Companion Animals in NYC Apartments – 2009 Edition[1]

Federal, State and City Laws protect the rights of people, including the disabled, to have companion animals in their homes. For people with the disabilities, the laws that prohibit unlawful discrimination provide for rights to have a medically helpful companion animal. There is also*§ 27-2009.1 of the Administrative Code of the City of New York* (sometimes called the "3-month law") that New York City enacted in 1983. With these laws,courts and agencies have resolved the legal issues involving the rights of New York City apartment dwellers to keep companion animals.

People should not be discouraged by clauses in their leases or Coop or Condo house rules that often appear to prohibit companion animals or to require written permission. The laws protecting people with disabilities and the *3 month law* override no-pet clauses in leases, rendering the no-pet clause unenforceable. And the no-pet clause itself is not always as prohibitive as it seems. Unfortunately, people are often not aware of the laws pertaining to tenants and their companion animals, and may be forced to choose between their home and companion animals.

Sound legal advice obtained early in the course of events is essential. If it does become necessary to go to court, the chances of winning the case with attorneys' fees awarded are often good. Becoming familiar with the laws will help. What follows is a summary of those laws.*

Question No. 1. What is the 3 Month Law?

The *3 Month Law* provides that once a companion animal lives in a multiple dwelling (a building with three or more residential units) for three or more months, openly and notoriously (not hidden from the building's owners, their agents, and on-site employees), then any no-companion animal clause in a lease is considered waived and unenforceable.[1]

The law applies in New York City. Westchester County has a similar law.[2] New York City Housing Authority housing, which is not subject to the Law but is subject to federal law concerning pets in housing,[3] is discussed in Question No. 15. Companion animal guardians living in buildings with fewer than three units may have other defenses that were used before the 3 Month Law was enacted. (See Question No. 14 for more details.)

The Law applies in cooperative apartments.[4] As for condominiums, it applies to condominiums in Brooklyn, Queens and Staten Island, but does not apply to condominiums in Manhattan and the Bronx. Coops and condos will be discussed in more detail in Question No. 8. Someone who rents (but does not own) an apartment in a coop or condo, as a regulated or unregulated tenant, will be protected.

Question No. 2: What does it mean to keep your companion animal openly and notoriously?

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[1] This brochure was updated and originally written by Darryl M. Vernon.

"Notorious" does not mean that your companion animal is an outlaw. As with much legal jargon, the words "open" and "notorious" have been interpreted by the courts, and have generally been held to mean visible and apparent, *i.e.*, not hidden. Thus, most judges have tried to determine simply whether or not the companion animal was hidden in any active way.

For example, in *Matter of Robinson v. City of New York*,[5] the landlord argued that because Cindy Robinson's small dog, Miss Muffy, was paper trained and did not go for regular walks, the dog was therefore not kept openly and notoriously. The court disagreed and found that a companion animal does not have to go for daily walks to be open and notorious. Any other rule, the court said:

> "would lead to a conclusion that all small dogs or other animals whose masters elected to treat only as house companion animals could not have the benefit of the [*Pet L]aw*'s waiver even though they had been seen and noted by management personnel . . . such a reading is arbitrary and capricious also because it would seem to work most harshly against tenants who are house bound for one reason or another, such as age or disability, and who choose to have small dogs (or cats) as a companion without the need to walk them."

In *184 West 110th Street Corp. v. Marvits*[6], the Appellate Division cited *Robinson* in holding that openly keeping a companion animal can mean keeping evidence of the companion animal out in the open:

> "[T]he presence of the cats' litter box in the bathroom was an unmistakable indicium of cat ownership. The cats' shy nature and tendency to hide from strangers notwithstanding, respondent was not required to display the cats in public."

So, in essence, you are keeping a house-bound companion animal openly if you do not hide the animal or its effects. When building personnel come to your apartment for repairs or inspections, keep the companion animal, as well as its toys, food, dishes, etc., in plain sight, or where you normally keep them.

