

Condominium Law

NAVIGATING ASSISTANCE ANIMAL REQUESTS



BY MICHAEL S. BENDER, ESQ.

Board members frequently encounter issues regarding whether an individual has the right to have an “assistance animal” reside in the community that would otherwise violate a pet restriction in the governing documents. Failing to properly respond to an assistance animal request could expose the association to a potential claim of discrimination under federal, state, and local fair housing laws. These laws protect against housing discrimination and require the association to approve an assistance animal in the community as a “reasonable accommodation” to the pet restrictions. The issue becomes difficult to evaluate when the disability is not readily known, or the need for the animal is not readily apparent. The board may request reliable medical

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documentation concerning the nature of the disability and the disability-related need for the animal.

Specialized training or “certification” of the assistance animal is not necessary. Breed, size, and weight limitation may not be applied to an assistance animal. Boards cannot require individuals to pay a monetary deposit for an assistance animal, nor request access to disability medical records. Boards may only determine whether the person seeking the assistance animal has a disability (a physical or mental impairment that substantially limits a “major life activity,” such as sleeping, breathing, and walking), and whether the person has a disability-related need for the animal. The board may request that necessary information come from a qualified medical professional, such as a physician, psychiatrist, or other mental health professional familiar with the disability. Evaluate every request on a case-by-case basis. If the individual submits sufficient information from a



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qualified medical provider to establish the disability, and that the animal in question will provide disability-related assistance or emotional support, the board should approve the reasonable accommodation and must exercise caution to protect medical information confidentially.

To avoid unintended law violations, the board should consider adopting formal evaluation procedures. A written discrimination policy can include assistance animal registration forms, a reasonable accommodation application package, and rules governing the conduct of assistance animals. Such a policy can streamline the request process, since the failure to respond could be considered the equivalent of a “constructive” denial. If a dispute arises, showing a record of the formal procedures being implemented will help demonstrate that the request received proper consideration. If a board is unsure whether the individual has submitted sufficient information to support the request, it is not advisable to immediately deny (or approve) the request. Promptly contact legal counsel experienced in this area to evaluate the information, provide a timely response, and assist in the development of a comprehensive discrimination policy. ■