270-28 (2012) (providing that subject to local law and a facility’s policy residents may keep household pets in the facility if they are kept clean, do not exhibit aggressive behavior, are current on vaccinations and are excluded from food preparation and dining areas). The University of Minnesota maintains a database of state laws relating to animals in nursing homes. University of Minnesota, School of Public Health, NH Regulations Plus, *Quality of*

The State of New Jersey has more extensive regulations than most states on visiting and residential pets, including guidelines requiring any residential dogs be sterilized.<sup>152</sup> The State of Oklahoma's requirements include the designation of at least one attendant to supervise the care of resident animals.<sup>153</sup>

Ownership of the animals should be established. If a resident animal is utilized, the facility itself may be the legal owner of the animal. As a result, it may be possible for the facility to deduct certain expenses relating to residence animals as an ordinary and necessary business expense.<sup>154</sup>

Institutions should confirm that they do not need an insurance rider if allowing for Animal Assisted Activities ("AAA") or a resident animal on the premises.<sup>155</sup> It is common for volunteer handlers registered through an established program to be covered by the program's insurance; however, it is recommended that they also have their own personal liability policy in the event of an incident.<sup>156</sup>

### 1. Animal Assisted Activities

AAA and Animal Assisted Therapy ("AAT") must be differentiated.<sup>157</sup> AAA is more informal and is not targeted to any

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*Life — Pets and Pet Therapy*, <http://www.sph.umn.edu/hpm/nhregsplus/NH%20Regs%20by%20Topic/Topic%20Quality%20of%20Life-Pets.html>.

152. N.J. ADMIN. CODE T. 8 CH. 39, APP. A (2012).

153. OKLA. ADMIN. CODE 310:675-7-19 (2012). The number of pets in a residence is limited under the Oklahoma Administrative Code as well. *Id.*

154. *Hansen v. Dep't. of Revenue*, TC-MD 081122D, 2009 WL 3089297, at \*14 (Or. Tax Magistrate Div. Sept. 29, 2009) (citing to Oregon regulations relating to adult foster homes concerning household pets to find that maintaining animals in such a facility is ordinary and thus an allocation of the expenses is allowable).

155. *Guidelines for Animal Assisted Activity, Animal-Assisted Therapy and Resident Animal Programs*, AM. VETERINARY MED. ASS'N, Revised 4/11, <https://www.avma.org/KB/Policies/Pages/Wellness-Guidelines-for-Animals-in-Animal-Assisted-Activity-Animal-Assisted-Therapy-and-Resident-Animal-Programs.aspx> (last visited Dec. 6, 2013) [hereinafter AVMA, *Guidelines*] (stating that most institutions should be able to institute such programs without an additional insurance rider).

156. *Insurance Coverage*, PET PARTNERS, <http://www.petpartners.org/insurance> (last visited Jan. 29, 2013) (describing the insurance coverage provided for volunteers and recommending volunteers also carry a personal liability policy); *Why Join TDI, Insurance Information*, THERAPY DOGS INT'L, <http://www.tdi-dog.org/WhyJoin.aspx?Page=Insurance+Information> (last visited Jan. 29, 2013) (stating that all "TDI Associate Members and their dogs are covered by our Primary Volunteer Liability Insurance policy and Secondary Volunteer Accident Insurance").

157. *What Are Animal-Assisted Activities/Therapy 101*, PET PARTNERS, <http://www.petpartners.org/page.aspx?pid=319> (last visited Jan. 29, 2013) (follow "What is AAA/T?" hyperlink).

specific medical condition or person.<sup>158</sup> It essentially is a visiting program through which a handler and animal interact with residents in a facility at specified times. AAT is an integrated part of a treatment process utilized by a health care provider.<sup>159</sup>

As with the research relating to the interaction with companion animals discussed in Part II.B,<sup>160</sup> there have been many studies attempting to determine the impact of AAA.<sup>161</sup> At a minimum, AAA can provide a distraction from the usual routine and can provide residents interested in the program with an opportunity to socialize.<sup>162</sup> As with keeping a resident animal, there is resource material easily available that can assist facilities in determining whether an AAA program is appropriate for their residents.<sup>163</sup>

## 2. Resident Animals

As an alternative to, or in addition to AAA, some nursing homes

158. *Id.* See also CYNTHIA K. CHANDLER, ANIMAL ASSISTED THERAPY IN COUNSELING 5 (2005) (distinguishing between AAA and AAT).

159. *What Are Animal-Assisted Activities/Therapy*, *supra* note 157; see also CHANDLER, *supra* note 158, at 5 (distinguishing between AAA and AAT). AAT is very widespread, reimbursed by health insurance companies, and there is a growing trend of college level training programs offering coursework in the area. CHANDLER, *supra* note 158, at 12. AAT is used in a wide range of therapies. See generally HANDBOOK ON ANIMAL-ASSISTED THERAPY THEORETICAL FOUNDATIONS AND GUIDELINES FOR PRACTICE, 149-355 (Aubrey H. Fine ed., 2d ed. 2006) (providing several examples of the use of AAT). What is referenced in many studies as AAT may actually be better defined as AAA. AAA can also be used in a variety of environments, including visits to private homes. Marilyn D. Harris, *Animal Assisted Therapy for the Homebound Elderly*, 8 HOLISTIC NURSE PRACT. 27, 27-37 (1993) (describing a program where AAA was coordinated with a visiting nurses program). The animals used for AAA are generally the companion animals of their handlers and are not required to be allowed in public accommodations under federal law.

160. See *supra* note 65 and accompanying text (discussing studies relating to the impact of companion animals).

161. Susan L. Filan & Robert H. Llewellyn-Jones, *Animal-Assisted Therapy for Dementia: A Review of the Literature*, 18 INT'L PSYCHOGERIATRICS 598, 609 (2006) (concluding that AAT shows promise as a psychosocial intervention for people with dementia, but the quality of current studies is limited); Shirley D. Hooker, *Pet Therapy Research: A Historical Review*, 17 HOLISTIC NURSE PRACT. 17, 18-21 (2002) (reviewing the research in the area and concluding although the work is not complete, there are some solid research results that support the use of AAT); Sara Matuszek, *Animal-Facilitated Therapy in Various Patient Populations: Systematic Literature Review*, 24 HOLISTIC NURSE PRACT. 187, 199 (2010) (describing the current use of animal facilitated therapy in nursing and concluding that although "not all patients will profit from animal therapy, but those who have the potential to benefit should have the opportunity"); Cindy Stern, *The Meaningfulness of Canine-Assisted Interventions (CAIs) on the Health and Social Care of Older People Residing in Long Term Care: A Systematic Review*, 9 JBI LIBR. SYSTEMATIC REV. 727, 753 (2011) (comparing two studies twenty years apart and concluding that the evidence is still scarce).

162. Stern, *supra* note 161, at 753 (stating that there may be "a range of emotional and physiological benefits" of such programs).

163. *Infra* note 283 and accompanying text.

and other group living facilities have one or more resident animals living on the premises.<sup>164</sup> As with AAA, the ability to keep a resident companion animal on the premises is subject to state law. It is imperative that there be staff as well as resident support of the program<sup>165</sup> in order for a resident animal program to be successful.

Of special concern in resident animal programs is the welfare of the animal. Unlike the animals used in AAA that are supervised at all times by their handlers, resident animals are oftentimes not supervised by staff and can consume food or other items, such as dropped medication, which may injure the animal. Additional issues relating to the welfare of AAA animals and resident animals is discussed in Part V.D.<sup>166</sup>

#### IV. SERVICE AND ASSISTANCE ANIMALS

Older adults are more likely to be disabled compared with other age groups. Of the civilian non-institutionalized population, 10% of adults aged eighteen to sixty-five are disabled, with the rate jumping to 37.2% for the population sixty-five years and older.<sup>167</sup> Although guide and hearing dogs are perhaps the most recognizable of service animals, it is not uncommon to have service animals assisting persons with mobility issues. The use of service or assistance animals to assist persons with psychiatric disabilities, such as depression, panic disorder, and post-traumatic stress disorder, has also become common.

There is research on the psychosocial benefits of service and assistance animals assisting persons with disabilities.<sup>168</sup> Some of the

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164. As an example, the Eden Alternative is a trademarked process that integrated plants, animals, and children in the nursing home environment to transform a facility from an institutionalized environment to a human habitat. Martha R. Hinman & Deborah M. Heyl, *Influence of the Eden Alternative on the Functional Status of Nursing Home Residents*, 20 *PHYSICAL & OCCUPATIONAL THERAPY IN GERIATRICS* 1, 2 (2002).

165. Anne Winkler, *The Impact of a Resident Dog on an Institution for the Elderly: Effects on Perceptions and Social Interactions*, 29 *GERONTOLOGIST* 216, 217 (1989) (discussing the agreement among the residents and staff prior to placing a resident dog in a facility); *CENSHARE: Questions to Consider Before Acquiring a Live-In Animal*, UNIV. OF MINN., <http://censhare.umn.edu/care02.html> (last visited Jan. 29, 2013) [hereinafter UNIV. OF MINN., *CENSHARE: Live-In Animal*] (providing as a question prior to placement of an animal the inclusion of staff, residents, and residents' family members in the decision-making process).

166. *Infra* notes 365–81 and accompanying text (discussing issues relating to AAA, AAT, and service animals).

167. U.S. CENSUS BUREAU, *SELECTED SOCIAL CHARACTERISTICS IN THE U.S. 2008–2010 AMERICAN COMMUNITY SURVEY 3-YEAR ESTIMATES*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_3YR\\_DP02&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_3YR_DP02&prodType=table).

168. Nora Wenthold & Teresa A. Savage, *Ethical Issues with Service Animals*, 14 *TOPICS IN STROKE REHAB.* 68, 69 (Mar.–Apr. 2007); Diane M. Collins et al., *Psychological Well-Being and Community Participation of Service Dog Partners*, *DISABILITY & REHAB. ASSISTIVE TECH.* 41, 46



psychosocial functions of service animals include companionship, something to care for, exercise, and safety.<sup>169</sup> Federal and state laws provide that reasonable accommodations must be made to allow access for individuals with disabilities who utilize service animals.

### A. *Americans with Disabilities Act*

The Americans with Disabilities Act (“ADA”) is the comprehensive federal civil rights law that prohibits discrimination on the basis of disability.<sup>170</sup> Individuals with disabilities must be granted access to public entities under Title II and places of public accommodation under Title III of the ADA.<sup>171</sup>

In March 2011, new regulations governing the ADA, including a definition of service animal, became effective.<sup>172</sup> Service animal is defined as: “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.”<sup>173</sup>

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(Jan.–June 2006) (discussing the psychological improvements of persons using service animals).

169. S.A. Zapf & R.B. Rough, *The Development of an Instrument to Match Individuals with Disabilities and Service Animals*, 24 DISABILITY & REHAB. 47, 47 (2002) (citing to work done by Katcher and Freidman). One study showed that a possible adverse effect of some therapies using animals is that the individual may become “so involved with the pet that other human beings are neglected.” James Robert Brasic, *Pets and Health*, 83 PSYCHOL. REP. 1011, 1019 (1998).

170. 42 U.S.C. § 12101, *et seq.* (2006) (as amended by the ADA Amendments of 2008, Pub. L. 110-325 (S. 3406), Sept. 25, 2008).

171. See generally Title II, 42 U.S.C. §§ 12131–12165 (2006) and Title III, 42 U.S.C. §§ 12181–12189 (2006). Section 504 of the Rehabilitation Act provides “no otherwise qualified individual with a disability . . . shall solely by reason of her or his disability, . . . be denied the benefits of . . . any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (2006). If applicable, Section 504 is utilized along with the ADA in service animal cases.

