What to Know About Service and Emotional Support Animals in Community Associations

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Community Trends

October 2015

Few topics have garnered more attention over the past few years than the dramatic increase in requests by unit owners seeking approval to keep a service or emotional support animal ("assistance animal") in communities with pet restrictions. While few question the right of an individual who truly needs an assistance animal to keep the animal in their home, many believe that the rise in requests are attributed to those seeking to abuse that right.

Associations that prohibit or limit pet ownership are required by law to allow owners to keep not only dogs or cats, but also other exotic animals such as miniature horses, lemurs, and kangaroos, as has been required in New Jersey and around the country. Boards are then placed in the unenviable position of trying to maintain and enforce regulations against other unit owners who cannot understand why the board does not enforce its rules against their neighbors.

So what does the law require exactly, and what are some best practices for Associations and managers to employ when they receive a request for a reasonable accommodation to allow an assistance animal?

Pursuant to the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA), housing providers (including community associations) are prohibited from restricting individuals with physical or mental disabilities from having assistance animals in their homes or the common elements. If an association has a no pets policy in place, failure to provide a "reasonable accommodation" to a disabled unit owner looking to keep an assistance animal would be deemed discriminatory, and in violation of these laws. While amendments to the ADA limit the definition of "service animal" to only include dogs and to exclude emotional support animals altogether, housing providers are still obligated to make reasonable accommodations for assistance animals

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under the FHA.

To qualify for a reasonable accommodation, the applicant must provide documentation that (1) the applicant has a physical or mental impairment that substantially limits one or more major life activities, and (2) the applicant has a need for an assistance animal related to their disability. In other words, the applicant must prove that he/she is disabled and the animal would work, provide assistance, perform tasks or services, or provide emotional support that helps to alleviate one or more of the identified symptoms or effects of the applicant's disability.

Housing providers are permitted to ask questions of the applicant to help determine whether they qualify for the reasonable accommodation, and it is recommended that associations do so, however, it is important to do so in a timely fashion and not wait for the next board meeting if that meeting is weeks away. For example, HUD regulations permit housing providers to ask applicants seeking an emotional support animal to provide a letter from a physician, psychiatrist, social worker, or other mental health professional signifying that they believe the animal will assist in alleviating one or more of the identified symptoms or effects of the disability. Many associations will also have their attorneys draft a standard form to be filled out by applicants. It is essential for associations to rely on their attorneys when preparing such a document because HUD regulations prohibit certain questions from being asked. Sometimes, they are allowed to ask no questions at all if the disability and disability-related need for the animal is apparent (i.e. the applicant is blind). Associations should never simply accept certificates printed from the internet identifying their animal as an assistance animal.

If the applicant provides documentation that satisfies the requirements, the Association must provide an exception to their "no pets" rule or policy to permit the applicant to live with and use the assistance animal(s) in all areas of the premises. Associations may not limit the breed, size, weight or species of assistance animal that may qualify as an assistance animal. Only if the Association can prove that the specific assistance animal in question would pose a direct threat to the health or safety of others or would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation can the Association deny the request. HUD regulations require that the Association's determination that the specific animal poses a direct threat be based upon an individualized assessment with objective evidence about the animal's actual conduct, not mere speculation or generalizations about breeds. Finally, it is important to note that assistance animals are not considered pets. For that reason, associations may not charge unit owners a pet fee or deposit for keeping the pet.

As the laws governing discrimination can be confusing and could lead to expensive and unforeseen litigation, it is highly recommended that boards develop a procedure and strategy for processing reasonable accommodation requests with their attorney.