

Service animals, emotional support animals, comfort animals and pets – confusing, controversial, and challenging scenarios for condominium and homeowner associations.

Many Southern New Jersey condominium and homeowner associations prohibit or restrict pets. If you reside in one, your association has likely had an owner submit a request to the condo board that they be permitted to have a service animal or emotional support animal (“ESA”). With pet ownership increasing, how do you know if this is a legitimate request or if this is an attempt by an owner to get around the pet prohibition? This scenario is playing out more and more in condo and homeowner associations, creating tension between owners, residents, and board members.

It is important to understand the difference between how service animals, emotional support animals, comfort animals and pets are treated under federal and state housing laws as they pertain to condominium and homeowner associations. This article will refer primarily to dogs as they are the prevalent service animal, emotional support, comfort animal and pet in most associations.

Why are pets prohibited in the first place? Associations prohibit pets for various reasons. Some people may be allergic to animals and will want to be assured that when they walk down the hallways or enter an elevator they do not have to worry about an allergic reaction. Some children are afraid of animals. There are also certain breeds of dogs that many people are afraid of. In some circumstances, even trained animals can become agitated or confrontational with other animals and their owners can lose control.

It's not easy changing condo and homeowner association pet prohibitions or restrictions. If the master deed for a homeowner or condominium association contains pet prohibitions or restrictions, the prohibition or restriction can be changed only by following the explicit procedures for making amendments or changes, which quite likely requires a super-majority vote of the entire membership and filing a formal amendment (legally binding change) to the governing documents. For some associations it is just about impossible.

What is the difference between a service animal, an emotional support animal and a comfort animal? Service animals are not pets under the Americans with Disabilities Act (“ADA”). Service animals are dogs (or other animals) that are individually and specially trained to do work or perform specific tasks for people with disabilities. The work or task a dog has been trained to provide is directly related to the person's disability. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with a mental illness to take prescribed medications, or calming a person with PTSD during an anxiety attack.

Even if an association has a “no pets” policy it must allow service animals. A condominium board cannot prohibit a service animal. The owner with the disability must rely on it everywhere and at all times. The condo board cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the animal, or ask that the animal demonstrate its ability to perform the work or task. When it is not obvious what service the animal performs or provides, only limited inquiries are allowed. Only two questions are legally permissible: 1) is the animal a service animal required because of a disability, and 2) what work or task has the animal been trained to perform? Proof of training is not required, because people with disabilities have the right to train the animal themselves and are not required to use a professional service dog training program.

Many service animals wear a harness with identifying tags. Under the Americans with Disabilities Act, service animals must be harnessed, leashed or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.

The terms “emotional support animal” and “comfort animal” are often used interchangeably. An emotional support or comfort animal is NOT a service animal, it is an assistance animal. An emotional support or comfort animal does not need to be trained to perform a service. The emotional and/or physical benefits

from the animal living in the home are what qualify the animal as an assistance animal. Dogs whose sole function is to provide comfort or emotional support do NOT qualify as service animals. (As an aside, a therapy animal provides support during therapy but does not go home with the patient).

Even if it's not a service animal, dogs are becoming more prevalent for use in mental health and wellness. If someone is blind or in a wheelchair, the purpose of their service dog is fairly obvious, but there are many other disabilities covered under the law that are less visible. Some individuals need their dogs to help them deal with depression or anxiety. When disabilities are not obvious, the request must be handled very carefully.

Condominium and homeowner associations have a duty to make "reasonable accommodations" to their policies, practices and procedures when necessary to accommodate people with disabilities. For most associations, if the owner requesting permission to have the emotional support or comfort animal provides a letter from a medical professional verifying the need for the support the animal will provide, the legal requirement of requesting a "reasonable accommodation" will generally be satisfied. The board must then balance the request for an accommodation against the health and welfare of all owners in the association.

But even if the condo board may have accepted the request to make reasonable accommodation, this does not mean the board has to allow the animal just because the owner submitted a letter stating the importance or need for the animal. The condo board should carefully examine the facts. If the request is for a service animal, the request must be honored unless there is irrefutable evidence to the contrary.

Condo boards must act carefully when dealing with a request to allow an emotional support or comfort animal. They cannot refuse to make reasonable accommodations when such accommodations may be necessary. But how do they verify that the letter or supporting documentation provided from a medical professional is legitimate? An internet search for service animal or emotional support animal registration or documentation shows just how easy it is to obtain "documentation". Fill out a form, answer a brief online questionnaire, pay the registration fee and obtain an "approval letter" or "certification" within a day.

Can the written documentation be easily verified? The board should closely review the supporting documentation to determine if it is legitimate. Is it from a reliable third party such as a medical professional or counselor, and if so, is that individual reasonably qualified to opine on the individual's need for the animal? You wouldn't expect a pharmacist or dentist to submit a letter in support of an individual's need for a service or emotional support animal. At one Southern New Jersey condo association, the board was suspicious of one such letter. The board notified the author of the letter that they were submitting the correspondence to the State medical oversight board. The author immediately retracted its supporting correspondence and the request for the emotional support animal was withdrawn.

Can the board set standards and criteria for the third party certification, or want verification that the owner is in fact being treated by the person authoring the certification? Proceed with caution and follow legal advice. Tele-medicine allows medical professionals, counselors and therapists to treat patients just about anywhere.

There are factors the board can consider when making a reasonable accommodation. The association can require the owner requesting the emotional support or comfort animal ("ESA") to answer the following questions. Is there other treatment that would be acceptable, and if not, why not? Does the ESA presence violate any other individual's right to quiet enjoyment? Would the presence of the ESA force another individual from his/her location? Does the ESA pose a threat to others enjoyment of recreational facilities? Does the ESA presence violate any health, sanitary or bathing codes? Is the ESA housebroken? Has the ESA posed a direct threat to others in the past? Has the ESA caused excessive damage to any property?

The board can impose reasonable requirements for owners of service animals, emotional support animals or comfort animals. For example, the board can require that the animal must be registered, and the owner must register and obtain an animal license from the local government. The association can require

that the registration be renewed annually to confirm the owner still requires the service or emotional support animal. Owners are responsible for the care and behavior of the animal and are financially responsible for any damage caused by the animal. The animal must be on a leash at all times on association common property. The owner must clean up after the animal. If there are special areas on the property for use by animals, those must be used exclusively. And if the animal is causing an unprovoked disturbance or a nuisance for other owners, the board should expressly state how such matters will be handled.

What if the board fails to act or denies the request to permit a service animal, emotional support or comfort animal? The owner has the right to file a formal complaint with a federal (HUD) or state (Division of Civil Rights) governmental agency. The agency will investigate, and based on the results of their investigation, may take legal action, file notices of violation and impose fines on the association. The association should budget for significant legal bills if not covered by insurance. And if the matter comes before a judge, courts are increasingly taking the side of the animal owner and ruling against the association, especially where the association has failed to make reasonable accommodations.

Keep in mind, as dog ownership has increased, pet policies and reasonable accommodation procedures will become increasingly important in the future for condominium and homeowner associations. Each request for an ESA is fact-sensitive and should be handled on a case-by-case basis with the guidance from the association's manager and legal counsel. For more information, visit the Americans with Disabilities Act website at www.ADA.gov.

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