

Homeowner Associations and Service Animals in Common Areas Part 2: FHA Considerations

In the Dirt: A Real Estate Legal Update

By Elizabeth Lum on February 15, 2022

Part one of this series addressed whether homeowners associations are required to allow support dogs in common areas where dogs may otherwise be prohibited. This article will address whether homeowners and condominium associations are required to make reasonable accommodations for “assistance animals” which may otherwise be prohibited by the association’s rules and regulations. Assistance animals, as defined by the Fair Housing Act (FHA), include more than just service dogs as defined by the ADA.

Homeowners and condominium associations are considered housing providers under the FHA and are subject to the fair housing laws.

Owners and associations alike should understand that assistance animals are not pets. Assistance animals are either service animals or other animals that do work, perform tasks, provide assistance and/or therapeutic or emotional support for persons with disabilities.

Requesting Assistance Animal Documentation From a Homeowner

In contrast to the ADA, the regulations of the Department of Housing and Urban Development (HUD) allow for entities subject to the FHA to seek additional information in evaluating the request to allow a service animal as a reasonable accommodation for a disability. However, the request for information must be limited in that the association cannot ask the person requesting reasonable accommodations to disclose a diagnosis or describe exactly what the animal does.

Under the FHA, the association may request the resident’s health care provider to provide documentation that is dated and signed which is limited to the following information:

- The person’s name
- Whether the person providing the information has a professional relationship with the person asking for accommodations for an animal

- The type of animal for which accommodations are sought
- Whether the person has a physical or mental impairment
- Whether the impairment limits at least one major life activity or bodily function, and
- Whether the person needs the animal because it does work or provides emotional support.

If the animal in question is not a dog or cat, the association may ask for:

- the date of the last consultation with the person asking for accommodations
- unique circumstances justifying the need for a particular animal
- whether the professional has information about this particular animal or recommended this type of animal.

The association may not require the professional to use a prescribed form or notarization.

As with the ADA, the FHA allows associations to deny requests for reasonable accommodations if the animal poses a direct threat to the safety of others that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal.

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