Question No. 3: In addition to keeping my companion animal openly for three months (i.e., not hiding my companion animal), am I also obliged to make certain that the actual owners and building agents have been told about him or her?

No. While you *may* need to make sure someone employed by or connected with the building sees your pet, it does not have to be the owner or managing agent.

In *Seward v. Cohen*,[7] an appellate court ruled that when building employees (even those employed as independent contractors) know of the companion animal, that starts the three months running. Thus, the actual owners or managers of the building do not need to know. For someone renting in a coop or condo, an appellate court recently ruled that knowledge of a building employee, even though employed by the coop or condo, triggered a waiver. This is so even though the coop or condo is not your landlord (the owner of your apartment is).[8]

The court also said that just keeping your companion animal openly and notoriously for three months may also be sufficient to trigger a waiver regardless of whether any building personnel actually knew about the companion animal because, in that case, they *should* have known. It was also found by a court in *Park Holding Co. v. Tzeses*[9] that the statute was intended to create an either/or requirement — either someone connected with the building knew about the companion animal for three or more months or the companion animal was simply kept openly for three or more months. However, a tenant would always have an easier time in court if he or she could prove that someone from the building actually knew about the companion animal. It may be useful to keep notes on when and where an employee or other agent of the owners or management observed (or should have observed) your companion animal, and who else was present at the time, to assist the court in determining if the building agents knew or should have known about the companion animal because of long-time open and notorious harboring of that companion animal.

Question No. 4. What if my landlord threatens that he or she will sue me for legal fees and evict me if I do not "get rid" of my companion animal?

Don't be intimidated by such tactics. You may have a good case, and if you win, you may win legal fees. If you do not prevail in the lower court, you can appeal. And in any case, even if you lose, the court will generally give you time to "cure" (e.g., place your companion animal in a good home) after the court renders a judgment. While in such an event you can lose legal fees, you will probably not lose your apartment if you comply with the court's order to remove your companion animal. To be careful, you should contact a lawyer seasoned in this area the moment a claim arises.

Question 5. Can my landlord evict me if I timely remove my companion animal from my apartment after he or she sends me a notice demanding that I remove my companion animal within a specified period of time?

No. You complied with your lease obligations by curing as requested. However, if you did have rights to keep your companion animal, *you may very well have hurt them by removing your companion animal*.

Question No. 6: Will the three-month period be extended if you enter into settlement talks with your landlord?

In one of the earlier cases under the *Pet Law*, it was ruled that if a landlord delays starting suit to remove your companion animal beyond the three month period because the landlord reasonably believes that there will be a settlement, then the three-month period may begin to run only after settlement talks end.[10] But a higher court later ruled[11] that this case should not be followed. Nonetheless, since settlement talks may still be detrimental to your rights under the *Pet Law*, it is best to consult a legal expert in this area as early as possible.

Similarly, if your landlord calls or writes to you about your companion animal, you should immediately consult an attorney. Save all letters and note the details of all discussions.

Question No. 7. When and how must the landlord start a legal action under the Pet Law?

Under the *Law*, a landlord must actually commence a suit within the three-month period to enforce the landlord's rights and not simply serve notice that he or she intends to bring suit.[12] Commencement of a lawsuit means service of a "summons and complaint" or of a "notice of petition and petition." One should be aware, however, that where the landlord's suit is dismissed on technical grounds, such as improper service of legal papers, a new suit commenced by the landlord may be considered timely as long as the original one was.[13]

Question No. 8: Does the Law apply to cooperatives and condominiums?

The *Law* states that it applies to tenants with leases in multiple dwellings. People who live in cooperatives have proprietary leases. So, about a year after the *Law* was enacted, the courts held that it applies to cooperative buildings. In *Corlear Gardens Housing Co., Inc. v. Ramos*,[14] the court stated that "all tenants, including cooperative tenants, are in need of the protection of the *Pet Law*."[15] Thus, as long as the cooperative has three or more residential units, the Pet law applies.