172. Rebecca J. Huss, *Why Context Matters: Defining Service Animals Under Federal Law*, 37 PEPP. L. REV. 1163, 1174–79 (2010) (discussing the proposed ADA regulations).

173. 28 C.F.R. § 35.104 (2012). The remainder of the definition is as follows:

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler’s disability. 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. The 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 for the purposes of this definition.

*Id.* This language is mirrored in regulations applicable to Title III of the ADA. 28 C.F.R. § 36.104

The regulations also require entities to make reasonable accommodations to permit the use of a miniature horse as a service animal; however, the entity may consider several assessment factors prior to allowing the miniature horse into a specific facility.<sup>174</sup>

Generally, entities are not allowed to ask about the “nature or extent of [a] person’s disability,” but are allowed to “ask if the animal is required because of a disability and what work or task the animal has been trained to perform.”<sup>175</sup> The Department of Justice (“DOJ”) also established, consistent with its prior policy, that entities shall not “require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.”<sup>176</sup>

### 1. Applicability of ADA to Facilities

It is clear that nursing homes and other facilities considered public accommodations are expected to comply with the ADA and would be required to make reasonable accommodations to allow for service animals.<sup>177</sup> The reason it is unusual to hear of service animal issues in facilities can be found in the ADA regulations.

The regulations provide that it is the responsibility of the person with a disability to control his or her service animal, and it is not the responsibility of the public entity or public accommodation to care for or supervise an animal.<sup>178</sup> It is logical that a person who, at this point in his or her life, is receiving skilled nursing care may not have the capacity to control or care for an animal. If a person had the resources to have an aide to care for the animal, it is feasible for the person to stay at a

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(2012).

174. 28 C.F.R. § 35.136(i) (2012); 28 C.F.R. § 36.302(c)(9) (2012).

175. 28 C.F.R. § 35.136(f) (2012); 28 C.F.R. § 36.302(c)(6) (2012).

176. *Id.*

177. 42 U.S.C. § 12181 (2006) (defining public accommodations). *See also* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 56 Fed. Reg. 35544-01, 35552 (1991) (stating that if a nursing home can be characterized as a service establishment or social service establishment it would be a covered public accommodation); Elizabeth K. Schneider, *The ADA — A Little Used Tool to Remedy Nursing Home Discrimination*, 28 U. TOL. L. REV. 489, 491-93 (1997) (discussing the applicability of the ADA to nursing homes).

178. 28 C.F.R. § 35.136(d) & (e) (2012); 28 C.F.R. § 36.302(c)(4) & (5) (2012) (providing that the animal shall be tethered to the individual unless the handler’s disability makes him or her unable to use such a tether, or it would interfere with the service animal’s tasks or work. *Id.* If the handler is unable to use a tether, he or she must otherwise be able to control the animal through voice control or other signals. *Id.* The regulations also provide that a service animal may be excluded from the premises if “(1) the animal is out of control and the animal’s handler does not take effective action to control it; or (2) the animal is not housebroken.” 28 C.F.R. § 35.136(b) (2012); 28 C.F.R. § 36.302(c)(2) (2012).

nursing facility with the service animal. That said, given the benefits of partnering with a service animal to certain residents, it may be to a facility's advantage to facilitate the care of a service animal by supporting in-house or community volunteer services.<sup>179</sup>

## 2. Applicability of ADA to Private Housing

The ADA protections may apply to older adults living in private housing. A recent case illustrates the application of the ADA to an older adult living in private housing. In *Sak v. City of Aurelia, Iowa*, a retired Chicago police officer and veteran was permanently disabled and confined to a wheelchair.<sup>180</sup> Mr. Sak's family pet, Snickers, was trained by Mr. Sak's physical therapist to assist Mr. Sak with walking, balance, and retrieving items.<sup>181</sup> Snickers was described as a "pit bull mix."<sup>182</sup> At the time of the preliminary injunction hearing in this case, Snickers was five and one-half years old and had no history of aggression.<sup>183</sup>

In November 2011, Mr. Sak and his wife, Ms. Leifer, (hereinafter referred to collectively as "the Saks") moved to a small city in Iowa.<sup>184</sup> The City of Aurelia had an ordinance that made it unlawful to keep or in any way possess a "Pit Bull Dog" within the city.<sup>185</sup> Mr. Sak did not dispute that Snickers would fall within the definition of "Pit Bull Dog" in the statute.<sup>186</sup> After a series of city council meetings, the Saks were informed they needed to have Snickers kenneled outside the city limits.<sup>187</sup> The Saks complied with that directive.<sup>188</sup> After Snickers had been removed from the household, and before the preliminary injunction hearing, Mr. Sak fell twice, once calling 911 for assistance.<sup>189</sup> In

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179. Susan L. Duncan, *APIC State of the Art Report: The Implications of Service Animals in Health Care Settings*, 28 *AJIC AM. J. INFECTION CONTROL* 170, 176–77 (2000) (discussing services that might be provided, such as toileting, walking, grooming, and other issues relating to the care of an animal).

180. *Sak v. City of Aurelia*, 832 F. Supp. 2d 1026, 1031 (N.D. Iowa 2011).

181. *Id.* at 1031–32. Although Mr. Sak obtained documentation that stated that Snickers was a "certified service animal" from the National Service Animal Registry, such certification is not required in the regulations for the ADA. The National Service Animal Registry is a corporation and is not affiliated with a governmental authority. *About Us*, NAT'L SERV. ANIMAL REGISTRY, <http://nsarco.com/aboutus.html> (last visited Jan. 29, 2013).

182. *Sak*, 832 F. Supp. 2d, at 1031.

183. *Id.*

184. *Id.* The city is described as having a population of "nearly 1,100 people" and is located in Northwest Iowa. *Id.*

185. *Id.* at 1033.

186. *Id.*

187. *Id.* at 1034–35.

188. *Sak*, 832 F. Supp. 2d at 1034–35.

189. *Id.* at 1035.

addition to the falls, the Saks also alleged other negative impacts of Mr. Sak as a result of being separated from his service dog.<sup>190</sup>

The Saks brought a complaint requesting, among other remedies, that injunctive relief be granted to prevent the city from enforcing the ordinance prohibiting pit bulls, like Snickers.<sup>191</sup> In order to grant a preliminary injunction several factors are considered.<sup>192</sup> The district court judge focused his analysis on whether there was a likelihood of success on the merits of Mr. Sak's claim.<sup>193</sup>

The court first established that Title II of the ADA would apply because there was no dispute that the city was a "public entity" covered by the law and Mr. Sak was a "qualified individual with a disability."<sup>194</sup> The court also reviewed the ADA regulations that specifically require public entities to accommodate service animals and cited evidence supporting the argument that Snickers met the definition of service animal under the regulations.<sup>195</sup>

The city challenged the application of the ADA, arguing that there was no discrimination in this situation, on two grounds. First, the city's ordinance was not a program, service, or activity. Second, Sak did not plan on using Snickers to access public services or places.<sup>196</sup> The court rejected the city's argument finding that "the regulation of any activity by a city, by an ordinance, is, itself, a program, service, activity, or benefit of the city that Title II of the ADA will reach."<sup>197</sup> The court found that Sak had shown a likelihood of success on his claim that the city was violating the ADA, and therefore, enjoined the city from applying the ordinance against Snickers.<sup>198</sup>

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190. *Id.* The Saks alleged that Mr. Sak's wife's ability to care for her elderly mother was compromised due to the inability to leave Mr. Sak alone. *Id.* In addition, Mr. Sak asserted that he was "deprived of both the medical and emotional benefit provided by Snickers." *Id.* at 1035–36.

191. *Id.* at 1036.

192. These factors were described by the court as "(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction would inflict on other parties; (3) the probability that the movant will succeed on the merits; and (4) the public interest." *Id.* at 1037.

193. *Id.* at 1038.

194. *Id.* at 1039.

195. *Id.* at 1041, 1043.

196. *Id.* at 1041–42. The court addressed the issue of non-use of Snickers in public by finding that an ordinance that would act in another way to bar a disabled individuals from living in the city, such as barring ramps into a residence, but, would regulate only the individuals' activities in their homes would "undoubtedly violate" Title II of the ADA. *Id.* at 1042 n.5.

197. Sak, 832 F. Supp. 2d at 1042 (citing *Heather K. v. City of Mallard, Iowa*, 946 F. Supp. 1373, 1389–90 (N.D. Iowa 1996)).

198. *Id.* at 1047. The City of Aurelia executed a Release and Settlement Agreement on June 27, 2012, allowing the Saks to keep Snickers in the city throughout both Mr. Sak and his wife's

As illustrated by the *Sak* case, individuals with service animals can use the ADA to assert rights of accommodation and access;<sup>199</sup> however, if applicable, the Fair Housing Act (“FHA”) provides an alternative with broader coverage for assistance animals.

### B. Fair Housing Act

The FHA was originally passed as part of the Civil Rights Act of 1968.<sup>200</sup> Protection from discrimination in housing on the basis of race, color, national origin, or gender is provided in the FHA.<sup>201</sup> The Fair Housing Amendments Act was passed in 1988, expanding the FHA to include handicapped persons in those classes protected from housing discrimination.<sup>202</sup> The DOJ and HUD are jointly responsible for enforcing the FHA;<sup>203</sup> however, HUD is responsible for the administration of the FHA.<sup>204</sup> The FHA covers many forms of housing,<sup>205</sup> including most rental housing, such as assisted-living

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lifetimes. The Saks agreed to keep or erect an eight-foot fence around their yard and keep Snickers on a leash if outside their property, and the city paid the Saks thirty thousand dollars. Release and Settlement Agreement, Dated June 27, 2012 (on file with author).

199. See also *Guglieimi v. Animal Management Division*, CAL13-27430 (Sept. 27, 2013 Order of the Court) (issuing a temporary restraining order requiring the Animal Management Division enjoined to return a service dog to Ms. Guglieimi care and custody). The service dog in question is described as a pit bull and pit bull dogs are banned in the county where Ms. Guglieimi resides. Arin Greenwood, *Maryland Judge Orders County with Pit Bull Ban to Return Service Dog*, HUFF POST, Oct. 7, 2013, [http://www.huffingtonpost.com/2013/10/07/prince-georges-county-pit-bull-service-dog\\_n\\_4057528.html](http://www.huffingtonpost.com/2013/10/07/prince-georges-county-pit-bull-service-dog_n_4057528.html).

200. 42 U.S.C. § 3601, *et seq.* (2006). See also H.R. REP. NO. 100-711, at 14 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, at 2176 (discussing the background and need for the Fair Housing Act).

201. 42 U.S.C. § 3601, *et seq.* (2006).

202. *Id.*; see also H.R. REP. NO. 100-711, at 17 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, at 2179 (discussing the need for an amendment to Fair Housing Act to protect the handicap). The FHA is sometimes referred to as the Fair Housing Amendments Act. References in this Article to the FHA include the FHA as amended by the Fair Housing Amendments Act. Handicap is defined as someone with “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment.” 42 U.S.C. § 3602(h) (2006). The term handicap does not include “the current, illegal use of or addiction to a controlled substance.” *Id.* As many of the court decisions in this area, this Article uses the terms “handicap” and “disability” interchangeably. See, e.g., *Giebeler v. M&B Assoc., L.P.*, 343 F.3d 1143, 1146 (9th Cir. 2003) (discussing the use of the terms “handicap” and “disability”).

203. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Act, May 17, 2004, <http://www.hud.gov/offices/fheo/library/hudjojstatement.pdf> and [http://www.justice.gov/crt/about/hce/joint\\_statement\\_ra.pdf](http://www.justice.gov/crt/about/hce/joint_statement_ra.pdf).

