Daily Business Review

Emotional Support Animals Leave Many Condo Associations Howling

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By **Michael E. Chapnick**

Over the last five years, one of the most significant areas of concern for Florida condominium associations, especially those with no-pet policies, has been the rise in requests by occupants for associations to provide "reasonable accommodations" in their rules and regulations by permitting an emotional support animal (ESA). Given the potential for legal repercussions in the event that a legitimate request is denied, associations and their boards of directors and property managers should seek expert guidance on how to address these requests.

The laws governing emotional support animals emanate from the Fair Housing Amendments Act of 1988, and its state and local counterparts. The act prohibits discrimination in the provision of housing to disabled persons, and it requires that a reasonable accommodation in an association's rules and regulations be provided to a disabled person so that they can use and enjoy the property to the same extent as a nondisabled person.

Disabilities can take many forms: some physical and others emotional and/or psychological. For emotional and/or psychological disabilities such as depression, there are rarely obvious, external symptoms.

The process for condominiums typically begins with a written request by an owner or resident notifying the association of their disability and asking for it to grant an accommodation for an emotional support animal. Such a request may or may not be accompanied by a letter from a treating physician or therapist. Since being disabled, as that term is defined in the law, is a necessary prerequisite to exercising one's right to be granted a reasonable accommodation, the individual who is making the request will need to demonstrate a disability. The act defines a disability as a condition that impairs or substantially limits a major life activity, e.g., walking, working, attending school, exercising, etc.

It is imperative for associations and their directors to understand that simply because the disability is not readily apparent, but rather emotional or psychological in nature, does not mean that the request is illegitimate or deniable out of hand. For example, if the individual is being treated for depression, especially if they are receiving psychiatric therapy as well as perhaps also medication, it will be difficult to deny a doctor's claim that the animal provides the emotional support that the requestor requires to perform even the most basic major life activities.

The owner/resident must be able to demonstrate to the association that the disorder qualifies as a disability under the act and the emotional support animal alleviates it. The accommodation must be deemed necessary to provide the disabled owner/resident with an equal opportunity to use and enjoy the residence, so they must demonstrate that the emotional support animal mitigates their symptoms.

Once a request for reasonable accommodation is made, an association must approve or disapprove the requested accommodation within a reasonable time period. Unlike with obvious physical disabilities, associations may request information regarding the nature of the psychological/emotional disability so that they can make a meaningful evaluation as to whether the request for accommodation is reasonable. They are entitled to inquire about how the disability affects major life activities and how maintaining the animal will assist the requestor in fulfilling these activities.

Once all of the requested information is received and reviewed by an association, it should render a decision and issue it in writing to the unit owner/resident. If the request is denied, the requesting member may then file a complaint with the U.S. Department of Housing and Urban Development or the Florida Commission on Human Relations, which would then investigate the complaint to determine whether or not discriminatory conduct has occurred.

The association will then be required to respond to the complaint and explain its position and reasoning behind the denial. If the investigating agency concludes that discrimination has occurred, the effected party would then be able to file suit against the association. Liability for such discriminatory conduct may be found against associations, managers and, in some cases, board members in their individual capacity.

While there are many legitimate psychological and emotional disabilities that benefit from the use of emotional support animals, it is also widely known that the rules governing ESAs are frequently abused in order to circumvent legitimate association pet restrictions, as well as travel restrictions for animals. In fact, a cursory search of "emotional support dog" on Google produced more than five million results and provided links to multitudes of kits with "emotional support dog certifications" for sale.

Given the growing popularity of requests for emotional support dogs and other animals for both legitimate and illegitimate purposes, community associations with pet restrictions should work closely with highly experienced legal counsel in order to avoid potential legal pitfalls stemming from denials of these requests.

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