Condominiums present a different issue, because even though a condominium's by-laws and rules can restrict companion animals much like a lease, there is no document entitled a "lease" between the unit owner and the condominium board. However, an appellate court covering Brooklyn, Queens, and Staten Island,[16] has held that the *Law* applies to condominiums, while the Appellate Division covering the Bronx and Manhattan came to the opposite conclusion, ruling that the *Law* does not apply to condominiums.[17] Thus, for now, the application of the *Law* to condominium owners will depend on where you live. (There is an appeal pending that might change this.) Keep in mind that, while a condominium owner may not be covered by the *Law*, a person who is renting, or subletting, a condominium and is not the owner of the unit is subject to a lease agreement (even if oral) and will, therefore, most likely have the protection of the *Law.*

Question No. 9: Am I allowed to get a new companion animal?

You may have been able to keep your first companion animal in your apartment, but the time may come when your first companion animal is no longer with you and you realize that you want very much to have *another* companion animal, or you wish to get an additional companion animal. Are you allowed by law to have one? Do the three months have to start all over again each time you get another companion animal?

Courts in New York had held for more than a decade that once the no-pet clause is waived or found to be unenforceable for your companion animal, it could not be revived for a subsequent companion animal. Thus, the next companion animal had been regularly allowed, whether or not the three months had run a second time. Yet the Appellate Term for Manhattan and the Bronx held in 1996 that the waiver of the clause for your first

companion animal will not act as a waiver of the no-pet clause for your second companion animal.[18] Thus, under current law, for people living in Manhattan and the Bronx, the three months has to run all over again for any new companion animal.

Question No. 10: What if I have no lease, or a lease without a prohibition against pets?

Then you have not agreed that you won't have companion animals, and your landlord cannot claim you've breached an agreement if you get a companion animal.

Question No. 11: For the *3 Month Law* to apply, must I first prove my landlord's bad faith motive, i.e., that my companion animal is being used by the landlord as an excuse to evict me?

No.

Co-ops, condos and landlords have argued that the *3 Month Law* should be enforced only when there is proof that the building is retaliating against the tenant for some reason other than a real desire to remove the tenant's companion animal. However, nothing in the statute requires such a reading. Indeed, New York already has a statute protecting tenants from retaliatory eviction.[19]

But most importantly, a court in *Metropolitan Life Insurance v. Friedman*[20] held that proof of a retaliatory motive is not required. The court stated:

> "We reject plaintiff's argument that the statutory three-month period is inapplicable absent the finding that a no-pet provision is being used as a pretext for a retaliatory eviction or some other bad faith motive."

Thus, if your landlord is retaliating against you for something you have the legal right to do (such as making a good faith complaint to a governmental authority) you may have an additional defense in an eviction proceeding, but you do not have to first prove this to win under the *Pet Law*.

Question No. 12. What happens if my companion animal is deemed a "nuisance?"

If your companion animal is a nuisance, then the *Pet Law* will not help you. Thus, the landlord can bring a claim that your companion animal is a nuisance even after three months have passed. Your companion animal may be deemed a nuisance for substantially interfering with your neighbors' use of their apartments (e.g., frequent urination or defecation in the hallway or lobby, constant barking, attacking other tenants, or strong, objectionable odors coming from your apartment). If many of your neighbors come to court complaining that their rights as tenants are substantially impaired by your companion animal's behavior, then the court may find that your companion animal is indeed a nuisance. However, courts have held that an isolated incident (such as an occasional accident in the lobby) does not make your companion animal a nuisance.

If your companion animal is a nuisance, you should get the expert help of an animal behaviorist and/or a trainer who may be able to correct the problem. If your companion animal's behavior changes quickly enough, a court may find that you need not lose your home or your companion animal.

Question No. 13: If I am disabled and have a companion and/or service animal, what are my rights?