204. 42 U.S.C. § 3608 (2006). The Attorney General or private persons may enforce the FHA. 42 U.S.C. § 3613–3614 (2006).

205. Although many of the cases discussing the applicability of the FHA deal with

facilities, and, in many cases, nursing homes.<sup>206</sup> Although not required, state laws may specifically reference the rights individuals have under the FHA in assisted-living facilities.<sup>207</sup>

Plaintiffs may prove discrimination under the FHA by showing the failure to provide a reasonable accommodation.<sup>208</sup> Refusing to make “reasonable accommodation in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling” is included in the FHA’s definition of discrimination.<sup>209</sup>

Language in federal regulations<sup>210</sup> and case law has made it clear that a reasonable accommodation may include a waiver of a no-pet rule to allow for an assistance animal.<sup>211</sup> HUD has provided guidance to assist in defining assistance animals; however, there is no definition in the federal regulations implementing the FHA.<sup>212</sup> HUD provided this definition of “assistance animals” in one of its handbooks:

Assistance animals are animals that are used to assist, support, or provide service to persons with disabilities. Assistance animals—often referred to as “service animals,” “assistance animals,” “support animals,” or “therapy animals”—perform many disability-related functions in-

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multifamily dwellings, under many circumstances single-family homes are also included under the purview of the statute. 42 U.S.C. § 3603(b)(1) (2006).

206. Eric M. Carlson, *Disability Discrimination in Long-Term Care: Using the Fair Housing Act to Prevent Illegal Screenings in Admissions to Nursing Homes and Assisted Living Facilities*, 21 NOTRE DAME J.L. ETHICS & PUB. POL’Y 363, 378–85 (2007) (analyzing the FHA and concluding that the focus is on whether the facility acts as a residence and, if so, assisted living and nursing homes would fall within its provisions); Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*, 90 IOWA L. REV. 121, 152–55 (2004) (analyzing the FHA and stating clearly that assisted-living facilities, including those that provide health-related services are subject to the FHA, acknowledging that the FHA’s applicability to nursing homes is dependent on certain facts, but concluding that most nursing home cases will be subject to the FHA).

207. *E.g.*, R.I. GEN. LAWS § 23-17.4-16 (2012) (providing the rights of residents under the Assisted Living Residence Licensing Act include the right to have a service animal consistent with the reasonable accommodations clause of the FHA).

208. 42 U.S.C. § 3604(f)(3)(B) (2006).

209. *Id.* The FHA requires that the public and common use portions of multifamily dwellings constructed after Jan. 1, 1991, must be handicapped accessible; however, any reasonable modifications within the unit are at the expense of the disabled person. 24 C.F.R. § 100.203 (2012). This is in contrast to the Americans with Disabilities Act provision that requires the person with the public accommodation to pay for any reasonable accommodations. 42 U.S.C. §§ 12111(9) & 12111(10)(B) (2006).

210. 24 C.F.R. § 100.204(b) (2012) (providing an example of a blind applicant with a seeing-eye dog).

211. *See Huss, No Pets Allowed, supra* note 98, at 75–88 (analyzing cases discussing waivers of no pet rules).

212. *See* 24 C.F.R. § 100.201 (2012).

cluding but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal 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.<sup>213</sup>

As discussed in Part III.E, HUD's position on assistance animals was also set forth in recent rulemaking in connection with the law that applies to pet ownership in HUD-assisted housing for the elderly and persons with disabilities.<sup>214</sup> In the guidance on that rulemaking, HUD references its position in the guidebook, set forth above,<sup>215</sup> and reiterates its longstanding position on the use of assistive animals — also referred to as “service animals,” “support animals,” “assistance animals,” or “therapy animals” under the FHA.<sup>216</sup> HUD articulated reasons why the FHA must cover “emotional support animals” and other animals that may not need training, stating “the needs of persons with disabilities in the housing arena are distinct from other settings.”<sup>217</sup> Unlike the ADA, there is no species limitation in the FHA definition of assistance animals, although it is likely that a housing provider could limit its accommodation to common household domesticated animals.<sup>218</sup>

HUD's administrative decisions support an expansive definition of assistance animal.<sup>219</sup> One reason for the prior ambiguity in this area is that courts interpreting the FHA have not always been consistent in

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213. HUD OCCUPANCY HANDBOOK, *supra* note 121, at Glossary 4, <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/index.cfm> (last visited Jan. 29, 2013) (click “Handbook 4350.3 Complete Version”; the scroll to click separate link “Exhibit 6-4 Mandatory and Discretionary Pet Rules”). The language of the *HUD Handbook*, addressing whether an assistance animal is a reasonable accommodation, states the “question is whether or not the animal performs the disability-related assistance or provides the disability-related benefit needed by the person with the disability.” *Id.* at 2–44.

214. *Supra* notes 114–42 and accompanying text (analyzing the law applying to assisted rental housing for the elderly or disabled).

215. *See supra* note 213 and accompanying text (defining assistance animal).

216. Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63834, 63835 (Oct. 27, 2008).

217. *Id.* at 63837.

218. Rebecca J. Huss, *Canines on Campus: Companion Animals at Post-Secondary Educational Institutions*, 77 MO. L. REV. 417, 439 (2012) [hereinafter Huss, *Canines on Campus*] (discussing the lack of a species restriction under the FHA definition of assistance animal).

219. In many situations, tenants have been successful in arguing that there should be a waiver of a no-pet rule in order for the tenant to be able to retain an assistance animal. *See* Huss, *No Pets Allowed*, *supra* note 98, n.112 and accompanying text (discussing HUD consent orders). In states that have laws that are at least as protective as the federal law protecting against discrimination, at HUD's discretion, the cases are referred to the applicable state division of human rights. 42 U.S.C. § 3610(f) (2006).

defining assistance animal.<sup>220</sup> It is clear at this point in time that the definition of assistance animal under the FHA is broader than that of service animal under the ADA.<sup>221</sup>

A person requesting a reasonable accommodation under the FHA may be required by the housing provider to supply medical records to support the status of the individual as a person with a disability and to demonstrate that the animal is needed for the individual to use and enjoy the premises.<sup>222</sup> It is not uncommon for individuals to have to educate housing providers, and others subject to the FHA, as to the ability to keep an assistance animal in housing that would otherwise ban such animal.<sup>223</sup>

Significant damages may be awarded if a housing provider violates the FHA. In a case settled in November 2012, where an older adult was required to give up her dog under threat of eviction and died just a few weeks later, the co-op agreed to pay the surviving spouse \$58,750 in damages in a settlement.<sup>224</sup>

There has been limited case law relating to service or assistance animals in residential care facilities. A 2009 case explored the situation

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220. See Huss, *No Pets Allowed*, *supra* note 98, at 74–85 (analyzing FHA cases).

221. *Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc.*, 778 F. Supp. 2d 1028, 1036 (D.N.D. 2011) (stating that “the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability”); *Overlook Mutual Homes, Inc. v. Spencer*, 415 Fed. Appx. 617, 623–24 (6th Cir. 2011) (discussing the definition of assistance dogs under the FHA and acknowledging that it was somewhat unclear at the time the litigation was initiated, but emphasizing that rather than utilizing the court process, housing providers should cooperate with residents over reasonable accommodation disputes).

222. Huss, *No Pets Allowed*, *supra* note 98, at 74–82 (discussing nexus between the disability and the assistance animal and the provision of medical records to support the request). A 2011 HUD consent order limited a housing provider’s ability to require medical records beyond a statement from a medical provider that the individual has a disability, and the designated animal provides emotional support or other assistance that alleviates one or more symptoms or effects of the person’s disability. *HUD v. Carter*, 2011 WL 7064545 (H.U.D.A.L.J. No. 11-F-077-FH-36, Dec. 13, 2011).

223. *E.g.*, Susan Marschalk Green, *Marley Comes Home*, TAMPA BAY TIMES, Feb. 3, 2012, at 1 (discussing a case where a sixty-five-year-old woman with cancer and depression was not allowed to have her seventy-pound emotional support animal in her condominium due to a weight restriction and the condominium board’s subsequent agreement to allow the dog after an attorney was hired to raise the FHA issue); Pilar Ulibarri, *Dog Owner Files Lawsuit to Keep Canine in Condo*, PALM BEACH POST, June 19, 2004, at 3C (reporting on case of a seventy-six-year-old man who successfully sued to keep his dog in his condominium and an eighty-five-year-old woman who filed a lawsuit to allow her to keep her dog in her condominium).

224. Settlement Agreement and Order, *United States of Am. v. Woodbury Gardens Redevelopment Co. Owners, Corp.*, Case 2:12-CV-00711 (E.D.N.Y. Nov. 10, 2012) (on file with author) (setting forth settlement after death of seventy-four-year-old woman who had multiple disabling conditions and who had provided medical documentation from four medical providers).



in which a person with a disability was allegedly refused admittance to a residential care facility with his assistance dog.<sup>225</sup> In the *Mellon Ridge* case, a forty-five-year-old man with numerous alleged health issues was denied admission to the facility for respite care because he had not provided the requested vaccination and health records for his assistance animal, Lieutenant.<sup>226</sup> The facility had attempted to obtain the veterinary records, but had been unsuccessful.<sup>227</sup> The facility allowed pets in addition to assistance and service animals, but all clients wishing to bring animals to the facility, regardless of the animal's status, were required to provide proof that the animal was up-to-date on all vaccinations.<sup>228</sup> Although Mr. Jackson was denied admittance on the initial day the facility had been contacted, the next day the facility informed the crisis therapist working with Mr. Jackson that he and Lieutenant would be admitted to the facility.<sup>229</sup> Mr. Jackson declined the invitation for reasons other than the issue of his dog.<sup>230</sup>

Mr. Jackson filed a charge alleging unlawful discrimination with the Ohio Civil Rights Commission ("OCRC"), and the OCRC filed a complaint against Mellon Ridge based on alleged violation of provisions of the Ohio Fair Housing Act.<sup>231</sup> In affirming the trial court's decision that Mellon Ridge did not discriminate against Mr. Jackson, the appellate court reiterated that the reason for not admitting Mr. Jackson and Lieutenant was due to the lack of vaccination records, something required by all prospective clients who wished to be admitted with any animal.<sup>232</sup> The appellate court cited a prior case that found that there was "no evidence of a discriminatory act where residential policy applied to *all* residents."<sup>233</sup>

In addition, the court cited to Ohio Administrative Law that

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225. Ohio Civil Rights Comm'n v. Mellon Ridge, Inc., No. CA2009-06-085, 2009 WL 3634200 (Ohio App. 12 Dist. 2009).

226. *Id.* at \*1. Based on the facts provided in the case, it does not appear that Lieutenant would meet the definition of "service animal" under the ADA regulations, but instead was suitable only to provide Mr. Jackson with emotional support. *Id.*

227. *Id.* at \*2. The facility was first informed that Mr. Jackson needed to sign a release for the veterinarian's office to provide the records, then the records provided by the veterinarian's office were not relevant, and finally the veterinarian's office had closed for the day. *Id.*

228. *Id.* In addition, the policy provided that the pets must be evaluated by a vet. *Id.*

229. *Id.* at \*2.

230. *Id.* The case stated that Mr. Jackson "refused the invitation because he believed that Jamicki, Mellon Ridge's owner, was a member of the Ku Klux Klan (sic)." *Id.*

231. Ohio Civil Rights Comm'n v. Mellon Ridge, Inc., No. CA2009-06-085, 2009 WL 3634200 \*2 (Ohio App. 12 Dist. 2009).

232. *Id.* at \*4.

