

# Dogs in Space: Negotiating Pet-Friendly Rules at Work

BY DANIEL C. JOHNSTON

**B**OSTON – A fast growing, yet often overlooked topic in commercial leasing today involves pet ownership. Roughly 66 percent of Americans own a pet and, more and more, these owners are looking to bring their furry companions to work.

With so many people now owning pets, and so many landlords competing for tenants in a tight market, it is no wonder pet provisions have quickly become the topic



du jour. However, negotiating a successful pet provision that distinguishes one building from another, while also safeguarding all parties, is not all bark and no bite. Both landlords and tenants must be careful to shield themselves from dangerous pitfalls. Here are just a few of the lease provisions that need a bit of extra love:

## *Rules and Regulations*

Prospective pet-friendly tenants may wonder where in a lease a pet provision is typically placed. Landlords should include pet provisions in the “rules and regulations” exhibit, which outlines operational rules for occupying space in the building. This is more appropriate than the “permitted use” section because a landlord can modify the rules and regulations with less hassle, which is helpful when the language is found to be outdated or problematic. Landlords should keep in mind, however, that tenants will want to ensure changes to the pet provision itself would require consent, or at least advance notice.

## *Scope and Framework*

Once the location has been set, a landlord should begin to think about the scope of the provision. Are dogs, cats and elephants allowed? Can a tenant’s office double as a petting zoo? Where can pets go when it is time for them to release their kibble? Here are some helpful tips:



- Both parties will want to designate a space outside the building as a pet relief area and impose guidelines for waste disposal. An alternative space in the office could accomplish the same objective; however, the landlord will want to ensure the space complies with local health ordinances, and that the tenant covers the cost for any additional janitorial services.

- To avoid issues between other tenants or other pets in the building, e.g. possible injuries, a landlord may want to require all pets be leashed when in common areas. This should also be addressed in the insurance and indemnification sections.

- A landlord may want to limit the number of pets in the office at one time and the size, type and breed of pet. Samuel L. Jackson and Alfred Hitchcock would agree that smaller dogs and cats are okay, but maybe not snakes and birds.

## *Assignments and Landlord Remedies*

The location and scope have now been worked out, but what happens when a tenant assigns their lease to a third party or cannot follow the established rules? Both parties must determine whether this pet provision is a concession for a desirable tenant or a form provision in all leas-

es. If the former, the landlord may want this specific right to be unassignable, or assignable only with the landlord’s consent. At the same time, the tenant may see the pet provision as a desirable selling point in the event their business is acquired and the lease is assigned.

While assignability is optional, a landlord must have remedies for tenant violations. Remedies can vary from rescission rights after repeated violations to short-term probation and monetary fines. Whichever remedy, or combination of remedies, is agreed to, the important point is that the landlord must always have control, as loving pets can sometimes cause serious problems outside the familiarity of a home.

## *Insurance and Indemnification*

Now that the parties have agreed on the pet provision itself, the discussion should turn to other major sections that, although previously alluded to, may be less obvious. The issue that should be at the top of any landlord’s mind when it comes to pets is the potential for injuries to employees, other tenants, occupants, visitors and other pets. A successful pet provision must include language that

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both: (i) requires the tenant's insurance to cover pet-related injuries to both people and property and (ii) would indemnify the landlord for any claim arising from the tenant's pets. Without these two provisions, a landlord could end up footing the bill for a tenant-caused injury.

## *Security Deposit and Additional Rent*

Other considerations include the security deposit and the tenant's share of additional rent. While a traditional security deposit might provide the landlord with assurance that the well-being of their property and a tenant's monetary obligations will be covered in the event of a tenant default or damage to the property, the landlord may wish to increase the security deposit to cover additional unforeseen events arising from pets in the building. A tenant indemnification can turn out to be worthless in the event of bankruptcy and dissolution.

Additionally, pets may require added janitorial or pest control services depending on the type of building; consider accidents on concrete versus carpeted floors. The tenant should consider these added costs, as a landlord will likely require the tenant to be responsible for a greater share of additional rent.



## *Conclusion*

Though these provisions and considerations are extremely important to a successful pet policy, there are many provisions in a lease that require extra attention. For instance, the applicability of the Americans with Disabilities Act, which forbids landlords from charging an extra security deposit for service animals; and other governmental statutes, rules and regulations which may prohibit animals in areas that process food, are beyond the scope of this post but are nonetheless crucial considerations for both parties.

With a bit of extra love, the right mindset, and the willingness to collaborate, implementing a pet-friendly lease may no longer be extraordinary and may, in the next couple of years, become quite ordinary.

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