by Mary-Joy Howes, Esq.

Understanding No-Pet Policies

Be in the Know, Before Saying No

Over the last few years, boards are increasingly inundated with requests from unit owners to make an exception to their association's no-pet policy. While there is a great deal of chatter among industry professionals on the topic, the fact of the matter is that a board must take every request for an "assistance" or "support" animal seriously. The reason being that failure to give the appropriate response to a request for an exception to a pet restriction may result in a discrimination complaint against the association. The consequences of such a lawsuit could have devastating effects on an association by way of fines that can be crippling to an association.

The "devil is in the details" because even though their qualifying disability is not readily apparent, unit owners and their tenants who have disabilities may qualify for a "reasonable accommodation." If an individual is in fact entitled to a reasonable accommodation, the association is obligated by law to allow the animal, regardless of the association's rule to the contrary.

Jurisdiction and Governing Law

The Rhode Island Human Rights Commission enforces the state's anti-discrimination laws, including those related to housing and public accommodations. In addition to enforcing state laws, the commission has contractual agreements with the federal government, including the U.S. Department of Housing and Urban Development, to assist in the enforcement of certain federal laws, including the Fair Housing Act (FHA), which is applicable to condominiums.

Generally speaking, the RI Human Rights Commission investigates the matter and attempts to negotiate a resolution. The complaint may go to a probable cause hearing and then ultimately to a full hearing, which may result in the assessment of damages to the offending party. Parties to a discrimination complaint can always elect to have the matter heard in the Rhode Island Superior Court of the respective county. Actions may also be brought to the Federal Court depending on the specifics of the particular case.

FHA makes it unlawful to "discriminate against any person ... in the provision of services or facilities in connection with [his] dwelling, because of a handicap" of that person or any person associated with that person. Discrimination includes, "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." The Rhode Island statutes regarding unlawful housing practices mirror this language.

Anyone seeking a reasonable accommodation has the burden of showing that they are handicapped as defined by statute. A handicap is defined as "(1) a physical or mental impairment which substantially limits one or more of such a person's major life activities; (2) a record of having such an impairment; or (3) being regarded as having such an impairment." Physical or mental "impairment" has been defined to include any mental or psychological disorder, such as emotional illness. Major life activities are defined as things such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Assistance Animals vs. Service Animals

It is important to note that "support" or "assistance" animals are not "service" animals. Service animals are trained to do work or specific tasks for the benefit of the disabled individual. Service animals are covered under the Americans With Disabilities Act (ADA), which has recently limited the definition of "service animal" to include only dogs and to exclude emotional support animals. The ADA only applies to a community association as far as areas that are open to the public. It is unlikely, however, that an individual, who qualifies under the ADA, would not qualify as needing a reasonable accommodation pursuant to the FHA.

Of a more complicated matter is a request for a reasonable accommodation pursuant to FHA. It is well settled that "assistive animals" can be, and often are, regarded as necessary to afford a disabled individual equal opportunity to use and enjoy a dwelling by providing emotional as well as physical support. While the FHA does not, the Rhode Island fair housing statute does makes specific reference to "personal assistive animals." Assistive animals that alleviate many of the symptoms of mental illness, such as depression, social phobia, and anxiety, are often referred to as "emotional support animals."

Requirements

In general, associations have the right to require the unit owner to show that

1) they have a disability; 2) there is an identifiable relationship between this disability and the requested reasonable accommodation; 3) the reasonable accommodation is necessary so that the unit owner may have a reasonable opportunity to use and enjoy their unit; and 4) there is a disability-related need for the animal.

An individual must demonstrate a nexus between his or her disability and the function the animal provides. If the disability is not readily apparent or known by the board, or if the disability-related need is not clear, the board may ask the individual for documentation from a physician, psychiatrist, social worker, or other mental health professional that shows that the animal provides the support that alleviates at least one of the identified symptoms or effects of the disability.

Currently, Rhode Island law requires personal assistive animals to be trained. Federal law, however, has been interpreted not to require training because some are considered assistive aids for reasons that do not require any specialized training. In general, the RI Human Rights Commission has not required assistive animals to be trained.

The association is limited when it comes to its ability to control many aspects of the accommodation. The RI Human Rights Commission has demonstrated an unwillingness to allow associations to set weight guidelines or breed (or species) restrictions for a unit owner's emotional support animal. The RI Human Rights Commission states that the kind and type of animal the disabled unit owner connects with is the key to the reasonable accommodation and therefore it cannot be dictated. We assume for all intents and purposes, however, that there are some species that would not pass the reasonableness test.

Speaking of "reasonable," it is important to remember that the accommodation must be reasonable. Factors considered in determining whether the accommodation is reasonable include whether the accommodation would result in substantial physical damage to the property, would pose an undue financial or administrative burden, or would fundamentally alter the association's operations.

Also to be considered is the specific animal's individual conduct and whether the specific animal poses a direct threat to the health and safety of the community. No determinations can be made on species, breed, or weight of an animal, and no determinations can be made based on speculation of what may happen. These factors are weighed against the presence of a disability and the need for a reasonable accommodation. Any denial of a request based on one of the aforementioned exceptions should be specific and detailed, and the board should first seek the advice of its attorney.

Fact Intensive and Case Specific

Bylaws should provide for the safe and sanitary management of all animals who are allowed to live on the premises as a result of applicable state and/or federal law. Topics that the bylaws should address include, but are not limited to, restrictions on where the animal may relieve itself, the clean up of animal droppings, a requirement for up-to-date vaccinations, and routine veterinary care. The association, however, can never charge an individual a fee for having an assistance animal. Bylaws should also address service and support animals whose owners are guests of unit owners.

Determining whether a reasonable accommodation is warranted for an assistance animal is a fact-intensive and case-specific question. When presented with these requests, boards must always give thorough and timely consideration in light of the applicable laws — to do otherwise is simply reckless. CM

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