233. *Id.* at \*4 (citing to *McIntyre v. N. Ohio Prop.*, 412 N.E.2d 434, 434 (Ohio App. 1979)).

requires residential care facilities that allow animals to “implement a written protocol regarding animals and pets that protects the health and safety of the residents and staff members.” Further, the court stated that the Mellon Ridge written policy “is certainly reasonable and appropriate.”<sup>234</sup>

Although the holding in the *Mellon Ridge* case was based primarily on the fact that the residential policy was applied to all residents, it raises the issue of what a reasonable accommodation would be in the case of a residential care facility. In other contexts of housing, where there is a concentration of people and claims of discrimination on the basis of having a service or assistance animal, it has been deemed reasonable to expect the animal to be in good health and up-to-date on vaccinations.<sup>235</sup> Pet rules regarding control of the animal and disposal of waste would also fall within the definition of reasonable accommodation.<sup>236</sup>

## V. RISKS OF RELATIONSHIP

There are risks associated with the human-companion animal relationship. It is important to analyze whether the risks, to both humans and companion animals, outweigh the benefits when considering the inclusion of a companion animal in a home.

### A. Risks to Humans

This Part will consider some of the risks to humans, focusing on those that may be of greater concern to the elderly. The risks to be considered are bites, falls, allergies, and the transmission of zoonotic diseases.

#### 1. Bites and Other Direct Injuries

It is estimated that dogs bite 4.7 million people each year in the United States.<sup>237</sup> Of these bites, approximately 800,000 people seek

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234. *Id.* at \*4 (citing to OHIO ADMIN. CODE 3701-17-61(D)).

235. See Huss, *Canines on Campus*, *supra* note 218, at 425 (discussing the guidance provided by the Department of Education in response to questions regarding service animals in dormitories).

236. *E.g.*, *Woodside Vill. v. Herzmark*, 1993 WL 268293 at \*1 (Conn. Super. June 22, 1993), *appeal dismissed*, 36 Conn. App. 73 (Conn. App. 1994) (providing when a tenant was unable to adhere to pet rules that a stipulated judgment was appropriate). See also Huss, *No Pets Allowed*, *supra* note 98, at 83–85 (discussing the limits of reasonable accommodations).

237. *Dog Bite: Fact Sheet*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/homeandrecreationalafety/dog-bites/index.html> (last visited Jan. 29, 2013) [hereinafter CDC, *Dog Bite*].

medical attention with 386,000 requiring emergency treatment.<sup>238</sup> Animal bite fatalities are rare in the United States, averaging twelve to twenty-four per year.<sup>239</sup> It is difficult to confidently assess the extent of the risk of dog bites because of a lack of a national reporting system.<sup>240</sup> A recent survey found that dog bites continue to be a public health issue affecting approximately 1.5% of the population each year.<sup>241</sup> The survey also found that the rate of bites among children has decreased, with the authors opining that there may be some evidence that dog bite prevention programs targeted to this population may be having a positive impact on the problem.<sup>242</sup>

More than 50% of dog bites occur on an owner's property.<sup>243</sup> An individual is more likely to be bitten by a neighbor's dog than by his or her own dog, with many victims being family members or acquaintances of the owner of the dog.<sup>244</sup> Dog owners are more likely to be bitten by dogs than non-dog owners.<sup>245</sup>

Cats also cause injuries with 10%-20% of animal bites attributed to them.<sup>246</sup> It is more common for women and the elderly to be bitten by cats.<sup>247</sup> Although cat bites are less destructive, they inflict deeper

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238. *Id.*

239. Peter M. Rabinowitz & Lisa A. Conti, *Infectious Disease Scenarios*, in PETER M. RABINOWITZ & LISA A. CONTI, *HUMAN-ANIMAL MEDICINE: CLINICAL APPROACHES TO ZOONOSSES, TOXICANTS AND OTHER SHARED HEALTH RISKS* 321 (2010) [hereinafter Rabinowitz & Conti, *Infectious Disease*]. See also J. Gilchrist et al, *Dog Bites: Still a Problem?* 14 *INJ. PREVENTION* 296, 296 (2008) (reporting that there was an average of sixteen fatalities per year during the 1979–1998 period studied).

240. Gilchrist, *supra* note 239, at 296 (reporting that dog bites are usually reported locally, but no national system exists).

241. *Id.* at 300.

242. *Id.*

243. *Dog Bite Liability*, INS. INFO. INST. <http://www.iii.org/articles/dog-bite-liability.html> (last visited Jan. 29, 2013). Insurance policies (homeowners or renters) typically cover dog-bite liability with the owner personally responsible for any claim exceeding the policy limit. *Id.* The Insurance Information Institute reports that one-third of homeowners' liability claims relate to dog bites. *Id.* Liability for dog bites is based on state law and is beyond the scope of this Article. See generally Huss, *Canines on Campus*, *supra* note 218, at 468–70 (discussing dog bite liability generally and liability for landlords). Facilities that allow for resident or visiting dogs should also check their state law to determine the standard to which they will be held. *E.g.* *Marie v. Am. Alternative Ins. Co.*, 97 So. 3d 8, 13 (La. App. 2012) (holding that a hospice would not be liable when a dog belonging to one visitor bit another visitor). The *Marie* court considered whether the facility had custody over the dog and determined that the dog's presence at the hospice did not create an unreasonable risk of harm. *Id.* at 12–13.

244. Rabinowitz & Conti, *Infectious Disease*, *supra* note 239, at 323.

245. *Id.*; Gilchrist, *supra* note 239, at 300.

246. Richard L. Oehler, *Bite-Related and Septic Syndromes Caused by Cats and Dogs*, 9 *THE LANCET* 439, 439 (2009).

247. *Id.* Rabinowitz & Conti, *Infectious Disease*, *supra* note 239, at 323 (reporting that 59%

puncture wounds and tend to carry a higher risk of infection.<sup>248</sup> Scratches constitute 70% of the wounds caused by cats.<sup>249</sup> The elderly are at greater risk of infection from animal bites than the general adult population.<sup>250</sup>

The Centers for Disease Control and Prevention (“CDC”) considers dog bites a “largely preventable public health problem.”<sup>251</sup> Although the percentage of adults who are bitten by dogs is less than children, continuing to educate people about dog bite prevention is a reasonable step to take in situations where housing providers are allowing companion animals or if animals are visiting the facilities.<sup>252</sup> Given that intact animals (especially males) are much more likely to be involved in reported bite incidents, another step could be to require pet owner to sterilize companion animals kept in rental housing.<sup>253</sup> Effective animal control efforts to deal with issues, such as strays and irresponsible owners, would also assist in controlling this issue.<sup>254</sup>

## 2. Falls

Given that during AAA the handler is expected to be with the animal at all times, the issue of falls primarily relates to companion animals in the community or resident animals in nursing homes.<sup>255</sup> The

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of cat bites are in females).

248. Oehler, *supra* note 246, at 440. If a person waits more than eight hours to obtain treatment for a bite, they often have infected wounds, and cat bites progress more rapidly to infection than dog bites. *Id.* It is estimated that cat bites become infected 80% of the time compared with infections from dog bites occurring only 5–15% of the time. Rabinowitz & Conti, *Infectious Disease*, *supra* note 239, at 325.

249. Rabinowitz & Conti, *Infectious Disease*, *supra* note 239, at 323.

250. *Id.* at 324 (reporting on risk factors for animal bite infections including the elderly and people who are immunocompromised). Multiple types of bacteria have been reported in connection with dog and cat bites. *Id.* at 326 (listing reported pathogens associated by animal bites). The pathogens associated with bites from other types of animals, including rodents and reptiles, are also listed. *Id.*

251. CDC, *Dog Bite*, *supra* note 237.

252. AM. VETERINARY MED. ASS’N TASK FORCE ON CANINE AGGRESSION & HUMAN-CANINE INTERACTIONS, *A Community Approach to Dog Bite Prevention*, 218 J. AM. VETERINARY MED. ASS’N. 1732, 1739 (2001), available at [http://www.avma.org/public\\_health/dogbite/dogbite.pdf](http://www.avma.org/public_health/dogbite/dogbite.pdf) (setting forth an approach to prevent dog bites in communities and stating that education “is key to reducing dog bites within a community”).

253. *See id.* at 1733; KAREN DELISE, *THE PIT BULL PLACEBO: THE MEDIA MYTHS AND POLITICS OF CANINE AGGRESSION* 164–65 (2007) (discussing the role of the reproductive status of dogs involved in fatal attacks and emphasizing the multiple factors that are often present when a serious attack occurs).

254. Gilchrist, *supra* note 239, at 300.

255. A search of case law relating to this issue resulted in only one published case where a fall occurred in a nursing home parking lot due to an individual becoming frightened by a dog.

CDC reports that one out of three adults sixty-five years and older fall each year, and the chance of falling and being seriously injured increases with age.<sup>256</sup> Falls are a significant problem in nursing homes as well, with the rate of falls in nursing homes estimated at twice the rate for older adults living in the community.<sup>257</sup> Companion animals are viewed as an environmental hazard that could lead to a fall.<sup>258</sup> Researchers from The Netherlands found that one of the predictors of recurrent falling was the presence of a dog or cat in the household.<sup>259</sup>

An Australian study examined patients aged seventy-five and older who were treated at an emergency room due to a fracture related to a companion animal in the home.<sup>260</sup> The study illustrated various ways companion animals cause falls, including tripping over the animals, slipping on animal waste, and issues relating to the control of animals — such as dogs pulling on leashes.<sup>261</sup>

There are many ways to decrease the risk of companion animals causing a fall, several of which are consistent with responsible caretaking of a pet.<sup>262</sup> For example, if an individual is unable to control

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Bertrand v. A.L. Berard, 521 So.2d 1264, 1265 (La. App. 1988). The court found that the owner of the dog, who lived across from the nursing home, was the sole proximate cause of the patient's accident. *Id.* at 1266–68. In an unpublished case in Wisconsin, a woman in an assisted-living facility that had one or two residents at the time fell after the owner's dog wrapped his leash around her legs when she was distracted. Bergstrom v. Baker, No. 2005AP2610, \*1 (Wis. App. Oct. 3, 2006) (unpublished disposition). See also *infra* notes 276–78 and accompanying text (discussing University of Minnesota study of nursing homes finding only two falls attributed to animals in the facilities).

256. *Falls Among Older Adults: An Overview*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/homeandrecreationalafety/falls/adultfalls.html> (last visited Jan. 29, 2013).

257. *Falls in Nursing Homes*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/HomeandRecreationalSafety/Falls/nursing.html> (last visited Jan. 29, 2013). Factors for the increased rate of falls in nursing homes include the fact that persons in nursing homes are generally frailer, older and have more chronic conditions and mobility issues than older persons living in the community. *Id.*

258. Lindy Clemson et al., *Types of Hazards in the Homes of Elderly People*, 17 OCCUPATIONAL THERAPY J. RES. 200, 206 (1997) (discussing several studies reporting falls caused by pets and considering pets a hazard in the home of the elderly).

259. S.M.F. Pluijm et al., *A Risk Profile for Identifying Community-Dwelling Elderly with a High Risk of Recurrent Falling: Results of a 3-Year Prospective Study*, 17 OSTEOPOROSIS INT'L 417, 421–23 (2006). The final risk profile variables included “two or more previous falls, dizziness, functional limitations, weak grip strength, low body weight, fear of falling, . . . a high educational level, the drinking of 18 or more alcoholic consumptions per week and two interactions terms.”

260. Susan E. Kurrie et al., *The Perils of Pet Ownership: A New Fall-Injury Risk Factor*, 181 MED. J. AUSTL., 682–83 (2004) (identifying sixteen cases).

