Maine Human Rights Commission
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Memo

Date: November 2, 2012

To: Jill Duson, Compliance Manager

From: John P. Gause, Commission Counsel

Re: Advisory Opinion – Service animals and dangerous-breed liability insurance exclusion

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We have been asked the following question:

> I am a landlord in [Maine] and have a tenant with a therapy dog, which I know I have to allow even though I keep a strict "no dog" policy in the other units. I understand service/therapy dogs are not "pets" so they do not fall under the same rules. I have a few other tenants at different locations with therapy dogs and none of them are a problem. My concern with this particular dog is that it's a pitbull. My insurance carrier has a specific exclusion for any claims caused by a pit bull or other "attack breeds". While I do not agree with it, they are firm with that policy.
>
> So now I have a real dilemma. If I prohibit the therapy dog due to its breed I believe I am illegally discriminating. However, I can't run the risk of that dog attacking someone and having no insurance coverage. I can't seem to find anyone who can give me a definitive answer on what I can and cannot do. I find it hard to believe I'm the only person in the state what has faced this problem. Can I legally require the tenant to maintain an insurance policy on her therapy pitbull due to it being excluded from my own insurance policy? I have checked around with other insurance carriers and there are only a few that do not have a dog breed exclusion. For me to switch to one of these policies would be extremely expensive and time consuming. I want to abide by the law but I'm concerned it will cost me thousands to do so and even more if the dog should actually harm someone, as I could be held personally liable.

In answer to the question, the Maine Human Rights Act ("the Act") does not allow a landlord to make it a condition of tenancy that a tenant with a service animal

purchase liability insurance for the animal. The applicable provision in the Act makes it "unlawful housing discrimination":

> For any owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the housing accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

5 M.R.S. § 4582-A(3). Because it is unlawful to "discriminate against an individual with a physical or mental disability who uses a service animal," 5 M.R.S. § 4582-A(3), a landlord may not insist that only a tenant with a service animal obtain liability insurance. In addition, because the Act states that, "[t]he use of a service animal may not be conditioned on the payment of a fee," 5 M.R.S. § 4582-A(3), a landlord may not require that a tenant purchase liability insurance, which would effectively constitute a "fee."

Cc: Amy M. Sneirson, Executive Director