

"Medically Necessary" Pets in



Pet Restricted Community Associations.

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“Medically Necessary” Pets in Florida’s Pet-Restricted Condo. and Homeowner associations

There are a growing number of advocates who feel community association pet restrictions should be illegal. These groups have internet sites complete with “sample doctor’s notes” for use by those who want to get around pet restrictions they agreed to when they bought into their community association. Pet owners have been submitting “Medically Necessary” prescriptions for their pets in large numbers. Owners that purchased in the communities that promised through their *Governing Documents* to restrict pets, are threatening to sue. Wanting to do the right thing and fearful of intervention by a governmental agency or a lawsuit from both the pet owner(s) and their neighbors, Board members are starting to learn the ins and outs of this potential minefield to better serve all of the people involved.

Legal Background:

Although many people cite the Americans with Disabilities Act (“ADA”) as the basis for their “anti-pet restriction” position, the ADA does not apply to community associations because they are not places of public accommodation. The law that does apply to Florida’s community associations is the Federal Fair Housing Amendments Act of 1988 (“Act”). This law prohibits discrimination on the basis of a “handicap”, which is broadly defined in the law to include most physical or mental maladies that impair a major life function. Florida has adopted the Act; therefore, references made to other Federal Court decisions from other states are binding on Florida. The Florida Committee on Human Relations and the Federal Department of Housing and Urban Development (“HUD”) enforce the Act.

The Act requires the association to make reasonable accommodations for disabled people to fully enjoy their premises. Such reasonable accommodations include, without a doubt, an association issuing a waiver of its pet restrictions. Recently, HUD updated (and although they deny it, I believe expanded) its regulations relating to the Act and animals that provide medically necessary support for their owner’s disabilities. Following are excerpts from public comments made by HUD in their public analysis of their updates to the ACT:

Under both the Fair Housing Act and Section 504, in order for a requested accommodation to qualify as a reasonable accommodation, the requester must have a disability, and the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person's disability. Thus, in the case of assistance/service animals, an individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. The Department's position has been that animals necessary as a reasonable

accommodation do not necessarily need to have specialized training. Some animals perform tasks that require training, and others provide assistance that does not require training. (Emphasis added).

Housing providers are entitled to verify the existence of the disability, and the need for the accommodation--if either is not readily apparent. Accordingly, persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability. (Emphasis added).

*. . .in order to qualify as a reasonable accommodation, the requester must have a disability, and there must be a relationship between the requested accommodation and that person's disability. For example, the person with a disability who is requesting the assistance animal must demonstrate a disability-related need for the animal, such as service, or assistance, performing tasks for the benefit of a person with a disability, or providing emotional support that alleviates one or more identified symptoms or effects of a person's disability. Examples of disability-related functions, include, but are not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. (Emphasis added). Based on the above guidance from HUD "each case brought to the association should be a fact-intensive, case specific determination". *Janush v. Charities Hous. Dev. Corp.*, 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors v. Hous. Auth. of the County of DeKalb, Ga.*, 652 F.2d 454, 457-58 (5th Cir. 1981). Please note, in conducting an analysis of a possible waiver, the Board cannot share an owner's submitted medical information to the members at large. Further, other than stating a waiver for "medical necessity" was granted, the Board should not discuss an owner's condition with the members. Further, all evidence submitted by an owner should be kept in a separate file marked CONFIDENTIAL" and should not be released pursuant to any record requests from an owner. Violations can result in both State and Federal lawsuits.*

Based on the above guidance from HUD "each case brought to the association should be a fact-intensive, case specific determination". *Janush v. Charities Hous. Dev. Corp.*, 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors v. Hous. Auth. of the County of DeKalb, Ga.*, 652 F.2d 454, 457-58 (5th Cir. 1981). The Board's duty of establishing that a "support animal" is necessary for an owner to use and enjoy their residence is critical. Courts have consistently held that an owner requesting an emotional support animal as a reasonable accommodation **must demonstrate a relationship between his or her ability to function and the companionship of the animal.** See, e.g., *Majors v. Housing Authority of the County of DeKalb*, 652 F.2d 454 (5th Cir. 1981); *Housing Authority of the City of New London v. Tarrant*, 1997 Conn.

Super. LEXIS 120 (Conn. Super. Ct. Jan. 14, 1997); *Whittier Terrace v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989); *Durkee v. Staszak*, 636 N.Y.S.2d 880 (N.Y.App.Div. 1996); *Crossroads Apartments v. LeBoo*, 578 N.Y.S.2d 1004 (City Court of Rochester, N.Y. 1991).

Conclusion:

Each case has to be reviewed by the Board on its own merits based upon submissions from the owner and the owner's doctor or similar professional. In conducting an analysis of a possible waiver of pet restrictions, the Board cannot share an owner's submitted medical information to the members at large. Further, other than stating a waiver for "medical necessity" was granted, the Board should not discuss an owner's condition with the members. Further, all evidence submitted by an owner should be kept in a separate file marked "CONFIDENTIAL" and should not be released pursuant to any record requests from an owner. Violations can result in both State and Federal lawsuits.

Although a fool proof method to avoid being sued or upsetting at least one group of owners does not exist. Understanding the requirements and working with your community's attorney for each owner submission will go a very long way in keeping the board out of the dog house!