

## Just Say Maybe: A Good Faith Approach To Fair Housing For Wisconsin Condominiums

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Practice Area: Community Associations

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Courts Increasingly Recognize The Right Of Condominiums To Ask Questions Before Granting Special Privileges Under Fair Housing Laws.

Courts are starting to clarify the riddle facing Wisconsin condominium Board members who are asked by members to make accommodations under fair housing laws. Sometimes, the requester needs the accommodation to make the living experience possible. Sometimes, unfortunately, the request is a cynical attempt to use Fido to ignore community rules.

The riddle: Board members, volunteers all, are charged with protecting the community, and that includes enforcing, where appropriate, the covenants of the association. At the same time, they are on the front line of interpreting and applying fair housing laws, an American policy designed to insure housing opportunities for people traditionally denied such opportunities because of handicap. Do you ignore the covenant for the member or enforce it?

Appellate courts are clearly stating, now, that a doctor's scribble on her note pad that "Fido will help Jack be happy" is not enough to ignore no-dog rules, for example. The Association has not only a right to investigate, but also a *duty* to do so if the need for the accommodation is not obvious. Typically, a not-obvious request for accommodation is the occasion for a legal consultation. Here are a few morals based on cases and experience:

- If a reasonable request is based on an obvious disability or one that is conceded, "serve the customer" and work out an accommodation. This will not be construed as a waiver of rules as to others.
- If you are skeptical, keep it to yourself. Never say no. Say "maybe," and form a small committee to inquire, in writing, at all times protecting the dignity and privacy of the requester.
- Your Board or subcommittee is entitled to know the nature of the disability and how a qualified professional thinks the accommodation will promote the housing opportunity. You are entitled to your own professional advice, if you are still in doubt.

Frankly, we are not surprised by the recent spate of cases in favor of condominium Boards which ask respectful, on-point questions. In recent years we have found some Federal investigators who take fair housing complaints to be ill-trained, quick to bully and advocate against the community's desire to make informed decisions. That conduct may falsely encourage the requester, and the loser is everyone. Hopefully, recent cases will change that.

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