Becker & Poliakoff

Q&A: Handling Requests for Emotional Support Animals

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By: Martin C. Cabalar

Q: **I live in a 40-unit condo building, which has a NO PET AMENDMENT from 1980. A woman recently purchased a unit and has been seen with a dog that barks all the time. She signed all the disclosure forms that stated "no pets" and had given the Board a note from a nurse practitioner that the dog is an emotional support animal. What can we do?**

A: The Federal Fair Housing Act (42 U.S.C. §§3601-3619) and the regulations promulgated thereunder require "housing providers," including entities such as condominium associations in New Jersey, to make "reasonable accommodations" to disabled persons 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. New Jersey's Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) similarly requires accommodation of the disabled. Decisions of federal and state courts in interpreting the Federal Fair Housing Law and New Jersey's Law Against Discrimination have held that in certain instances housing providers, such as a condominium, must accommodate those with a legitimate physical or emotional disability requiring the support or assistance of an animal.

Notwithstanding, simply providing a note from a nurse practitioner stating that "the dog is an emotional support animal," does not provide the governing body of a condominium the reasonable opportunity to establish that the resident suffers from a disability defined by law; and, further, requires the physical assistance or emotional support of a dog to reasonably accommodate their disability. Thus, in this instance, it likely would not be unreasonable for the association to request additional information to allow its governing body to evaluate the reasonableness of the request.

For example, the association may reasonably request that the resident provide a certification of a Physician or other qualified Treating Professional certifying: (a) the disability or handicap suffered (b) said disability or handicap meets the standards set forth by the Federal Fair Housing Act; (c) to the major life activities substantially limited by the disability or handicap; (d) whether treatment is available for the disability or handicap; (e) to the description of the accommodation requested; (f) as to whether the accommodation requested alleviates or mitigates the disability or handicap; and, (g) as to whether any alternative accommodations exist. If, upon receipt of such additional information,

the association concludes that the resident is disabled under the law and that the physical assistance or emotional support of the identified animal is reasonably necessary to accommodate the disability, then approval of the accommodation is required by law.

Where an accommodation is required by law, the resident is still required to maintain the animal in accordance with existing rules and regulations; which often include, among other requirements, that residents permit no activity that creates a nuisance or annoyance to other residents. Such rules require the resident to take all actions necessary to prevent the animal from making noise that may unreasonably annoy or disturb the peace of neighboring residents.

Keep in mind that where an accommodation is required to be made by law, the animal is not considered a “pet.” Rather, it is an animal that the resident has claimed is required under the law for the physical assistance or emotional support for the disability that the resident is afflicted with. Therefore, the governing board of a community association should seek the advice of legal counsel before denying the request of a resident for a physical assistance or emotional support animal. The association’s legal counsel is best suited to advise and assist the governing board with implementation of appropriate procedures should the board receive such a request.