

## SERVICE ANIMALS: A BOARD MEMBER FAQ

*By: Jeffrey A. Beaumont, Esq.*

### **Q: What is a “Service Animal”?**

A: The Americans with Disabilities Act (“ADA”) defines a “service animal” as any guide dog, signal dog, or other animal trained to provide assistance to a disabled person. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government. Service animals perform some of the functions and tasks that the individual with a disability cannot perform alone. Guide dogs are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up items for persons with mobility impairments.
- Assisting persons with mobility impairments.

### **Q: Is a service animal considered a pet?**

A: No. A service animal is not a pet. Therefore, if an association’s CC&Rs limit the number of pets, e.g., to no more than one pet per residence, a disabled resident may have one pet plus a qualified service animal.

### **Q: How can I tell if an animal is really a service animal and not just a pet?**

A: Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain, you may ask the person if it is a service animal and, if so, whether the animal is required because of a disability. Furthermore, where an accommodation is made to a resident for a service animal, you may ask for proof of a disability to document the granting of an accommodation. A disabled resident's obligation to provide this information is generally (but not always) fulfilled by a note from the individual's licensed physician, confirming the claimed disability and that a service or companion animal is necessary to accommodate the disability, i.e., for medical or therapeutic purposes. In requesting, reviewing and maintaining personal, medical information boards should use great caution and consult with legal counsel.

### **Q: Our Association has a pet restriction. Are we required to allow a resident to keep a service animal?**

A: Yes. A service animal is not a pet. The law requires you to modify and/or deviate your pet restriction to allow the use of a service animal by a person with a disability. This does not mean you must abandon your pet rules or restrictions altogether, but you must make an exception (i.e. “reasonable accommodation”) for service animals. Although pet restrictions recorded in your CC&Rs may control the number of animals kept, housed, and maintained within a residence, exceptions, within reason, must be

made for service animals. Pet restrictions in your CC&Rs may be enforced to the extent that the rights of a disabled person are not infringed upon. Whenever reasonable accommodations are made (i.e., by allowing residents to keep a service animal in violation of CC&Rs) boards have the right to ask for documentation to confirm the claimed disability. Therefore, you may ask owners to provide certification of the animal as a service animal from the City of Los Angeles, for example, and documentation that the owner has a legally defined disability.

**Q: What is a “reasonable accommodation?”**

A: The California Fair Employment and Housing Act (“FEHA”) requires homeowners’ associations to make reasonable accommodations for people with disabilities. To remain in compliance with the law, associations must make reasonable accommodations in rules, policies, practices, or services when necessary to afford a disabled person equal opportunity to use and enjoy their residence and common area facilities. For example, although your CC&Rs may have pet restrictions, you may be required to allow a disabled resident to keep a service animal.

**Q: Can anyone claim they have a disability, and be able to keep a service animal in violation of CC&Rs?**

A: California law broadly defines “disability” to include: physical disability, mental disability, and medical conditions. The reason for this broad definition is to protect disabled persons from discrimination. Physical and mental disabilities include, but are not limited to: chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of “physical disability” and “mental disability” under the law of this state require a “limitation” upon a major life activity. This is intended to result in broader coverage under the law of this state than under federal law.

**Q: What type of training is required for a service animal?**

A: Although California Courts have held that training is not required where an animal is necessary for mental health purposes, a dog must perform a service that mitigates the disability and helps compensate for the tasks the disabled person cannot perform alone.

**Q: What if a resident claims the animal is a “companion animal,” rather than a service animal?**

A: A companion animal is not considered a service animal under the law, but an association may be required to accommodate a disabled resident’s companion animal. In *Auburn Woods I Homeowner’s Ass’n v. Fair Employment and Housing Com’n*, 121 Cal. App. 4th 1578 (2004), the Court held that an association failed to reasonably accommodate a married couple who suffered from depression by permitting them to keep a small companion dog. However, a companion animal must provide a benefit related to the resident’s disability. In *Auburn Woods*, the Court found that the innate qualities of the dog helped alleviate the symptoms of depression, a legally defined mental disability. The Court made clear that companion pets are not always a required reasonable accommodation for individuals with mental or physical disabilities. Rather, each inquiry is a question of fact and requires case-by-case determination.

**Q: Can Boards adopt rules or regulations governing the use of a service animal?**

A: Yes. Boards may adopt rules and regulations addressing, among other things, the maintenance and behavior of service animals. For example, boards may adopt rules and regulations that require, among other things, service animals to be clearly marked as such (i.e. by wearing a vest). The conduct of a service animal may also be regulated as the conduct of a pet would be, included prohibiting barking, requiring the animal to be on a leash, and ensuring that the resident clean up after the animal. Moreover, rules or regulations may require the resident to indemnify the association for loss or damage caused by the service animal.

**Q: What happens if these laws are violated?**

A: Based on federal and California law, and as illustrated by the *Auburn Woods* case, Boards should strive to investigate a resident's request for a service or companion animal with sensitivity, requesting only information necessary to determine that a disability exists, and that the service or companion animal assists the management of the individual's disability. Violation of these laws can lead to a discrimination claim and/or lawsuit, which are typically not covered by insurance. More importantly, improper handling of service dog related issues can furthermore deprive a disabled resident of their ability to function comfortably within their home.