

Service Animals: Providing Reasonable Accommodations for Man's Best Friend

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According to the Humane Society of the United States, thirty-nine percent of households own at least one dog, and thirty-percent of households own a cat. With so many families owning an animal, pet restrictions have become prevalent within homeowners' associations. Although pet restrictions are common, and often considered a positive instrument to keep property values up, associations may have a legal duty to allow an owner to keep a Service Animal, even if in violation of the CC&Rs.

A Service Animal is defined under California state law as "any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items."¹ Under federal law, specifically the Americans with Disabilities Act ("ADA"), a Service Animal is not considered a "pet."

Federal Law

The Fair Housing Act of 1988 ("FHA") prohibits housing discrimination on the basis of disability and requires associations make reasonable exceptions in their policies and regulations to afford people with disabilities equal opportunities. For example, an association with a "no pet" policy may be required to grant an exception to this rule, and allow an individual who is hearing impaired to keep and maintain a Service Animal. To be classified as a Service Animal, federal law requires the animal: (1) Be individually trained, and (2) Work for the benefit of a disabled individual. Federal courts further require a relationship to be established between the animal and the disability. Currently, under federal law, there is no clear or specific requirement as to the amount or type of training of the animal.

California Law

Like the federal FHA, the California Fair Employment and Housing Act ("FEHA") requires homeowners' associations to make **reasonable accommodations** for people with disabilities. Although pet restrictions recorded in your CC&Rs may control the number of animals kept, housed, and maintained within the Association, exceptions, within reason, must be made for disabled persons.

Although California Courts have held that training is not required where an animal is necessary for mental health purposes,² the dog must perform a service that mitigates the disability and helps compensate for the tasks the disabled person cannot perform alone.

¹ California *Civil Code* § 54.1

² *Auburn Woods I Homeowner's Ass'n v. Fair Employment and Housing Com'n*, 121 Cal. App. 4th 1578 (2004) (finding that the innate qualities of the dog helped alleviate the symptoms of depression, a legally defined mental disability).

As a result, an animal otherwise prohibited by an Association's CC&Rs may be kept by a resident with a disability, provided:

- (1) The animal is properly trained for the service it provides, and proof of training can be produced;
- (2) The owner of the animal has a legally defined disability;
- (3) The animal provides a service related to the person's disability; and
- (4) The resident submits appropriate documentation to the Board verifying the existence of a legally defined disability (i.e. a valid letter from the resident's physician).

When the Service Animal is not within the boundaries of its home, California law provides that the owner must ensure the dog is on a leash, and is identified by a tag issued by the county clerk, animal control, or other agency. Additionally, the person shall be liable for any provable damage done to the premises or facilities by the service dog.

Pet Restrictions in Your CC&Rs

Many Associations either prohibit or restrict the keeping and maintaining of animals. Disability law allows a disabled person to keep a Service Animal in addition to the number of pets allowed, provided the owner meet the requirements as set forth above. The following is an example of a CC&R provision properly regulating the number of animals and accommodating disabled persons in need of a Service Animal:

"An animal otherwise prohibited³ by these CC&Rs which is kept by a resident for the purpose of servicing the resident's disability may be kept by such resident provided (i) the resident submits appropriate documentation to the Board verifying the existence of a legally defined disability, (ii) the service animal is properly cared for by the resident (i.e., healthy, clean and properly groomed, and waste material is properly disposed of), and (iii) the animal is not unruly or disruptive (e.g., barking, growling, running loose, displaying aggressive behavior, etc.). All applicable pet rules shall apply to service animals."

By including such a provision in your CC&Rs, you can help to eliminate future liability, confusion, or conflicts with an owner.

Requirements to Obtain a Service Animal License

Where an owner makes a request to keep a Service Animal for his or her disability, the Board may ask for proof that the dog has been properly trained and that the owner has a legally defined disability, for which the dog is recommended by a licensed physician, psychiatrist, psychologist, or

³ "Otherwise prohibited" refers to the section restricting the number of animals allowed to one per unit.

therapist. The Board of Animal Services Commissioners of the City of Los Angeles requires the following to properly license a Service Animal:

- The dog must be properly trained for the types of tasks he or she performs;
- Proof of training must be provided;
- A business letter from your doctor stating why the dog is needed and the type of service the dog is to render;
- The dog should be trained for the type of assistance your doctor states that you require;
- The dog must be current on rabies shots and must have a certificate for the same; and
- A signed affidavit must be submitted stating that the above are true.

Conclusion

To ensure compliance with federal and state law, associations should always remain sensitive to the rights of a disabled person. 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) associations have the right to ask for documentation of a disability. Therefore, you may ask owners to provide certification from the City of Los Angeles and documentation that the owner has a legally defined disability.