261. *Id.*

262. Clemson, *supra* note 258, at 210 (listing suggestions for reducing hazards, including placing food and water dishes away from access and traffic ways); Kurrie, *supra* note 260 at 683 (recommending further research to understand the risk and consider possible interventions to decrease the risk).

a dog on a leash, the dog should be taken to training — preferably with the owner — or walked by a responsible caretaker. If a cat or dog is underfoot while food preparations are occurring, the animal can be confined to another room during that time. Tripping over animals at night can be avoided by installing better lighting or confining the animals to another part of the residence.

### 3. Allergies

One of the common concerns about animals in facilities is that they may cause problems for residents and staff with allergies. Some animals trigger allergic and respiratory disorders in humans.<sup>263</sup> Proper grooming<sup>264</sup> and careful selection of the animal used can reduce this risk.<sup>265</sup> In the general population, allergies to cats are “twice as common as allergies to dogs.”<sup>266</sup> Animal dander can cause allergic reactions in 20%–30% of people with asthma.<sup>267</sup>

Allergens from cats and dogs are found in environments in which no animal resides.<sup>268</sup> One study found that “essentially all homes in the United States” contain cat and dog allergens.<sup>269</sup> Clothing may be the primary transfer mechanism and source of pet allergens.<sup>270</sup> Another source for transfer may be human hair.<sup>271</sup> Thus, even if a facility does not allow animals on the premises, staff members and visitors can still transfer allergens into the facility.

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263. Brodie, *supra* note 57, at 454. Six percent of the people seen by allergists in North America have an allergic reaction to animal dander. Brasic, *supra* note 169, at 1019.

264. Brodie, *supra* note 57, at 454.

265. Cats may not be the best suited for all environments given that allergies to cat dander is at the top of the hierarchy of animal-related allergies. *Id.* at 454.

266. Linda Stahl, *Coping with Cat Allergies*, COURIER J., Aug. 16, 2007, at 1E.

267. Andrea Coombes, *Onboard Pets May Aggravate Allergies of Some Air Travelers*, SEATTLE TIMES, Oct. 26, 2003, at M5 (discussing travelers who are allergic to animals).

268. Paivi M. Salo et al., *Indoor Allergens in Schools and Day Care Environments*, 124 J. ALLERGY CLIN. IMMUNOL. 185, 185 (2009).

269. Samuel J. Arbes, Jr. et al., *Dog Allergen (Can f 1) and Cat Allergen (Fel d 1) in US Homes: Results from the National Survey of Lead and Allergens in Housing*, 114 J. ALLERGY CLIN. IMMUNOL. 111, 116 (2004).

270. Salo, *supra* note 268, at 187 (citing to studies that show that allergen levels are higher in the dust of pet owners' clothing compared to non-pet owners).

271. *Id.*

#### 4. Zoonotic Disease<sup>272</sup>

Including the possibility of transmission by all non-human animals, not just companion animals, over half of infectious diseases affecting humans are zoonotic.<sup>273</sup> As with the risk of infection after a bite injury, immunocompromised individuals and the elderly are at higher risk of contracting a zoonotic disease compared with the population as a whole.<sup>274</sup>

Because animals can be carriers of infectious diseases, it is recommended that they not have contact with residents who have certain diseases, such as tuberculosis, *Giardia*, and methicillin-resistant *Staphylococcus aureus* (“MRSA”).<sup>275</sup> In addition, certain parasites and fungi affect both humans and animals, so steps should be taken to reduce the risk of transmission.<sup>276</sup>

The key way to avoid transmission of disease is to implement effective hygienic measures, such as hand washing and appropriate sanitation measures.<sup>277</sup> Regular evaluation of the animals by veterinarians also can result in early detection of a zoonotic disease and parasites, thus preventing transmission of disease to humans.<sup>278</sup>

There is limited research focusing on the specific risk of companion animals in care centers. One study of 284 nursing homes that allowed

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272. Zoonotic disease is defined as “an animal disease that can be transmitted to humans.” The Free Dictionary by Farlex, <http://www.thefreedictionary.com/zoonotic+disease> (last visited Oct. 16, 2013).

273. Peter M. Rabinowitz & Lisa A. Conti, *Zoonoses* in PETER M. RABINOWITZ & LISA A. CONTI, HUMAN-ANIMAL MEDICINE: CLINICAL APPROACHES TO ZOONOSES, TOXICANTS AND OTHER SHARED HEALTH RISKS 105 (2010) [hereinafter Rabinowitz & Conti, *Zoonoses*]. A majority of “emerging” infectious diseases in the past thirty years are zoonotic. *Id.*

274. Heidi DiSalvo et al., *Who Let the Dogs Out? Infection Control Did: Utility of Dogs in Health Care Settings and Infection Control Aspects*, 34 AM. J. INFECTION CONTROL 301, 303 (2006) (discussing risk factors for animal-related illnesses). Children are also at a higher risk for animal-related illness due to a combination of reasons, including behavioral factors, such as neglecting to wash their hands after contact with an animal. *Id.*

275. *Id.* at 303. In the case of MRSA, there is evidence that humans can transmit MRSA to domesticated animals, who then must be treated to eradicate the pathogen. Oehler, *supra* note 246, at 443–45 (reporting on transmissions of MRSA and the efforts to eliminate the pathogen); K. Coughlan, *Methicillin-Resistant Staphylococcus aureus in Resident Animals of a Long-term Care Facility*, 57 ZOONOSES PUB. HEALTH 220, 220–24 (2010) (reporting on a study that tested twelve resident animals of a long-term care facility, finding two of the cats colonized with MRSA).

276. Rabinowitz & Conti, *Zoonoses*, *supra* note 273, at 144–49, 174–77 (discussing dermatophytosis, also referred to as ringworm and hookworm).

277. DiSalvo, *supra* note 274, at 303. One set of guidelines requires that all patients, visitors, and health care workers “practice hand hygiene both before and after each animal contact.” Sandra L. Lefebvre et al., *Guidelines for Animal-Assisted Interventions in Health Care Facilities*, 36 AM. J. INFECTION CONTROL 78, 79 (2008).

278. DiSalvo, *supra* note 274, at 303.

pets found that the number of incidents was very low.<sup>279</sup> The study found that for each pet-related incident, there were more than 200 non-pet-related incidents.<sup>280</sup> There were two minor falls attributed to carelessness by the person who fell and no recorded allergies or zoonotic infections.<sup>281</sup>

Careful planning can minimize these risks.<sup>282</sup> Several published guidelines for structuring a program could be used to minimize risks of companion animal ownership.<sup>283</sup> The guidelines cover everything from selection of the animal, health screenings, training for staff and volunteers, to management of the contact of the animal during visits.<sup>284</sup> As discussed in Part III.F, staff training and support are keys to the success of a program.<sup>285</sup>

From a human centric perspective, based on the increasing use of animals for therapy and service, as well as continued high rates of companion animal ownership, it appears that people have determined that, on average, the benefits of using animals to assist humans outweigh the risks. The next Part explores some of the risks that animals encounter because of their connection with humans.

### *B. Risks to Animals (and Humans)*

This Part will consider risks that may adversely affect animals and their human caretakers. Environmental factors and the possibility of abuse occurring will be discussed in this Part.

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279. Jill Bowen, *Current*, ROANOKE TIMES, Jan. 3, 2010 (reporting on a study by the University of Minnesota that found the risks of having animals in nursing homes was low).

280. *Id.* (reporting on University of Minnesota study). A reference to a University of Minnesota study in a 1987 publication found that people and environmental factors are 500 times more likely to be associated with adverse incidents compared with incidents involving pets. Anderson, *supra* note 150, at 124.

281. Bowen, *supra* note 279.

282. *Id.* E.g., U.S. DEP'T HEALTH & HUMAN SERVS. & CTRS. FOR DISEASE CONTROL & PREVENTION, GUIDELINES FOR ENVIRONMENTAL INFECTION CONTROL IN HEALTH-CARE FACILITIES 109 (2003) (stating that "no reports have been published regarding infectious disease that affects humans originating in service dogs"); James Denn, *State Health Department Pushes Pet Therapy*, TIMES UNION, Jan. 7, 1998 (reporting that in the previous two years pet therapy had been used in nursing homes with no animal bites or animal caused infections reported).

283. E.g., Lefebvre, *supra* note 277, at 79–84 (listing specific guidelines); UNIV. OF MINN., *CENSHARE: Animal Assisted Activities Policies and Procedures*, <http://censhare.umn.edu/care07.html> (last visited Jan. 29, 2013) (providing policies and procedures relating to programs, the animals and handlers); UNIV. OF MINN., *CENSHARE: Live-In Animal*, *supra* note 165 (providing a list of issues to consider prior to acquiring a resident animal).

284. Lefebvre, *supra* note 277, at 79–84.

285. *Supra* note 165 and accompanying text (discussing the importance of staff support of programs).



## 1. Selected Environmental Factors

Anything that impacts the humans in the household can also impact the companion animals. As discussed in Part V.A.2, companion animals are an environmental hazard for people in the context of falls, but animals can also be injured in the process.<sup>286</sup> Poor indoor air quality, including exposure to environmental tobacco smoke, has been linked to diseases in companion animals.<sup>287</sup> Issues in the environment, such as lack of exercise areas and limited green space, impact both humans and their companion animals.<sup>288</sup>

A significant problem for companion animals in the United States is obesity — an issue controlled by the humans in the environment.<sup>289</sup> A recent survey of veterinarians found 53% of adult dogs and 55% of cats are classified as overweight or obese.<sup>290</sup> The results of one survey show that of pet owners, 93.4% identify pet obesity as a problem; however, there is a “pet fat gap” where many owners consider their pet’s weight normal when the animal is actually overweight or obese.<sup>291</sup> Companion animals that are overweight or obese are at higher risk for weight-related health conditions, such as osteoarthritis, high blood pressure, breathing problems, and a shortened life expectancy.<sup>292</sup>

This issue is germane to this Article because a recent study found that older adults, sixty years old or older, who were overweight were more likely to have overweight cats and dogs.<sup>293</sup> Although the researchers recognized that the study had several limitations, they recommended that “educational and marketing strategies . . . should be

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286. Kurrie, *supra* note 260, at 682 (reporting on the death of a cat when an older woman fell and landed on the cat).

287. Clifford S. Mitchell et al., *The Built Environment and Indoor Air Quality*, in PETER M. RABINOWITZ & LISA A. CONTI, *HUMAN-ANIMAL MEDICINE: CLINICAL APPROACHES TO ZOOSES, TOXICANTS AND OTHER SHARED HEALTH RISKS* 41 (2010) (listing environmental tobacco smoke as an indoor air quality problem and a sentinel event in connection with nasal neoplasia in dogs and malignant lymphoma in cats among other issues).

288. *Id.* at 38–39 (listing health hazards and clinical conditions in humans and animals related to the built environment).

289. *Big Pets Get Bigger: Latest Survey Shows Dog and Cat Obesity Epidemic Expanding*, ASS’N FOR PET OBESITY PREVENTION, <http://www.petobesityprevention.com/big-pets-get-bigger-latest-survey-shows-dog-and-cat-obesity-epidemic-expanding/> (last visited Jan. 29, 2013) (discussing problem of obesity in pets).

290. *Id.* (translating into 88.4 million pets). The number of animals entering into the highest danger zone for weight-related disorders is also increasing. *Id.*

291. *Id.* (reporting a “pet fat gap” of 22% for dog owners and 15% for cat owners).