In addition to any rights you have under the*3 Month Law,* you may be protected by Federal, State and City laws allowing you to keep your companion animal.

Most people are aware that the law protects your right to keep a hearing assistance or seeing eye guide dog in your home. People with other disabilities who have a service animal are also protected. For example, *New York Civil Rights Law §§ 47* provides that "no person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because said person is a person with a disability and is accompanied by a guide dog, hearing dog, or a service dog." This applies to housing and includes service dogs for a wide range of physical, mental and medical impairments. The law also covers service dogs living with a person while the dogs are in training. Federal[21] and local laws also provide protection for persons with disabilities who have service animals.

Under the federal *Fair Housing Act*[22] people with disabilities have been successful in arguing that, in certain circumstances, landlords must allow them to have a companion animal who provides them with emotional support as a reasonable accommodation.[23] In this situation, the companion animal does not have to be qualified as a guide dog, hearing dog, or other type of service animal. Disabilities do not necessarily have to be physical and may include such conditions as depression. Therefore, if a companion animal is determined to be medically necessary by your health care provider, a court may hold that the pet must be permitted to live in your home with you. Similar rights also exist under State and City law.

Here too get early legal counseling because a landlord must be advised of your disability and of your right to have an emotional support animal. If your landlord refuses to make a reasonable accommodation after being notified of your rights, relief can be sought at the New York City Commission on Human Rights, at the NYS Division of Human Rights, and at the United States Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity Enforcement and in Federal and State courts.

For a full description of your rights contact an attorney knowledgeable in this area (you can find a lawyer through the City Bar's Legal Referral Service, 212-382-7373 or www.nycbar.org.org) or, for advice, you can contact: ASPCA Legal Department, 424 East 92nd Street, New York, NY 10128; Delta Society, 289 Perimeter Road, Renton, WA, 98057; Canine Companions for Independence, Northeast Regional Training Center, P.O. Box 205, Farmingdale, NY, 11735; Guiding Eyes for the Blind, 611 Granite Springs Road, Yorktown Heights, NY, 10598; or Canine Hearing Companions, 247 East Forest Grove Road, Vineland, NJ, 08360.

Question No. 14: What if I do not live in a building with three or more units and thus am not protected by the *3 Month Law*?

In situations in which the *Law* does not apply, there is still hope. First, the laws protecting the rights of people with disabilities apply regardless of the size of the building.

Also, since the laws of New York give a landlord the right to proceed summarily, (i.e., get a determination more quickly than in most courts,) this right is balanced with strict rules.[24] Thus, even before the 3 Month *Law* was passed, courts held that if a lease does not clearly tell the tenant that he or she may be evicted for having a companion animal, the tenant cannot be evicted on that ground.

Just as the lease clause must be abundantly clear, the predicate notice (i.e., the notice to cure or terminate that is usually required before a lawsuit may begin) must also be unequivocal, and a court may hold that the particular lease clause that is allegedly violated must be cited in the notice.

If rent is accepted after the termination date, but before commencement of the suit, the notice will be considered void and the landlord must start again.

New York law[25] provides that a residential lease (or other consumer contract) that has printed type smaller than eight points or is unclear is not admissible in evidence. So, if the no-pet clause provision is visibly unclear, or the print is too small, then the landlord will not be able to place the lease in evidence to prove a case against a person harboring a companion animal.

Question No. 15: What may happen if I live in a building with three or more units but less than six units?

If you live in a building with three or more units but fewer than six units you are protected by the *Law*, but your rights to renew your lease generally *may* be limited because you may not be protected by rent stabilization or rent control. If you live in such a building you should contact an attorney immediately if your landlord contacts you about your companion animal.

Question No. 16: What happens if I live in New York City Housing Authority housing?

Some 180,000 apartments owned and operated by the New York City Housing Authority (NYCHA) are exempt from the benefits of the *Pet Law*.

