

Can I Keep My Assistance Animal?

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Scenario: *The Tiger King* Condominium Association is – ironically – a no-pet building and has a restriction in its master deed prohibiting any pets (dogs, cats, reptiles, TIGERS, etc.). However, an owner, Joe Exotic, recently requested that the board relax this restriction so he could keep his emotional support animal, which was allegedly prescribed by his doctor to treat an unknown disability. How should the association's board handle this request?

The answer to this question is now much clearer thanks to the recent guidance issued by the United States Department of Housing and Urban Development ("HUD"). On January 28, 2020, HUD issued a notice – FHEO-2020-01² – clarifying how housing providers should comply with the Fair Housing Act ("FHA") when assessing a person's request to allow an assistance animal as the result of a disability. As discussed herein, this new guidance sets forth best practices regarding the type of information and documentation an association can request to evaluate any accommodation request.

Under the FHA³ and its regulations, housing providers⁴ are required to make reasonable accommodations to disabled persons with respect to policies, practices, or services when such accommodations may be necessary to afford a person with a

disability the equal opportunity to use and enjoy a dwelling. One such accommodation is to allow a person to reside with an "assistance animal" even when an association may have a specific no-pet policy or other similar restrictions.

HUD defines assistance animals as two (2) types: (1) service animals; and (2) other animals that "do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities" (collectively referred to as "support animals"). A "service animal" is a dog specifically trained to perform tasks for the benefit of a disabled person. Note that a service animal can only be a dog except in very rare circumstances. However, a "support animal" can be any kind of animal that is normally kept in a house (examples given are dogs, cats, small birds, rabbit, hamster, fish, or turtle). For any other type of animal (barnyard animal, monkey, reptiles other than turtles, etc.), the disabled person has a burden of demonstrating why a traditional household pet cannot provide the needed support.

An assistance animal is not considered a pet so long as the animal provides some type of assistance to an individual. If an animal alleviates the effects of any kind of disability, it will be treated as an "assistance animal" under the

FHA; there is no requirement that the animal be specially trained or possess any special skills. Importantly, associations may not charge any type of fee or a deposit for an assistance animal, and other pet rules (such as a size or breed limit) do not apply to assistance animals; however, assistance animals may be subject to noise and other restrictions, and in certain circumstances associations can refuse a reasonable accommodation for an assistance animal where the specific animal "constitutes a direct threat to the health or safety of other individuals" or "would result in substantial physical damage to the property[.]"

Again, any request from a resident to relax a no-pet or limited-pet policy should be treated a request for a reasonable accommodation under the FHA. In such cases, appropriate considerations include: (1) whether the resident has a disability-related need for the animal; (2) whether the animal would alleviate one or more identified symptoms; and (3) whether granting the request would result in an undue financial burden or fundamentally alter the nature of the housing provider's operations. A resident has an absolute right to reside with a service animal; however, in order to make a determination as to whether an association needs to accommodate a resident's request for a support

animal, the association has a right to request more information when the resident's disability is not readily apparent or known.

Here is where the new HUD guidance is instructive. The new guidelines provide that a service animal is different than a support animal with regard to the approach to deciding whether to grant a reasonable accommodation. With respect to a service animal, the only questions a board or management can ask the resident seeking an accommodation are: (1) "is the animal required because of a disability?"; and (2) "what task has the animal been trained to perform?"

With respect to support animals, the first question to consider is whether the person seeking the accommodation has an observable disability. If the person does not have an observable disability (blindness, deafness, mobility limitations, etc.), the association may request information that reasonably supports that the person has a disability. A "disability" is defined as a physical or mental impairment that substantially limits one or more major life activities (seeing, hearing, walking, talking, breathing, performing manual tasks, caring for one's self, learning and working, etc.).

Acceptable information to support the claim of a disability includes a determination of a disability by a federal or state agency, receipt of disability benefits, eligibility for housing benefits based on a disability or information from a health care professional. Please Note: an association is not entitled to know an individual's specific diagnosis; however, HUD's guidance makes clear that a certificate obtained from a website does not constitute sufficient proof of a disability if the healthcare professional does not have personal knowledge of the patient and so states in the document submitted.

Once it is determined whether an individual has a disability, the question becomes whether the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability. This question can be answered by a licensed healthcare professional general as to the condition but specific as to the individual with a disability and how the assistance or therapeutic emotional support is provided by the animal. A relationship or connection between the disability and the need for the assistance animal must be provided, particularly when the disability is non-observable and/or the animal provides emotional support.

As discussed above, even with HUD's new guidance, reasonable accommodation issues in community associations are not always cut and dry, which is why association boards should seek the advice of legal counsel before denying any request from a resident for an assistance animal. The association's legal counsel is

best suited to advise and assist the board with implementation of appropriate procedures should the board receive such a request.

FOOTNOTES

¹ R.E.M., "It's The End of the World As We Know It (And I Feel Fine)," Document, 1987.

² The full FHEO ("Fair Housing and Equal Opportunity") Notice: FHEO-2020-01 can be found at this link: <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

³ See 42 U.S.C. §§3601-3619, as amended.

⁴ As defined by the FHA, housing providers include all forms of community associations, including condominiums, homeowners associations, and cooperatives.

ABOUT THE AUTHOR

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