

Pet Rules Regarding Breeds - Right for Your Community?

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Practice Area: Community Associations

*May a Wisconsin Condominium lawfully restrict certain breeds of dogs?
We think so.*

The trend to consider breed specific restrictions arises in several contexts. Some condominiums which had prohibited dogs now wish to enlarge the population of potential condo buyers by allowing pets. Other associations wish to fine-tune existing pet restrictions. Sometimes, a no-pet community accommodates a substantially disabled individual with a service-dog exception. Even then, the exception must be reasonable from the point of view of other owners.

In each of these cases, the breed of dog has become a topic. And no wonder. Breed specific limitations have become a national issue:

- Some municipalities are making breed specific restrictions.
- Insurance companies are more interested in dog breeds in the homes they insure.
- A court case in Maryland just held that a landlord is automatically at fault ("strict liability") if a Pit Bull injures someone on the premises. Landlord rules are often applied to condominium associations.
- Dog bites, particularly against children, are a continuing health hazard, causing even the American Society of Plastic Surgeons to express concern.

Consider the lakeside Wisconsin city of Cudahy, just south of Milwaukee. Cudahy wrote the following official policy about dangerous animals:

"Dangerous animals occasionally escape from the yard or building in which they are kept, by slipping under a fence, jumping over a fence, slipping through a door or gate temporarily opened or unlatched, breaking the leash or chain, or pulling up the anchor for the chain or leash. Children too young to read may wander too close to an animal ... It is the policy of this City that children and others should not have to assume the risk of a dangerous animal having an opportunity to attack or to kill. The benefits to an animal owner in owning a dangerous animal are outweighed by dangers to children and to [the] general public."

The Cudahy definition of "dangerous animal" includes pit bulls and dogs that have the appearance and characteristics of pit bulls, among others. A pit bull owner must annually register the dog and provide pictures of the dog and of the owner; the leash must be held by an adult and may be no longer than four feet. The dog must be confined in a secure structure and must wear a bright orange collar. A "Beware of Dog" sign must be posted and liability insurance covering pit bull injuries must be proved. All offspring born of a pit bull must be removed from the City within six weeks of birth. Don't even consider transporting a pit bull through Cudahy without taking adequate safeguards, including notifying the Chief of Police, in advance, of the time and the route.

In the past, a Maryland landlord was liable for an on-premise dog attack only if he knew of the vicious nature of the particular dog and could do something about it. But a new court decision holds that because Pit Bulls and cross-bred Pit Bulls are inherently dangerous, prior knowledge of the particular canine is unnecessary to be held legally responsible. If you allow a pit bull or pit bull mix on your property in Maryland, you are responsible for the consequences, the appeals court stated.

We do not conclude that a single bite would lead to condominium liability in Wisconsin. Wisconsin has potential statutory and court-made obstacles to such a conclusion. But legal liability is one issue. Protecting children, elderly and others from mauling (which is what happened in the Maryland case,) is another.

Finally, those who professionally calculate risk of loss note that breed choices make a difference. Brokers have advised that some insurance companies raise rates or refuse coverage when certain breeds are present, including Pit Bulls, Akitas, Rottweilers, Staffordshire Bull Terriers, Doberman Pinschers, Chows and Presa Canarios.

A conversation with a knowledgeable insurance professional on how her company evaluates the risk of dog bites and the correlation with certain breeds might be useful. Not all companies do this. Many do.

Many condominiums historically have had pet restrictions limiting size of an animal, a rule which is perfectly legal but which, over the years, we have found troublesome. Perhaps breed discrimination would be more useful.

Further research on dog bite prevention and the correlation between breeds and bites can be found at the web site for the Centers for Disease Control, and elsewhere. Additionally, the U.S. Postal Service has declared next week, starting May 19th, National Dog Bite Prevention Week. Mail carrier interest in the subject is no surprise, of course.

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