

# October 2018

## *Community Associations Newsletter*

### **Assistance Animals**

**By: John F. McCabe, Jr.**

Whether to allow or not to allow animals in community associations under the various federal, state, and local disability laws is a question that is appearing frequently in the news, and more importantly, being faced by community associations.

Notwithstanding covenant pet restrictions, unit owners are requesting, as a reasonable accommodation under disability laws, to have animals in their units and on the community association premises. These animals are variously characterized as “service animals”, “assistance animals”, “support animals”, or “therapy animals”, or under other names.

The U.S. Department of Housing and Urban Development has used the term “assistance animals” for animals that work, provide assistance, or perform a task for the benefit of a person with a disability or that provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.

It is important to distinguish the federal, state or local law under which a request is made, as well as the type of animal in the request.

For example, the law that most usually applies to community associations is the Federal Fair Housing Act. Most community associations, unless they have a public accommodation such as a swimming pool open to more than just the residents, are not subject to the Americans with Disabilities Act and, therefore, they do not directly face the issue of service animals as defined under the Americans with Disabilities Act (essentially trained dogs such as seeing-eye dogs). State and county laws generally follow the federal laws, and they may be broader, so they should be checked.

Under federal law, an assistance animal is not a pet, and, therefore, provisions of a community association’s bylaws for “pet” rules do not apply. For example, assistance animals are allowed even where pets are completely prohibited. Where pets are allowed, rules regarding whether or not pets may pass through a lobby with the owner do not apply. It is important to look at your documents’ language and differentiate between “pet” restrictions from “animal” restrictions. Even where animal restrictions may apply, they will still be subject to federal law.

If a resident with a disability desires to have an assistance animal, he/she may be required to submit a request to do so. The request must include reliable documentation of the disability, and the disability-related need for the assistance animal if the disability is not known or readily apparent.

When the community association considers the request, it may consider the following questions:

1. Does the person seeking to use and live with the animal in the community association have a disability, that is, a physical or mental impairment that substantially limits one or more major life activities?
2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability, or does the animal work, provide assistance, perform tasks and/or services for the benefit of the person with the disability?

If there is no disability, then the assistance animal may not be allowed. If there is a disability, and if the answer to the second question is also "yes", then the animal should be allowed.

The community association, however, is still permitted to impose certain conditions. The assistance animal is not free to do anything, at anytime, anywhere that the unit owner chooses to allow. In particular, the person who possesses the approved assistance animal is responsible for assuring that the approved animal does not unduly interfere with the routine activities of the residents of the condominium, or cause difficulties for them. The person who possesses the approved assistance animal is also

financially responsible for the actions of the assistance animal, including bodily injury or property damage. This responsibility includes, but is not limited to, replacement of damaged furniture, carpet, windows, wall coverings, and the like. The person possessing the approved assistance animal is also responsible for cleaning, repair and maintenance beyond ordinary wear and tear to the common areas.

When addressing a request to have an assistance animal, the community association should remember that assistance animals are permitted; they are not required to be trained or to serve any other function than emotional support; they are not subject to limitations regarding pets because they are not pets. The community association should also consider, however, that no assistance animal is permitted to be a nuisance or a threat, or to be a health hazard or to violate other federal, state or county laws. (An example is the issues arising when assistance animals are allowed in swimming pool areas).

Requests for assistance animals are extremely fact specific and can also have a high level of emotional investment – on both sides. It is important to get the assistance of your management and legal professionals when faced with this nuanced situation.