

PETS AND HOA'S

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Pets can cause all kinds of issues in your HOA especially with Fair Housing issues if you are not careful. This article is geared to help you stay out of trouble in this area. We want to help people where we can, but you need to understand your boundaries in asking for information about an assistance animal, emotional support animal or a comfort animal as you can only legally ask for so much.

Does your association have a pet policy? There are varied opinions from the “experts” in this area. Some say you definitely need them and others say that it is a good idea.

You first need to look at the existing governing documents, specifically the CC&R's. What do they say about pets? Some documents totally prohibit pets so people with pet allergies move into these communities, typically condos, thinking they are safe. But, guess what? In speaking with the Fair Housing experts, if a person needs an emotional support animal or a service animal, it is the person who asked for an accommodation first that gets the accommodation. Did the person who will end up in a hospital if a pet moves in next door know that they need to ask for an accommodation since they specifically moved into a NO PET community? In most cases they did not know and could end up in the hospital before they find out they needed to do so.

So, how does a pet policy help in this whole process? The policy will totally depend on what your covenants, state laws and federal law state. If your documents speak to animals and allow the board to adopt rules, these rules need to be well thought out before they are put into place. If the CC&R's don't address animals, you are going to be safer if you have the owners vote to amend the CC&R's before major rules are adopted in this area. There could be rules for outside the units on the common area and rules for what goes on inside the units.

An example of an issue that you could find yourself in is a Massachusetts case involving pets and condos. A woman had two pet poodles that didn't go out of the house. A maintenance guy knocked on the door and saw the dogs. The association tried to enforce its “rule” against pets, but the court stated the following “If you want to control any kind of conduct within owners' units, you have to go beyond a rule. It has to be in the Master deed or bylaws and voted on by the unit owners.”

Covering pets in your CC&R's gives everyone fair notice of your restrictions on animals, and that's something that becomes very helpful when you are later trying to enforce your restrictions.

We have to first know the difference between “service” animals, “assistance” or Emotional Support or comfort animals.

1. **Assistant Animal:** An assistance animal is specially trained to provides assistance or performs tasks for the benefit of a person with a disability.

2. **Service Animal:** A service animal is a dog, miniature pony, or other animal that's trained to do work or perform tasks to benefit someone with a disability. It can be a physical, sensory, psychiatric, intellectual or other disability.

3. **Emotional Support or Comfort Animal:** This is an animal that provides therapeutic benefit, such as alleviating or mitigating some symptoms of the disability to a person with a mental or psychiatric disability. They are typically dogs or cats but can be other animals such as pigs. Emotional support animals are not assistance animals under the American with Disabilities Act.

There is a lot of confusion about what's a service animal and what's an emotional support animal. Service animals are specifically trained to perform a certain take for the benefit of an individual who has a disability. That would typically be a seeing-eye dog, and the disability would be the inability to see without the services of that animal. Emotional support animals are entirely different. They provide emotional support and alleviate some of the effects of a person with a disability. The disability could be anxiety or the loss of a loved one. The bar is pretty low as to the type of analysis or evaluation the person must receive. Service animals are specially trained and under the ADA, they are specifically limited to dogs and miniature horses. Comfort animals, which are also legally classified as emotional support don't receive training, but still have to be allowed as an accommodation if needed for a disability.

Please remember that service animals and comfort animals are not considered "pets" and therefore your "pet" rules don't apply. The U.S. Department of Justice has made it abundantly clear that there is no difference between a service animal and a comfort animal. If an animal assists someone with a disability, whether it's a physical or mental or emotional disability, there is no distinction. If your HOA says that you can have one pet, that means that the owner can have one pet plus an emotional support animal if needed.

So, what can you ask when someone is requesting an accommodation? You can ask two basic questions: Is the animal necessary and is it reasonable to afford the person an opportunity to enjoy their dwelling? You can also ask the person to explain the relationship between the disability and the need for the requested accommodation.

You cannot do the following:

1. Inquire about the individual's disability
2. Request medical records
3. Request a special identification card or training documentation for the animal.
4. Request a demonstration of the service animals' abilities.

5. Charge a pet security deposit.

You can do the following:

1. Request that the animal be house trained and if it bites, it must go.
2. Request that they clean up the animal's waste, make sure it does not constitute a nuisance and if it is a dog, can't bark or run away from the handler. It must be on a leash or tether that the handler must be able to control.

Before the Community Manager or the Board ever has to ever face this issue, please consult with legal counsel to ensure you stay in safe harbor, while protecting the rights of all of your owners with or without disabilities. Check under www.hoasupport.com for a sample rule that can be adopted (Coming soon to the website), but PLEASE have it reviewed by legal counsel so that you are not in trouble with your documents and/or Fair Housing.