292. *Id.*

293. Roschelle Heuberger & Joseph Wakshlag, *Characteristics of Aging Pets and Their Owners: Dogs v. Cats*, 106 *BRIT. J. NUTRITION* S150, S152 (2011) (reporting on study done in the rural Midwestern United States).

targeted towards decreasing both owner's and pet's overweight."<sup>294</sup> Resident animals may be particularly susceptible to becoming overweight. This is indicated by reports of resident animals becoming overweight because of a lack of supervision or the feeding of an inappropriate diet.<sup>295</sup>

Choosing to have an animal participate in animal-assisted activities may preclude a person from feeding the animal a raw diet.<sup>296</sup> Proponents of raw diets believe that feeding raw protein sources provides health benefits for their animals.<sup>297</sup> An announcement by Pet Partners, one of the largest certifiers of animals, was controversial because it said that animals on raw diets were precluded from participating in its program.<sup>298</sup> Essentially people may be required to choose between participation in an AAA program or feeding their animals a diet they believe is sub-optimal.<sup>299</sup>

## 2. Selected Issues Relating to Abuse

No national official statistics or databases track the abuse of animals.<sup>300</sup> A few websites purport to track animal abuse; however, the

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294. *Id.* The researchers also encouraged the use of exercise and dietary interventions. *Id.*

295. Sharon L. Bass, *Nursing Home Pets a Boon to Residents*, N.Y. TIMES, June 1, 1986, <http://www.nytimes.com/1986/06/01/nyregion/nursing-home-pets-a-boon-to-residents.html?pagewanted=all> (reporting that there had been no real problems with pets in nursing homes, but "there are cases where pets have gotten too damn fat because the patients are constantly feeding them"); Mickey Brettingen, *Lessons to Be Learned from the Saga of Mae*, <http://censhare.umn.edu/care05.html> (reporting on the placement of a dog in a nursing home and subsequent problems including mistreatment of the dog by staff, substantial weight gain, and a lack of grooming); LaBuda Interview, *supra* note 76 (discussing the placement and subsequent removal of a dog in a nursing home and the dog's weight gain and inappropriate feeding at the facility).

296. Lefebvre, *supra* note 277, at 81; *Pet-Partners Program: Raw Protein Diet Policy*, PET PARTNERS, <http://www.deltasociety.org/Page.aspx?pid=638> (last visited Jan. 29, 2013) (describing the policy that excludes animals fed a raw diet effective June 30, 2010).

297. Nancy Kerns, *Cold Raw Facts: These Frozen Diets, Comprised Mainly of Raw Meat Offer Truly Premium Nutrition for Your Dog*, WHOLE DOG J., Nov. 2010, at 6 (describing history of raw diets and growing availability of commercial raw diets).

298. C.J. Puotinen, *Are Raw-Fed Dogs a Risk? A Major Therapy Dog Registry Has Banned Raw-Fed Pets*, WHOLE DOG J., July 2010, at 10 (discussing controversy and criticism of Pet Partners', formerly known as Delta Society's, announcement regarding its new raw diet policy).

299. Not all AAA programs have the same policy. Therapy Dogs, Inc.'s policy does not restrict the diet of the dog handler teams, but has many other policies regarding the health of the dogs. *How to Become a Member*, THERAPY DOGS, INC., [http://www.therapydogs.com/Become\\_A\\_Member.aspx](http://www.therapydogs.com/Become_A_Member.aspx) (last visited Jan. 29, 2013).

300. The United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, tracks violent and property crimes, but does not include animal abuse in these categories. *FAQ, What Type of Crime Does NCVS Measure?*, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=qa&iid=473> (last visited Jan. 29, 2013). The Federal Bureau of Investigation also tracks certain crimes, but not

data is limited.<sup>301</sup> One of these sites found that the cases reported on the site reflect that males are more likely than females to abuse animals and that beginning with the age of ten, the number of reported abusers increases with age until middle age, then declines.<sup>302</sup>

A few counties in New York have established animal abuse registries.<sup>303</sup> Legislation has been proposed in several states establishing statewide registries.<sup>304</sup> The purpose of these registries is to provide the ability to track persons who have been convicted of animal abuse to help prevent them from gaining access to animals.<sup>305</sup> Unfortunately, without accurate statistics, it is difficult to assess the risk to animals specifically related to their interaction with older adults in the general context of abuse.<sup>306</sup>

A link between domestic violence and animal cruelty has been established by several studies.<sup>307</sup> Scholars have hypothesized that there may also be a link between animal abuse and older adult welfare issues.<sup>308</sup> An estimated 4%–6% of the elderly are abused.<sup>309</sup> A recent

animal abuse. *Uniform Crime Reports, UCR General FAQs*, FED. BUREAU OF INVESTIGATION, [http://www.fbi.gov/about-us/cjis/ucr/frequently-asked-questions/ucr\\_faqs08.pdf](http://www.fbi.gov/about-us/cjis/ucr/frequently-asked-questions/ucr_faqs08.pdf) (last visited Jan. 29, 2013). There are a few databases available online that purport to keep track of animal abuse. *E.g.*, *The National Animal Abuse Registry*, THROUGH THEIR EYES, <http://www.inhumane.org/>; *Animal Abuse Crime Database*, PET-ABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database.php](http://www.pet-abuse.com/pages/cruelty_database.php).

301. *Animal Abuse Crime Database, Database Disclaimer*, PET-ABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database/disclaimer.php](http://www.pet-abuse.com/pages/cruelty_database/disclaimer.php) (last visited Jan. 29, 2013) (stating that the information on the website is provided as public service and is intended to be used as reference material, but the records are not official records).

302. *Animal Abuse Database Statistics — Life Cycle of Abuse with Gender Separation*, PET-ABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database/statistics/ages\\_male\\_vs\\_female.php](http://www.pet-abuse.com/pages/cruelty_database/statistics/ages_male_vs_female.php) (last visited Jan. 29, 2013). The numbers began decreasing after the age of forty for men and fifty for women. *Id.*

303. Richard Simon, *Laws Would Require Animal Abusers to Register: Florida, Colorado, Arizona and Other States Have Proposed the Measures*, L.A. TIMES, Jan. 22, 2012, at 9 (discussing proposed legislation and the establishment of registries in Suffolk County, New York, and two other counties in New York). Westchester County, New York, also established a registry. *Registry for Animal Abusers OK'd*, JOURNAL NEWS, Nov. 17, 2012, at A3.

304. Simon, *supra* note 303, at 9.

305. *Id.* (discussing the registries and the requirement in the New York registries to require shelters and pet stores check the registry prior to the adoption or sale of animals).

306. One of the difficulties is that many cases relating to abuse do not list the age of the offender. Abuse can occur in any environment. In a case relating to a sexual assault by a male resident against a female resident of a nursing home, the male resident had previously been observed using cats as masturbation aids and otherwise acting inappropriately with the animals. *Healthcare Ctrs. of Tex., Inc. v. Rigby*, 97 S.W.3d 610, 614 (Ct. App. Tex. 2003). The case does not indicate whether any of the cats were harmed. *Id.*

307. Catherine A. Faver & Elizabeth B. Strand, *Domestic Violence and Animal Cruelty: Untangling the Web of Abuse*, 39 J. SOC. WORK ED. 237, 240–44 (2003) (describing studies illustrating the link).

308. Peak & Ascione, *supra* note 15, at 38.

project created an assessment protocol to gather information on animal-abuse issues implicated in cases of the abuse of elder adults and vulnerable adults in the State of Utah.<sup>310</sup> This assessment protocol is similar to those used to explore the connection of domestic violence and animal abuse.<sup>311</sup>

This study surveyed 200 Adult Protection Services professionals in forty states.<sup>312</sup> Seventy-five percent of these professionals reported that “pet welfare issues complicated the process of providing services to older adults (e.g., older adults refusing relocation if their pets were not allowed to accompany them).”<sup>313</sup> In addition, “35% of the respondents indicated that older adults described pets being threatened or harmed,” and “92% suggested that older adult self-neglect may co-occur with neglect of pets.”<sup>314</sup> The researchers found that states currently do little to assess issues relating to pets in the home.<sup>315</sup>

The research also found that anecdotal responses indicate that the “three most frequent pet-related concerns noted by Adult Protective Services workers were: an elder’s inability to manage his/her pets, older adults spending money on their pets instead of themselves, and the lack of a safe place for pets to stay during emergency situations or natural disasters.”<sup>316</sup> As with domestic violence, generally, the companion animals in the home can be used to coerce the victim.<sup>317</sup> The researchers conclude by determining that, if the ultimate goal is to achieve effective intervention in cases of elder abuse, it is necessary to have more information, including information about the role of companion

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309. *What Is Elder Abuse?*, NAT’L COMMITTEE FOR THE PREVENTION OF ELDER ABUSE, <http://www.preventelderabuse.org/elderabuse/> (last visited Jan. 29, 2013). Elder abuse consists of all types of abuse, including domestic violence, neglect, and financial abuse. *Id.*

310. Peak & Ascione, *supra* note 15, at 39.

311. *Id.* at 39.

312. *Id.* at 40.

313. *Id.*

314. *Id.*

315. Peak & Ascione, *supra* note 15, at 43–44. Anecdotal information is collected that may relate to companion animals in the home, such as whether an Adult Protective Services worker noted the presence of a potentially dangerous animal as a safety-related issue. *Id.* at 44.

316. *Id.* at 45. *See also* Huss, *Rescue Me*, *supra* note 68, at 2063–64 (discussing the issue of pets in disaster situations); Rebecca J. Huss, *The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and Their Animal Companions*, 43 VAL. U.L. REV. 1131, 1136 (2009) (discussing animals in disasters and the PETS Act that was passed in 2006 providing that local and state preparedness operation plans take into account pets and service animals).

317. Peak & Ascione, *supra* note 15, at 46. *And Finally . . . Son Threatened to Kidnap Cat*, CHI. TRIB., Sept. 6, 2007, at 10 (reporting on a Rhode Island man charged with extorting more than \$20,000 from his seventy-eight-year-old mother by threatening to kidnap her cat and demanding ransom).

animals.<sup>318</sup> Research on the link between abuse of the elderly and animal abuse is in its inception, with much work ahead.

### 3. Hoarding

One specific type of abuse that has been studied in more depth is that of an animal hoarder.<sup>319</sup> There has been increased attention paid to these cases in recent years.<sup>320</sup> Hoarding appears to have a psychological basis.<sup>321</sup> Although there is no systematic reporting of cases, the following criteria are often used to determine whether there is a problem with animal hoarding.<sup>322</sup> First, there is generally more than the typical number of companion animals in the household.<sup>323</sup> The second factor is the inability to provide minimal standards of care, with the impact of this resulting in illness or death to the animals.<sup>324</sup> The final factor is that the person denies that he or she is unable to provide minimal care and that there is a negative impact on the animals, household, or other human members of the household.<sup>325</sup>

There have been several studies examining animal hoarding.<sup>326</sup> Of

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318. Peak & Ascione, *supra* note 15, at 47.

319. See generally, THE HOARDING OF ANIMALS RESEARCH CONSORTIUM, <http://vet.tufts.edu/hoarding/> (last visited Jan. 29, 2013) (discussing a group of researchers collaborated over a nine-year period to increase awareness about the disorder).

320. Arnold Arluk et al., *Press Reports of Animal Hoarding*, 10(2) SOC'Y & ANIMALS 113, 117-30 (2002) (exploring the emotional themes used by the press to describe animal hoarding and finding that they present an inconsistent view of the problem); Jessica Tremayne, *Can You Identify Animal Hoarders? New Legislative Push Binds Practitioners to Report Cases*, DVM NEWSMAGAZINE, Feb. 2005, at 12 (discussing hoarders' self-identification and new legislation in California requiring veterinarians to report suspected animal abuse or cruelty to the appropriate law enforcement agency pursuant to CAL. BUS. & PROF. CODE § 4830.7).

