

Service Animals and Emotional Support Animals Advisory

Your condo association prohibits pets, but you need a 'comfort' animal. What do you do?
By Benny L. Kass, Attorney, August 11, 2017

Your condominium rules prohibit pets of any kind except fish and birds. A unit owner asks the board of directors to allow them to keep a dog because they need the comfort the animal gives them. What should the board do?

First, the board has to understand the difference between a "service" animal and a "comfort" or "emotional support" animal. I use the word animal, because there are more than dogs in this category. The list includes pigs, parrots, cats, ducks, and yes, even a turkey that last year had to be given a seat on a Delta air flight.

A service animal, such as a guide dog, is trained to do a specific task. Not even a condominium can prohibit such an animal because the owner has to rely on it everywhere. It is not a pet.

A comfort, assistance or emotional support animal falls into a different category. According to the Humane Society, such an animal "does not need to be trained to perform a service. The emotional and/or physical benefits from the animal living in the home are what qualify the animal as an assistance animal."

While the Americans With Disabilities Act does not generally apply to many community associations, the Fair Housing Act does. Oversimplified, the Fair Housing Act requires the housing provider, including condos, to make "reasonable accommodations" to a request for such a comfort animal.

[\[More Kass: Bill pending in D.C. Council would slightly diminish tenant rights\]](#)

Typically, if the owner seeking such an animal provides a letter from a doctor or a therapist stating the disability and the need for the comfort that animal will provide, the legal requirement of making a "reasonable accommodation" will be satisfied.

Sounds easy? In fact, it's too easy to get such a letter. Look on the Internet for "emotional support animals." For \$99, you can get the necessary letter within 24 hours. Imagine being diagnosed in less than one day that you have such a burning need for that pig or duck to keep you happy. If it quacks like a duck, that's exactly what it is: a "quack."

In fact, I recently heard that one of these "trained professionals" issued a letter authorizing the condo owner to have two pets: one to comfort the owner and the second to comfort the poor depressed animal that was supposed to comfort the owner.

Condo boards have a major problem when faced with a request to allow such a comfort animal. The Fair Housing Act makes it very clear: They are "prohibited from discriminating against . . . [owners or even tenants] because of their disability or the disability of anyone associated with them." The act goes on to prohibit the board from refusing "to make reasonable accommodations in rules, 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."

A recent case handed down by the D.C. Court of Appeals — *Welsh v. McNeil*, decided June 29 — summarized the law. For the unit owner or the tenant to have a case for violating the Fair Housing Act, “he must show (1) that he suffered from a disability; (2) the landlord knew or should have known of the disability; (3) an accommodation of the disability is necessary . . . to have an equal opportunity to use and enjoy the premises in question, (4) the tenant requested a reasonable accommodation, and (5) the landlord refused.” Although that case did not involve comfort animals, the requirements are applicable for all Fair Housing Act cases whether involving a landlord or a community association.

[\[More Kass: This condo owner pays fees for a money-losing garage and doesn't even own a car\]](#)

According to the Department of Housing and Urban Development (HUD), which enforces the law, in 2016 alone, the agency completed more than 8,300 investigations, of which some 40 percent involved a housing provider's failure to provide “reasonable accommodation.”

Although most of these cases did not involve comfort or service animals, the fact remains that HUD has the authority to investigate and issue fines.

Unit owners who are faced with discrimination have two remedies: take the association to court or file a complaint with the local HUD office. Clearly, the latter is much less expensive.

Accordingly, condo boards and their property managers are well aware of the ramifications of not making a “reasonable accommodation.” However, this does not mean the board has to allow the animal just because the owner or the tenant has one of these letters stating the importance of such an animal.

First, the board can — and should — carefully examine the facts. If the request is for a service animal, unless it is absolutely clear it is a sham (a board member saw the alleged blind person driving alone in a car which was not a self-driving one) the request must be honored. And even then, what one may think is a “service” animal, may actually be claimed as a comfort animal.

Next, the board should carefully analyze the letter from the alleged professional. Confirm it is legitimate. Did the owner meet with the letter writer or was it merely one of those \$99 specials?

Last, the board can impose reasonable requirements, similar to what all other animal owners in the condo have to follow. It must be registered, and the owner should get an animal license from the local government. The animal must be on a leash at all times on common property.

The owner must clean up after the animal. If there are special zones in the property for use by animals, those must be used exclusively. And last, if the animal is causing a disturbance or a nuisance for other owners, the board should address the problem by holding a hearing and possibly fining the owner.

But, in the final analysis, boards should be wary of imposing too many requirements or too many hurdles for the owner seeking that comfort animal. This is a highly emotional issue for many people, and easy to seek guidance — and enforcement — from HUD. --