But under federal law[26], companion animals are allowed in federal housing under certain conditions. NYCHA has promulgated a pet policy which allows tenants to have one cat or one dog (who is not expected to weigh more than 40 pounds when fully grown). NYCHA is also allowing some companion animals who were already living in NYCHA housing when the new policy was enacted to stay.

Under this policy, you will be required to register any cat or dog in your household and pay a one time non-refundable pet registration fee which will be waived for people in senior buildings and people with service animals. All cats and dogs over three months must be spayed or neutered and be vaccinated against rabies.

Also, all of the provisions protecting the rights of people with disabilities outlined in Question 13 are applicable in NYCHA apartments.

If you live in New York City Housing Authority apartments, and you are given a notice to appear before the building's management or other agent because you have a companion animal, you should *immediately* contact an attorney. Do not go to management alone and without getting legal advice.

IT CANNOT BE OVEREMPHASIZED that, regardless of the type of housing involved, legal advice from an expert in issues pertaining to animals should be obtained as soon as problems arise regarding your pet and before you are about to get a new apartment or pet. Sound legal counsel obtained early may prevent or minimize problems, whereas negotiating with management or owners yourself could have a detrimental effect on your case.

* This brochure is not offered as legal advice and should not be relied upon for particular matters without the independent advice of counsel qualified in these issues. The law in this area changes frequently, and the information provided herein may be out of date. For counsel you can contact the Legal Referral Service of the Association of the Bar of the City of New York and the New York County Lawyers' Association (212-626-7373) or your local bar association or humane organization.

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[1] § 27-2009.1 of the New York City Administrative Code provides:

> "… b. Where a tenant in a multiple dwelling openly and notoriously for a period of three months or more following taking possession of the unit harbors, or has harbored a household pet or pets . . . and the owner or his or her agent has knowledge of this fact, and such owner fails within this three-month period to commence a summary proceeding or action to enforce the lease provision prohibiting the keeping of such household companion animal, *such lease provision shall be deemed waived*. . . ." c. It shall be unlawful for an owner or his or her agent, by express terms or otherwise, to restrict a tenant's rights as provided in this section. *Any such restriction shall be unenforceable and deemed void as against public policy*." [emphasis added]

[2] Westchester County Law §§ 695.01 *et seq*.

[3] 42 USC §1437z-3.

[4] In *Corlear Gardens Housing Co., Inc. v. Ramos,* 126 Misc.2d 416, 481 N.Y.S.2d 577 (Sup. Ct. Bronx Co., 1984), the court made three basic and crucial findings. First, the Pet Law did not violate the Urstadt Law which "was not intended to place restrictions on a municipality other than with respect to rent control regulation. . . . The Urstadt law was passed by the legislature to restrict municipalities from enacting more stringent economic and rent controlled restrictions and in order to encourage the construction of new housing in the City of New York . . . " 481 N.Y.S.2d at 579. Second, the court found that there was no reason to exclude cooperative owner-shareholders and tenants from the *Pet Law*. Last, the court found that the *Pet Law* was retroactive because it was remedial legislation. The court cited *Garsen v. Nimmo,* NYLJ 2/14/84 p. 14 col. 4, 12 HCR 27B, which found that the *Pet Law* was retroactive "in light of the law's remedial purpose as expressed in the stated legislative declaration——to wit that under the existence of the continued housing emergency it is necessary to protect pet owners from retaliatory eviction and to safeguard the health, safety and welfare of tenants who harbor pets . . . [and] to prevent potential hardship

and dislocation of tenants within this city (See *Gordon & Gordon v. Matavan, Ltd.*, 108 Misc.2d 349, *aff'd* 85 A.D.2d 937; *Tegreh Realty Corp. v. Joyce*, 88 A.D.2d 820)." And apart from the above cases, the legislative declaration of the *Pet Law* states that "because household pets are kept for reasons of safety and companionship . . . it is hereby found that the enactment of the provisions of this section is necessary to prevent potential hardship and physical dislocation of tenants in this city" (New York City Admin. Code § 27-2009.1).