321. Lisa Avery, *From Helping to Hurting: When the Acts of "Good Samaritans" Become Felony Animal Cruelty*, 39 VAL. U.L. REV. 815, 835-38 (2005) (discussing theories for animal hoarding's psychological roots).

322. Lewis Griswold, *Animal Hoarding: When Pet Owners Lose Control*, FRESNO BEE (Modified Dec. 26, 2010 at 10:58pm), <http://www.fresnobee.com/2010/12/25/2210120/animal-hoarding-when-pet-owners.html> (reporting that the American Society for Prevention of Cruelty to Animals estimates that there are 2,000-3,000 hoarding cases in the United States each year, with the average number of animals per incident at 200).

323. Gary J. Patronek, *Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult to Study Population*, 114 PUB. HEALTH REP. 81, 84 (Jan.-Feb. 1999). Note that the number of animals does not define a hoarder; it is the inability to provide acceptable care that is key. *Id.*

324. *Id.*

325. *Id.*

326. E.g., Gary J. Patronek & Jane N. Nathanson, *A Theoretical Perspective to Inform Assessment and Treatment Strategies for Animal Hoarders*, 29 CLINICAL PSYCHOL. REV. 274, 2 (2009) (reviewing several studies in connection with consideration of developmental factors that relate to animal hoarding); Hoarding of Animals Research Consortium, *Health Implications of*

specific relevance to this Article is the relatively high percentage of hoarding cases that involve older adults.<sup>327</sup> According to one study, a majority of hoarders were female and about half of the hoarders lived in single-person households.<sup>328</sup> More than 46% of the hoarders identified in the study were sixty years of age or older.<sup>329</sup> Another study found that 40% of hoarding complaints to local health departments involve elder services agencies.<sup>330</sup>

The animals most frequently involved in hoarding cases are cats and dogs.<sup>331</sup> Animals kept by hoarders are very likely receiving substandard care. One study reported that animals were found dead or in poor condition in 80% of hoarder cases.<sup>332</sup>

There are other public policy issues relating to hoarders, including health and safety implications for the individual and community.<sup>333</sup> Of significance is that all forms of hoarding carry the risk of elder neglect, including self-neglect, and that dependent or vulnerable adults or children are found in 10%–15% of hoarding cases.<sup>334</sup>

One part of the solution is to make certain specific laws combat the problem of hoarding.<sup>335</sup> The general provisions in anti-cruelty statutes

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*Animal Hoarding*, 27 HEALTH & SOC. WORK 125, 125 (2002) [hereinafter *Health Implications*] (discussing studies on animal hoarding).

327. Gail Steketee et al., *Characteristics and Antecedents of People Who Hoard Animals: An Exploratory Comparative Interview Study*, 15 REV. GEN. PSYCHOL. 114, 115 (2011) (reporting on studies that suggest that animal hoarders are usually unmarried, middle-aged women (fifty years or older) who are socially isolated).

328. Patronek, *supra* note 323, at 84 (finding 76% of the cases involved females).

329. *Id.*

330. Gail Steketee et al., *Hoarding by Elderly People*, 26 HEALTH & SOC. WORK 176, 176 (2001).

331. Patronek, *supra* note 323, at 84.

332. *Id.* Poor condition is described as very malnourished, poor hair coat, or with obvious disease or injury. *Id.*

333. Randy O. Frost et al., *Hoarding: A Community Health Problem*, 8(4) HEALTH & SOC. CARE IN THE COMMUNITY 229, 229 (2000) (discussing health concerns of hoarding and distinguishing between animal hoarding and other types of hoarding).

334. *Common Questions About Animal Hoarding*, HOARDING OF ANIMALS RESEARCH CONSORTIUM, <http://vet.tufts.edu/hoarding/abthoard.htm#A1> (last visited Jan. 29, 2013). Hoarders also frequently acquire additional animals through breeding, adding to the companion animal overpopulation problem. Patronek, *supra* note 323, at 84 (finding that planned breeding accounted for 13% of the accumulation of animals and unplanned breeding accounted for approximately 39% of the acquisition of animals).

335. Megan L. Renwick, *Animal Hoarding: A Legislative Solution*, 47 U. LOUISVILLE L. REV. 585, 604–05 (2009) (proposing aspects of legislation dealing with hoarding). Note that there are several types of hoarders and different approaches may be more effective on one type or another. ANIMAL HOARDING: STRUCTURING INTERDISCIPLINARY RESPONSES TO HELP PEOPLE, ANIMALS AND COMMUNITIES AT RISK 20 (Gary J. Patronek et al. eds., 2006) [hereinafter ANIMAL HOARDING] (identifying the types of hoarders as exploiter, rescuer, and overwhelmed caregiver); Griswold,

have not been found to be effective in addressing the problem, in part because of conflicting goals of prosecution of the offender and concerns for the animals.<sup>336</sup>

The first state to have a statutory provision explicitly dealing with animal hoarding was Illinois.<sup>337</sup> The criteria discussed above can determine if a person is a hoarder.<sup>338</sup> A person fitting the hoarding criteria, failing to provide minimal care<sup>339</sup> to each of the animals under his or her care, may be ordered by a court to undergo a psychological or psychiatric evaluation and treatment at his or her expense.<sup>340</sup>

In 2008, Hawaii enacted legislation establishing a misdemeanor offense of animal hoarding.<sup>341</sup> An individual can be convicted of animal hoarding if the person:

[I]ntentionally, knowingly or recklessly: (a) Possesses more than fifteen dogs, cats, or a combination of dogs and cats; (b) Fails to provide necessary sustenance for each dog or cat; and (c) Fails to correct the conditions under which the dogs or cats are living, where conditions injurious to the dogs', cats', or owner's health and well-being result from the person's failure to provide necessary sustenance.<sup>342</sup>

In 2011, the State of Wyoming passed legislation that established the crime of household pet animal cruelty if an individual: "(i) Keeps any household pet in a manner that results in chronic or repeated serious physical harm to the household pet or (ii) Keeps the household pet

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*supra* note 322 (discussing that some hoarders attempt to justify their actions by saying they are rescuing animals).

336. Colin Berry et al., *Long-Term Outcomes in Animal Hoarding Cases*, 11 ANIMAL L. 167, 179 (2005) (discussing the tradeoff of negotiating a plea bargain for a lesser charge in exchange for legal custody of the animals).

337. 510 ILL. COMP. STAT. 70/2.10 (2012); Kate Thayer, *Law May Cost Animals' Lives Some Say*, ST. LOUIS POST DISPATCH, Jan. 20, 2005, at D03 (discussing the changes to Illinois law).

338. 510 ILL. COMP. STAT. 70/2.10 (2012):

"Companion animal hoarder" means a person who (i) possesses a large number of companion animals; (ii) fails to or is unable to provide what he or she is required to provide under Section 3 of this Act [510 ILCS 70/3]; (iii) keeps the companion animals in a severely overcrowded environment; and (iv) displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the companion animals are living and the deleterious impact they have on the companion animals' and owner's health and well-being.

*Id.*

339. The care is defined as "(a) sufficient quantity of good quality, wholesome food, and water; (b) adequate shelter and protection from the weather; (c) veterinary care when needed to prevent suffering; and (d) humane care and treatment." 510 ILL. COMP. STAT. 70/3 (2012).

340. 510 ILL. COMP. STAT. 70/3 (2012).

341. HAW. STAT. ANN. § 711-1109.6 (2012).

342. *Id.*

confined in conditions which constitute a public health hazard.”<sup>343</sup>

Although it is a positive step that jurisdictions are attempting to deal with the specific issue of hoarding legislatively, hoarding situations are notoriously difficult to resolve.<sup>344</sup> A comprehensive response is necessary to control the behavior that causes harm to both the animals and humans in the home.<sup>345</sup> Providing for long-term monitoring and mandatory counseling is also recommended to decrease the likelihood of recurrence and damage caused by the problem.<sup>346</sup>

### C. Ethical Issues Relating to Companion Animals

Rarely do academic discussions about the ethical issues relating to humans’ interaction with animals focus on domestic animals acting as companions or assisting humans with disabilities.<sup>347</sup> Given the current status of animals as property, animals are only protected when it is in the interest of humans.<sup>348</sup>

Commentators have considered the moral implications of keeping pets.<sup>349</sup> Abolitionist theory would argue that it is wrong to continue bringing companion and other domesticated animals into existence and would support sterilization programs.<sup>350</sup> It is also consistent with abolitionist theory to participate in rescue and adoption efforts that lead to the animals being accorded inherent value.<sup>351</sup> Under the abolitionist theory, there would come a time when there would no longer be pet keeping as it is currently practiced.<sup>352</sup>

Welfarist theory would generally accommodate keeping companion

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343. WYO. STAT. § 6-3-203(p) (2012).

344. ANIMAL HOARDING, *supra* note 335, at 1 (discussing the fact that merely prosecuting for animal hoarding will result in almost complete recidivism).

345. *Id.* at 2 (summarizing the manual that includes identifying agencies that must work together to achieve a successful intervention). *See also*, Berry, *supra* note 336, at 188 (discussing the need for communication among agencies to identify, rehabilitate, and monitor hoarders).

346. Berry, *supra* note 336, at 188.

347. *But see* Tzachi Zamir, *The Moral Basis of Animal-Assisted Therapy*, 14:2 SOC’Y & ANIMALS 179, 179-195 (2006) (discussed *infra* notes 378-80 and accompanying text).

348. *See, e.g.*, Gary L. Francione & Anna E. Charlton, *Animal Advocacy in the 21st Century: The Abolition of the Property Status of Nonhumans*, in ANIMAL LAW AND THE COURTS: A READER 7, 7 (Taimie L. Bryant et al. eds., 2008) (discussing the fact that animal interests are only protected when it is economically beneficial for humans).

349. *E.g.*, Leslie Irvine, *Pampered or Enslaved? The Moral Dilemmas of Pets*, 24 INT’L J. SOC. & SOC. POL’Y 5, 5-14 (2004).

350. Francione & Charlton, *supra* note 348, at 27-28. Supporting the idea that Trap, Neuter, Return programs for feral cats are also consistent with abolitionist theory. *Id.* at 28.

351. *Id.* at 27.

352. Irvine, *supra* note 349, at 14 (discussing the animal rights perspective and the conclusion that under this theory it is immoral to keep animals for our pleasure).



animals, subject to changing certain practices, such as aversive training methods, to ensure that the animals are treated humanely.<sup>353</sup> Under the welfarist theory, breeding pure-breed dogs and cats is problematic because the pressures to achieve specific breed standards can cause health issues in the animals.<sup>354</sup> Educating the community on the appropriate treatment of animals would also be key to the welfarist perspective.<sup>355</sup>

One commentator considers the research that finds that nonhuman animals have emotions, cognitive capacities, and culture, among other attributes, and concludes, “our growing knowledge of animals brings profound obligations.”<sup>356</sup> “As it becomes clear that other animals are more like us than not, we must reconsider our treatment of them, even that which appears benign.”<sup>357</sup>

From a practical perspective, a dean of one of the veterinary colleges in the United States stated in a keynote address in 1984 that veterinarians reported that 50% of animal owners are irresponsible.<sup>358</sup> Even if that number is widely inaccurate today, hopefully given the increasing rates of sterilization and educational campaigns in the last thirty years, it is clear that irresponsible owners can adversely impact the health and well-being of animals.<sup>359</sup>

The American Veterinary Medical Association (“AVMA”) recently revised its *Guidelines for Responsible Pet Ownership*.<sup>360</sup> Of specific relevance to this Article is that the guidelines begin by stating that responsible pet ownership includes “committing to the relationship for the life of the pet,” but recognizing that may not be possible. It also lists “making arrangements if caring for the pet is no longer possible.”<sup>361</sup> Not surprisingly, providing preventative and therapeutic veterinary care is

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353. *Id.* at 11 (discussing the welfarist view and the necessity to alleviate suffering if pet keeping continues).

