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Pets Rules and Reasonable Accommodations

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Pandemic Pets in Multifamily Communities

The coronavirus crisis has forced many unwelcome changes on households around the world—but it has also allowed or inspired some to make lifestyle choices that were impractical or otherwise out of reach before. One such choice has been to acquire a pet. With travel restricted, and working and schooling largely happening at home, households across the country decided that if there was ever a time to add a furry (or feathered, or scaly) friend to the family, this was it.

But for the 74 million Americans who live in communities managed by homeowners associations or cooperative corporations, according to estimates by the Community Associations Institute (CAI), bringing a pet home involves considerations that those in detached, single-family homes don't have to contend with. For one thing, many communities simply prohibit pets altogether. Of those that do welcome pets, most have rules—which residents agreed to follow upon becoming a unit owner or shareholder—limiting the species, breeds, sizes, or number of animals residents can harbor in their homes, as well as registration requirements and rules about where the pets are allowed to be on the property. And it's a given that no pet may interfere with the habitability or quiet enjoyment of their neighbors' homes.

Along with the rules, there are practical considerations for would-be pet owners, too. In many multifamily communities, having a pet—especially one that needs to go out several times a day like a dog—requires taking that animal through the property's common areas: the hallways, lobbies, elevators, vestibules, outdoor paths, and so forth. With the ongoing pandemic keeping people at home, that means more interactions between pets, their owners, and their neighbors. An unruly or aggressive pet in an enclosed space (like an elevator or stairwell) is a big problem; it's also problematic for someone who's highly allergic to fur or dander. And while vaccination rates are improving and mask requirements in common areas are de rigueur, there's still a pandemic on; many residents are understandably un-thrilled at the prospect of crowded elevators and lobbies full of rambunctious pups and their owners trying to get outside for morning walkies.

Pet, or Emotional Support Animal?

First, let's get those distinctions out of the way. The Americans with Disabilities Act (ADA) defines service animals as dogs (and only dogs as of March 15, 2011, although there are separate provisions for certain miniature horses) that are individually and specially trained to do

work or perform specific tasks for people with disabilities in direct relation to those specific disabilities, such as a guide dog for someone with legal blindness, or an alert dog for someone with a seizure disorder. Dogs whose sole function is to proand guidelines of the U.S. Department of Housing and Urban Development (HUD) and the federal Fair Housing Act (FHA). Notably, HUD does include animals that provide emotional support in its definition of “assistance animals,” and distinguishes those animals from “pets” if that support “alleviates one or more identified effects of a person’s disability.”

These laws require housing providers to make “reasonable accommodations” for persons with disabilities in order to enjoy equal and fair use of their housing. A reasonable accommodation might include an exemption to an association’s or corporation’s ‘no pets’ or ‘no dogs’ policy, or a waiving of fees required under a policy that does allow certain animals. An accommodation may be considered unreasonable if it “would impose an undue financial and administrative burden on the housing provider or … would fundamentally alter the nature of the housing provider’s program.” According to HUD, such determinations “must be made on a case-by-case basis” and can take into account factors specific to a given residential situation.

According to Heather Stiell, senior counsel with New York City-based law firm Lasser Law Group, the only questions or “proof” that can be asked of a person requesting an accommodation for an assistance animal are for “documentation supporting the existence of the claimed disability, and the need for an emotional support animal to alleviate or assist in that disability.” Such documentation, says Stiell, can include a letter from a licensed mental health professional treating the individual. There is no nationally recognized ESA “registry” or organization that provides an official ESA “designation” or “certification.” (No, not even from the internet.)

Stiell explains that asking inappropriate questions or unduly rejecting a request for an ESA accommodation can open boards up to civil liability and penalties under federal and state anti-discrimination and human rights laws. But by the same token, such requests must be vetted for legitimacy, and approvals only given when the accommodation does not interfere with the housing rights or safety of other residents. As an example, Yost relates how one Southern New Jersey condo board handled a vide comfort or emotional support do not qualify as service animals under the ADA. However, multifamily buildings and communities are subject to rules suspicious medical letter submitted as documentation for a resident’s ESA accommodation request: “The board notified the author of the letter that they were submitting the correspondence to the State medical oversight board,” he says. “The author immediately retracted their supporting correspondence, and the request for the emotional support animal was withdrawn.”

Similarly, adds Stiell, whether a pet, an ESA, or a service animal, “If the animal in question were a type of animal that was deemed to be unsafe or unsanitary, either because of a health code limitation, or because the animal was disruptive or dangerous or caused a lot of damage,” then it is no long considered “reasonable” to accommodate that animal. “Buildings are not required to accept an animal if it would pose an undue burden to the building, or to the residents of the building.”

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