

Home Owners Associations: Beware of the Fair Housing Act When Enforcing Pet Prohibitions and Restrictions

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Many planned communities, townhome communities, and condominiums (collectively, "Associations" since they are nearly universally governed by one) have restrictions that either prohibit or limit the number, size, and type of pets that can be kept within the community. In general, as long as a restriction prohibiting or limiting pets is clearly drafted, the North Carolina courts will uphold their enforcement; however, they may not be enforceable under the Federal Fair Housing Act ("FHA").

The FHA prohibits housing providers and their agents and governing bodies, such as Associations, from discriminating against a resident or potential resident, regardless of whether the resident or potential resident will be the owner or listed tenant of the housing unit because of the resident's or potential resident's disability. The FHA makes it unlawful for Associations to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability with an equal opportunity to use and enjoy a housing unit. In fact, the Department of Housing and Urban Development has explicitly stated that an exception to a "no pets" policy qualifies as a reasonable accommodation.

Accordingly, Associations must modify their policies, practices, or procedures to permit an individual with a disability to use, own, and live with an "assistance animal" when doing so is necessary to provide the resident an equal opportunity to use and enjoy the housing unit.

It is important to note that the FHA requirement for reasonable accommodation of "assistance animals" in housing situations is much broader than the older, and more familiar, Americans With Disabilities Act ("ADA") requirement that "places of public accommodation" allow persons with disabilities to use "service animals." The ADA's requirement is limited to dogs that have been specifically trained to provide certain types of assistance such as a seeing-eye dog for a blind person.

In contrast, an "assistance animal" under the FHA can be any animal: a dog, cat, bird, gopher, guinea pig, or what have you, and it does not have to specially trained to provide any assistance. For example, a person with emotional issues resulting in a disability may have a need for the companionship of a "comfort" animal such as a cat or guinea pig, neither of which, so far as is known, can be trained to provide any service. While the animal would not qualify as a "service animal" under the ADA and could be barred from a place of public accommodation such as a restaurant, it may well be included in the FHA requirement for accommodation of assistance animals.

In order for a disabled individual to qualify for a reasonable accommodation from the Association's pet policies, there must be a relationship between the individual's disability and the assistance that the assistance animal provides. If this requirement is met, the Association then must permit the accommodation, and allow the individual to keep the assistance animal, unless the Association can demonstrate that allowing the assistance animal would:

- Impose an undue financial or administrative burden upon the Association;
- Pose a direct threat to the health and safety of others that cannot be reduced or eliminated by reasonable accommodation; or,
- Would cause substantial physical damage to the property of others that cannot be reduced or eliminated by reasonable accommodation.

If any of the above factors exist, the Association can prohibit the animal.

The FHA defines a person with a disability to include individuals:

- With a physical or mental impairment that substantially limits one or more major life activities that either:
 - Are regarded as having such an impairment; or,
 - Have a record of such impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of controlled substances), and alcoholism.

So what does an Association do if an owner, tenant, guest, or other resident requests a reasonable accommodation for an assistance animal? The Association is entitled to obtain information necessary to evaluate if the request is a reasonable accommodation and whether it's necessary because of the disability. If a resident's or potential resident's disability is obvious or otherwise known to the Association, and if the need for the requested accommodation is also readily apparent, then the Association may not request additional information about the requesting party's disability or the disability-related need for the accommodation. For example, if an owner-resident who is blind advises the Association that the owner wishes to keep a guide dog in the owner's home, the Association may not ask for information about the disability-related need for the dog as it is readily apparent that the owner's disability is connected to the service provided by the dog.

However, if the requesting individual's disability is known or readily apparent to the Association, but the need for the accommodation is not readily apparent or known, the Association may ask the individual to provide information about the disability-related need for the assistance animal. For example, if an owner-resident who uses a wheelchair advises the Association that the owner wishes to keep an assistance animal in her unit, the association may ask for additional information.

If a disability is not obvious (or the connection between the apparent disability and an assistance animal is not readily apparent), the Association may request reliable disability-related information that:

- Is necessary to verify that the resident or potential resident meets the Fair Housing Act's definition of a disability;
- Describes the need for the accommodation; and,
- Shows the relationship between the person's disability and the need for the requested accommodation.

In such a situation, it is recommended that the Association ask the requesting individual to present documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support which mitigates at least one identified symptom of the disability.

Under no circumstances should the Association:

- Ask for a deposit, fee, or surcharge in exchange for having the animal.
- Require that an assistance animal have specific training.
- Require the assistance animal to wear or carry a special collar, harness, vest, emblem, or other means of identifying it as such.
- Inquire about the extent of the individual's disability or ask for detailed medical records for the individual requesting the assistance animal.

Consequently, Associations must make exceptions to their prohibition or limitations on pets to accommodate disabled owners, tenants, guests, and other residents when there is a relationship between the requesting individual's disability and the assistance the assistance animal provides. There is no one-size-fits-all answer, so every request should be reviewed on a case-by-case basis.

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