[5] *Matter of Robinson v. City of New York*, 152 Misc.2d 1007, 579 N.Y.S.2d 817 (Sup. Ct. NY Co., 1991).

[6] *184 West 110th Street Corp. v. Marvits*, 2009 NY Slip Op. 01327, February 24, 2009 (App. Div. 1st Dept.).

[7] *Seward v. Cohen*, 287 A.D.2d 157, 734 N.Y.S.2d 42 (1st Dept., 2001).

[8] *1725 York Venture v. Block*, 19 Misc.3d 81, 860 N.Y.S.2d 786, (App. Term 1st Dept., 2008).

[9] *Park Holding Co. v. Tzeses, 17 HCR 251* (Civ. Ct.NY), *aff'd* NYLJ 4/13/89, p.22 col. 6 (App. Term, 1st Dept. 1988). The lower court in *Tzeses* stated:

> "*Section 27-2009.1*: A landlord waives the right to enforce a no-pet clause by failing to commence suit within three months after learning of an animal's presence. The waiver applies where landlord lacks actual knowledge but is chargeable with such knowledge by the tenant's conduct—e.g., frequent goings and comings in view of building employees. [Note: the statute speaks of the tenant's harboring the pet "openly and notoriously . . . *and* the owner or its agent hav[ing] knowledge of this fact']. Thus, the defense is established even if tenant proves only constructive notice [citations omitted]."

[10] In *Park Holding v. Lavigne*, 130 Misc.2d 396, 498 N.Y.S.2d 248 (App. Term 1st Dept., 1985) the Appellate Term held that a belief that the matter was about to be settled allowed the landlord to refrain from instituting court proceedings, as long as the service of the notice to cure and notice to terminate had come within the three month period. However, subsequently, the Appellate Term, in *Park Holding Co. v. Tzeses*, *supra* and *Arwin 74th Street Co. v. Rekant*, NYLJ 12/19/88 p.23, col.4 (App. Term 1st Dept.) *aff'd* 151 A.D.2d 1056 (1st Dept. 1989), held that an action or proceeding is "commenced" (for purposes of the *Pet Law*) by service of process of the actual lawsuit which must be done within three months absent *Lavigne* circumstances and, most importantly, a higher court has since ruled that *Park v. Lavigne* should not be followed. *Seward v. Cohen*, *supra*.

[11] *Seward v. Cohen*, *supra*.

[12] In *Arwin 74th Street Co. v. Rekant, supra*, the Appellate Division, First Department affirmed the Appellate Term's holding that the failure to commence a suit, even where predicate notices have been served, will cause a waiver of any no pet provision to occur under the *Pet Law*.

[13] See, *Baumrind v. Fidelman*, 183 A.D.2d 635, 584 N.Y.S.2d 545 (App. Div. 1st Dept. 1992). Justice Kupferman dissented and would have reversed for the reasons stated in the lower court ruling of Judge Mark H. Spires, *i.e.*, that the failure to properly serve the papers commencing the proceeding within the three months causes a waiver under the *Pet Law*.

[14] 126 Misc.2d 416, 481 N.Y.S.2d 577 (Sup. Ct. Bronx Co., 1984).

[15] 126 Misc.2d at 419, 481 N.Y.S.2d at 579.

[16] In *Board of Managers v. Lamontanero*, *supra*, the Appellate Division, Second Department stated:

> "The legal status of the occupant of a multiple dwelling unit (i.e., whether he pays rent, owns cooperative shares, or is the owner in fee simple of a condominium unit) is not relevant to the purposes of the statute, which include preventing abuses in the enforcement of covenants prohibiting the harboring of household pets and preventing the retaliatory eviction of pet owners for reasons unrelated to the creation of nuisance.
>
> "We generally conclude that it would be pernicious to create an exception for condominiums from the generally beneficial requirements of Article 27 of the Administrative Code [the *Pet Law*]. In addition to substantive harms, an exception for condominiums could lead to anomalies such as permitting the tenant of a condominium owner to invoke the protection of the '*Pet Law*,' while the condominium owner himself could not."

