

Handling Requests For Assistance Animals - Guidance For Boards When Things Get Hairy

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Practice Area: Community Associations

Many condominium associations have rules regarding pets. Some associations place restrictions on the type, breed and number of pets, and some impose limitations on the weight and size of pets. Some associations prohibit pets altogether. These types of pet rules are enforceable, except when a pet is considered an "assistance animal" to a person with a "disability" under fair housing laws.

When faced with a request for an assistance animal, the board is put in a difficult position. On the one hand, board members often feel compassion and have a desire to help their fellow neighbor. On the other hand, other owners often purchase in a condominium with pet restrictions due to pet allergies, fear of animals or for cleanliness purposes. The board must balance enforcement of the association's governing documents while staying in compliance with state and federal law. Not an easy task!

Most boards are aware that the federal Fair Housing Act (FHA) and state and local fair housing laws apply to condominium associations. The FHA requires condominium associations to make "reasonable accommodations" for residents who have disabilities by waiving rules or policies which prevent them from fully enjoying the condominium. Under the FHA, if a person with a disability has a disability-related need for an assistance animal, the person generally has the right to have an assistance animal, even if it violates the condominium association's pet rules and policies.

Condominium boards across the state and the country are increasingly receiving requests from residents to keep assistance animals. Many of these requests are from residents claiming to require an emotional support animal (aka comfort or companion animals).

These types of requests, in particular, often make board members want to "roll over and play dead." One reason is that emotional support animals are not the same as service animals. A service animal is a dog (or miniature horse) specifically trained to do work or perform tasks for people with disabilities. For example, a seeing eye dog that assists a blind resident is a service animal.

An emotional support animal is an assistance animal that provides emotional support to a person with a mental or emotional impairment. An emotional support animal does not need special training, and there is no restriction as to what type of animal may be considered an emotional support animal. If a duck can, in the opinion of a professional, mitigate the effects of an emotional or mental impairment, it may be considered an emotional support duck.

Another reason these requests are difficult is because people who require emotional support animals have disabilities that are not observable to the naked eye. The FHA defines a disability as a physical or mental impairment that substantially limits one or more major life activities. This includes impairments such as depression, anxiety, or PTSD.

To top things off, there are some people who are willing to do almost anything to keep their pet, including making a legally questionable claim and having a doctor sign off on it. A quick search of the internet reveals just how easy it is, for a nominal fee, to obtain an emotional support animal "certificate."

So what is a well-meaning board to do when faced with one of these requests?

When determining whether to allow a resident to have an assistance animal, the association must determine (1) whether the resident has a disability, (2) whether the animal will provide assistance to the resident, and (3) whether the request is reasonable. The determination should be made on a case-by-case basis.

If it is not obvious that a person has a disability, which is usually the case when a resident claims an emotional or mental disability, the association may ask for documentation and investigate the request. The FHA generally forbids inquiry about the nature and severity of a person's disability, but the association is entitled to information that is necessary to verify that a person has a disability and needs an assistance animal.

Once it is determined that a resident is disabled and requires an assistance animal, the association must consider whether the request is reasonable. Unreasonable requests include those that would impose an undue financial burden on the association or fundamentally alter the nature of the association. The association may also deny requests if the specific animal in question poses a direct threat to the health or safety of others. For example, an association could deny a resident's request to keep her pit bull, Rex, if there is evidence that Rex actually poses a threat to others, and not simply because Rex is a pit bull.

Keep in mind that associations can require residents with assistance animals to follow certain rules, such as requiring them to clean up after their animal, pay for any damage the animal does to the common area, and abide by the association's noise and nuisance requirements.

The most important thing for an association to remember is that all requests must be taken seriously. If you doubt the documentation or the legitimacy of a request, you should consult an attorney who can assist with further inquiry into the request. Consulting a knowledgeable attorney at the outset will be much more cost effective than potentially facing a discrimination claim for an improperly handled claim.

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