



# PIT BULL PROBLEMS

*HUD and case law set the standards for liability when a resident gets bit or attacked by an animal.*

**THE FAIR HOUSING ACT** requires housing providers to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling.

When a resident requests a reasonable accommodation for an assistance animal, he or she is requesting an accommodation – an exception to either a “no pets” or a “breed restricted” policy. Remember: breed, size, weight and number limitations do not apply to assistance animals.

The problem is that many properties have breed, size and weight limitations for the purpose of avoiding potential liability issues when aggressive breeds or large dogs are present on the property. The question is, if you were required to allow assistance animals of any breed or size, what would be your liability if an assistance animal causes problems on your property?

## **HUD Guidance**

HUD is the agency responsible for investigating claims under the Act. HUD's interpretation of the Act provides important guidance on how the Act will be enforced. On April 25, 2013, HUD issued a notice regarding assistance animals.

In its notice, HUD stated the Act requires housing providers to modify or provide an exception to a “no pets” rule or a policy that permits a resident with a disability to live with and use an assistance animal in all areas of the premises where persons are normally

allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services. HUD stated that the request can also be denied if:

(1) The specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or

(2) The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Determining whether an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct. The individualized assessment cannot be based on the following: mere speculation, the fear of the type of harm or damage an animal may cause and evidence regarding harm or damage that another animal(s) has caused.

While it is clear that breed, size and weight limitations are not to be applied to assistance animals, according to HUD, the Act does not require housing providers to allow animals that would pose a direct threat to others at

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the property. However, an animal being a direct threat must be determined based upon the specific conduct of the animal, not on a generalization based upon the type or size of the animal.

## **Dangerous Animals: The Liability in Texas**

Texas case law clarifies when an owner is liable for having an animal that poses a danger to other residents. An owner has a duty to protect residents from dog attacks in the common areas of the property and will be held liable when a two-prong test is met. In order to prevail in a claim, an injured resident must show that:

- (1) The injury occurred in a common area under the control of the owner; and
- (2) The owner must have had actual or imputed knowledge of the dog's vicious propensities.

In *Mattox v. Timmerman*, a 2013 decision by an appellate court in Austin, the court

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considered a case involving a claim brought by a visitor of an apartment property. Mattox alleged that a large dog attacked him while he was visiting his friend who lived in an apartment community. Mattox alleged that the owner knew or should have known that a dangerous condition was present on the property, and failed to take steps to eliminate or reduce the unreasonably dangerous condition posed by the dog's presence.

However, the court held that even if Mattox could show that the dog's size and appearance were indicative of the dog's potentially dangerous nature, size and appearance alone are not the standard in Texas for imposing premises liability. The court ruled in favor of the owner, stating that there was no evidence to prove the owner had actual or constructive knowledge that the dog posed a dangerous condition. The mere fact that the dog was large, without more information, did not prove the dog was a dangerous animal.

## **What Can We Learn?**

HUD's interpretation of the Act and case law in Texas seems to be consistent in that an owner will not be responsible for a dog attack on property unless the owner knew or had reason to believe of the dog's vicious propensities. A dog's vicious propensities would not be apparent until the conduct of the specific assistance animal shows such dangerous propensities.

The Act does not allow properties to prohibit aggressive breeds or large animals, and Texas law does not hold you liable simply for having aggressive breeds and large dogs on your property as assistance animals. However, the Act suggests and Texas law requires, that properties take prompt action if an assistance animal, like any other animal, poses a direct threat to others in the community. Once the animal's conduct suggests aggressive or vicious propensities, the argument will stand that you now know or should know that the dog could pose a direct threat to others in the future. If a property knows or should know of aggressive or vicious propensities, you may be liable the next time the animal's conduct causes an injury to another.

If a resident has a disability and a disability-related need for an assistance animal, the resident is entitled to have the assistance animal. However, there are limits on your obligation to grant this accommodation. A resident is not entitled to have an assistance animal if that animal is a threat to others. By knowing your rights and responsibilities, you can minimize problems and your exposure to potential claims. 