[17] The Appellate Division, First Department, in *Board of Managers of the Parkchester North Condominium v. Nicholas Quiles*, 234 A.D.2d 130, 651 N.Y.S.2d 36 (1st Dept., 1996) held that the *Pet Law* is not applicable to condominiums, reasoning that, by its terms, the *Pet Law* only applies where there is a landlord-tenant relationship and this is not true of condominiums. The court noted that the law refers only to "covenants contained in multiple dwelling leases and that condominiums are a form of fee ownership."

The First Department expressly stated its disagreement with the Second Department: "We disagree with the Second Department that condominiums should be deemed covered by the *Pet Law* because not explicitly excluded."

One curious note here is that, in *Seward v. Cohen*, *supra*, the Appellate Division, First Department, cited *Lamontanero* to support the proposition that the exclusion of the NYC Housing Authority implies the inclusion of "all others" to explain its conclusion that co-ops were covered by the *Pet Law*. The author's firm has filed an appeal arguing that the Appellate Division, First Department should follow *Lamontanero*.

[18] *Park Holding Co. v. Emicke*, 168 Misc.2d 133, 646 N.Y.S.2d 434 (App. Term. 1st Dept., 1996). Prior to *Emicke*, several lower courts had held to the contrary. For example, in *Brown v. Johnson*, 139 Misc.2d 195 (Civil Ct. NY Co., 1988) the court held that "it appears that the only reasonable reading of the statute is that failure to bring a proceeding constitutes a waiver of the clause in the future. The Section refers to a tenant who harbors or has harbored a household pet or pets. The inclusion of the past tense can only mean the reference to situations such as the one at bar" *at* 680. Similarly, in *McCullum v. Brotman*, NYLJ 5/11/88, p. 14 col. 4, the court held that once there is a waiver with the first pet, such waiver "is the relinquishment of a legal right. The courts have held that once a right has been waived, it cannot be revived to the detriment of a party who has relied on a waiver." And the lower court in *Park Holding Co. v. Emicke*, 167 Misc.2d 162 (Civil Ct. NY Co. 1995), *rev'd* 168 Misc.2d 133 (App. Term 1st Dept. 1996) had held that once the waiver occurs, the no pet clause is waived not only for the current, but also for future companion animals. Finally, the Appellate Division, Second Department ruled in *Megalopolis Prop. Assn. v. Buvron*, 110 A.D.2d 232, 494 N.Y.S.2d 14 (2nd Dept., 1985), that once the three months passed, and no suit was commenced, then the "lease provision shall be deemed waived." This appears to stand for the proposition that once the waiver has occurred, it is not to be taken away.

[19] *See* Real Property Law §223-b, which prohibits landlords from commencing a suit to recover an apartment when they are retaliating against a good faith complaint by a tenant to a governmental authority, or for other actions taken in good faith to secure certain rights of a tenant. If this section is violated by the landlord, then a suit may not be maintained even if the three months have not expired.

[20] *Metropolitan Life Insurance v. Friedman*, 205 A.D.2d 303, 613 N.Y.S.2d 8 (App. Div. 1st Dept., 1994).

[21] Americans with Disabilities Act. 42 USC 12101, et seq.

[22] 42 USC §3604

[23] See, generally, "Discrimination: The Emotional Support Pet as a Reasonable Accommodation Under Federal Law" by Karen Copeland, Esq., in *Landlord-Tenant Practice Reporter*, Vol. I, Issue 1, December 1999.

[24] Real Property Actions and Proceedings Law, Article 7, sets forth generally the right of a landlord to maintain a summary proceeding (*see also* CPLR, Article 4).

[25] Civil Practice Laws and Rules § 4544.

[26] 42 USC §1437z-3