354. *Id.*

355. *Id.*

356. *Id.* at 5, 14.

357. *Id.* at 14.

358. L.K. Bustad & L. Hines, *Our Professional Responsibilities Relative to Human-Animal Interactions*, 25 CANADIAN VETERINARY J. 369, 372 (1984). Leo K. Bustad was the Dean of the Washington State University College of Veterinary Medicine for a decade and is a co-founder of Pet Partners formerly, known as Delta Society. *Biography of Leo K. Bustad*, PET PARTNERS, <http://www.deltasociety.org/Page.aspx?pid=387>.

359. *Cf.* Huss, *Rescue Me*, *supra* note 68, at 2064–65, 2094–96 (discussing decreasing rates of euthanization of animals over the past two decades and increasing rates of sterilization).

360. AVMA Policy, *Guidelines for Responsible Pet Ownership*, AM. VETERINARY MED. ASS’N, <https://www.avma.org/KB/Policies/Pages/Guidelines-for-Responsible-Pet-Ownership.aspx>. (last visited Dec. 6, 2013).

361. *Id.*

listed in the guidelines.<sup>362</sup> In addition, providing socialization, appropriate training, exercise, and mental stimulation to the pet are included in the guidelines.<sup>363</sup>

As another commentator stated: “few would disagree that when animals are housed and cared for in a manner enabling them to satisfy all their biological and behavioral (including social-psychological needs), and keep in good health, free from stress, pain and disease, they are being ‘responsibly’ treated.”<sup>364</sup> The challenge, of course, is to provide companion animals with what they need to thrive in our households, not just survive.

#### *D. Ethical Issues Relating to Animal-Assisted Activities and Service Animals*

Animals used in AAA, AAT, and as service animals implicate ethical and risk issues beyond those applicable to animals whose sole role is that of companionship. Commentators have raised concerns over some of the methods used to train service animals.<sup>365</sup> Some commentators argue that physical signs indicate dogs are stressed during certain training processes and due to the confinement to kennels during training.<sup>366</sup> The managing of expectations and the workload of service animals is another ethical issue.<sup>367</sup> A balance between work, rest, and play must be maintained.<sup>368</sup>

There can be a risk of injury to dogs if the dogs are being used as physical support or to pull wheelchairs.<sup>369</sup> Specific welfare concerns exist when a dog is being used to assist with disabilities where the

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362. *Id.*

363. *Id.* Additional guidelines relate to the choice of the pet, impact on other people, controlling a pet's reproduction, and making appropriate end-of-life care decisions. *Id.*

364. Dennis C. Turner, *Ethical Issues in Companion Animal Ownership, Use and Research*, in *FURTHER ISSUES IN RESEARCH IN COMPANION ANIMAL STUDIES* 26 (1996). Turner also discusses the ethical issue of sterilization and finds that it is ethically justifiable to sterilize cats. *Id.* at 28–29.

365. James A. Serpell et al., *Welfare Considerations in Therapy and Assistance Animals*, in *HANDBOOK ON ANIMAL-ASSISTED THERAPY THEORETICAL FOUNDATIONS & GUIDELINES FOR PRACTICE* 453, 466 (Aubrey H. Fine ed., 2006) (discussing the use of aversive conditioning to instruct assistance dogs).

366. Robert Hubrecht & Dennis C. Turner, *Companion Animal Welfare in Private and Institutional Settings*, *COMPANION ANIMALS IN HUM. HEALTH* 267, 273 (Cindy C. Wilson & Dennis C. Turner eds., 1998); Serpell, *supra* note 365, at 462–63 (discussing the changes in physical environments that occur to many assistance and service animals).

367. *Cf.* Wenthold & Savage, *supra* note 168, at 70. There can be psychological stress for dogs due to multiple handlers that may act inconsistently in institutional environments. *Cf. id.* at 71.

368. *Cf. id.* at 70–71.

369. Hubrecht & Turner, *supra* note 366, at 273–74 (discussing the necessity of good harness design to avoid injuries to dogs).

human is unable to maintain control over his or her physical actions.<sup>370</sup>

The use of ongoing veterinary inspections for service animals was the focus of another study considering the benefit of service dogs to humans.<sup>371</sup> Examinations of the dogs would include determining whether the animal is exhibiting signs of stress.<sup>372</sup> This study concluded that most recipients showed “a vigilance for their dog’s health and well-being beyond a mere concern to keep the dog fit for work.”<sup>373</sup>

The AVMA “wellness guidelines” for animals involved in AAA, AAT, and Resident Animal programs set forth many issues relating to these programs.<sup>374</sup> One of the guiding principles is that an animal used in any program is “protected from being harmed by participation in the program.”<sup>375</sup> Other guiding principles ensure that the animal is “behaviorally appropriate for the program” and relate to the animals’

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370. Kristen E. Burrows et al., *Factors Affecting Behavior and Welfare of Service Dogs for Children With Autism Spectrum Disorder*, 11 J. APPLIED ANIMAL WELFARE SCI. 42, 50–51 (2008) (discussing aggressive behavior by some children with autism that is often directed toward the dogs).

371. D.R. Lane et al., *Dogs for the Disabled: Benefits to Recipients and Welfare of the Dog*, 59 APPLIED ANIMAL BEHAV. SCI. 49, 50 (1998) (discussing the obligation an organization that places an animal in service has for ongoing care of an animal). Depending on the agreement with the person with a disability, if an organization that places a service animal is not satisfied with the care of the animal, or the actions of the handlers, the organization may reclaim or decertify the animal. Scott Wyland, *Blind Couple Lose Use of Guide Dogs: School for Companion Animals Decertifies Them After Abuse Allegations*, DAYTONA NEWS J., Aug. 19, 2007, at 03C (discussing the decertification of two guide dogs by the Leader Dogs for the Blind after officials had received complaints that the handlers did not have proper control over and abused the dogs).

372. Lane, *supra* note 371, at 50. Cf. Dorit Karla Haubenhofer & Sylvia Kirchengast, *Physiological Arousal for Companion Dogs Working With Their Owners in Animal-Assisted Activities and Animal-Assisted Therapy*, 9(2) J. APPLIED ANIMAL WELFARE SCI. 165 (2006). This study found that dogs used in AAT work were physiologically aroused when they engaged in therapy work. *Id.* at 168–71. The researchers could not determine whether the arousal indicated positive excitement or negative stress related to the activity. *Id.* at 165, 171. See also *CENSHARE: Signs of Stress in Companion Animals*, UNIV. OF MINN., <http://censhare.umn.edu/care06.html> (last visited Jan. 29, 2013) (describing signs of stress in companion animals and stating that “failure to recognize stress signals can affect the long-term physical and mental well-being of both the animals and humans in the environment”).

373. Lane, *supra* note 371, at 58.

374. AVMA, *Guidelines*, *supra* note 155. Pet Partners, formerly known as Delta Society, is an organization that promotes the use of therapy and service animals, and has a well-known program that trains and screens volunteers and their animals for visits to institutional environments. *How to Become a Registered Therapy Animal Team*, PET PARTNERS, <http://www.deltasociety.org/Page.aspx?pid=261> (last visited Jan. 29, 2013). Pet Partners’ Standards of Practice include provisions that require the handler to continually evaluate the effect of interactions with people on the animal’s health and that the animals are to be treated “with respect and in a responsible manner.” DELTA SOCIETY, STANDARDS OF PRACTICE FOR ANIMAL-ASSISTED ACTIVITIES & ANIMAL-ASSISTED THERAPY 43–44 (1996).

375. AVMA, *Guidelines*, *supra* note 155.

health to reduce the transmission of zoonotic diseases.<sup>376</sup> Animals should be “provided regular opportunities for play, quiet time, and rest” separate from the animals’ activities in therapy or as residential pets.<sup>377</sup> It is important to plan for the retirement of the animal, as service animals generally are not able to perform the tasks needed for their entire life.<sup>378</sup>

One scholar distinguished between different forms of AAT and has argued some are morally unobjectionable and others should be abolished.<sup>379</sup> The liberationist perspective that this scholar utilizes takes a broad view of the issue, breaking down the impact on various species that are used for AAT and raising concerns over some of the training methods used.<sup>380</sup> By considering the interests of the animals, the scholar concludes AAT programs utilizing horses and dogs are consistent with the welfare of those animals, but programs using other species of animals are exploitive regardless of whether any abuse occurs.<sup>381</sup>

Another commentator has suggested allowing only domesticated animals be used who have been trained using positive reinforcement techniques, and are properly housed and cared for.<sup>382</sup> In addition, this commentator believes “therapy/service animals are only to be considered where other forms of therapy/assistance have failed, or when there is a particular reason for using such animals (e.g., their socializing effects; a special relationship of the patient or disabled person to companion animals; cost effectiveness).”<sup>383</sup>

The discussion of the ethical issues relating to the use of service animals is in its nascent stage.<sup>384</sup> Presumably, as commentators continue

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376. AVMA, *Guidelines*, *supra* note 155 (articulating concerns over the bi-directional transfer of diseases among other issues).

377. *Id.* (including interventions consisting of a “vacation” for the animal, more breaks, or discontinuing the activity).

378. *Cf.* Wenthold & Savage, *supra* note 168, at 73–74.

379. Zamir, *supra* note 347, at 195.

380. *Id.* at 181, 183, 189, 195. Zamir cites to the prolonged period of training needed for dogs and monkeys and “breaking” a horse for utilization in a hippotherapy program. *Id.* at 181.

381. *Id.* at 195. Zamir stated that there is a broad, moral vindication of forms of AAT that rely on horses and dogs because “[a] world in which practices like AAT exist is an overall better world for these beings than one that does not include them.” *Id.* at 195.

382. Serpell, *supra* note 365, at 471–72 (setting forth ethical guidelines for the care and supervision of animals used in AAT or AAA programs).

383. *Id.*

384. M. Fejsakova et al., *Ethical Aspects Related to Involvement of Animals in Animal Assisted Therapy*, 53 FOLIA VETERINARIA 62, 62 (2009) (stating that “there is only very limited knowledge about the effect of the therapeutic activities on animals themselves”). The authors of this piece also state that the “majority of AAA/AAT animals are ‘imprisoned’ in systems in which they have little self-control over their social life and are unable to avoid unwanted social environment.” *Id.* at 63.

their philosophical work on the more general issue of humans' use of animals, this discussion will move forward as well. At this time, so long as the animals are well cared for, there appears widespread acceptance of the use of domesticated animals as companions and to assist humans with disabilities.

## VI. CONCLUSION

Based on popularity of pet ownership and the plethora of animal assisted activity programs, it is clear that many older adults enjoy having companion animals in their lives. The law provides limited protection for companion animal ownership, unless the animal is acting as an assistance or service animal.

Education about the resources available to assist older adults in obtaining, fostering, and caring for their animals should be made widely available. Rental housing, including continuing care communities, should consider allowing companion animals, with appropriate rules regarding their care and control. Design features facilitating the keeping of animals should be considered in developing and renovating structures. AAA and resident animal programs should be supported with robust rules regarding safety and well-being of the human and the non-human animal participants. Society can, and should, take measures to ensure that the relationship is positive for both older adults and companion animals.