Revisiting Reasonable Accommodation Requests

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Over a year ago, I wrote an article for our newsletter about service and support animals, and the pitfalls of failing to properly consider and address requests for reasonable accommodations. Since that time, I have seen a dramatic increase in the number of condominium residents who have sought relief from condominium pet restrictions or prohibitions to maintain dogs, cats and other animals in their units.

If you, as a board member or property manager, have not yet received such a request by now, I can assure you it won't be long before you do. It seems to me now that service and support animals are ubiquitous; whether you are in a restaurant, on a cross-country flight or just down in the clubhouse of your condominium. While I have no doubt that many of these animals provide meaningful services and support to many individuals who suffer from genuine disabilities, I have also unfortunately seen a number of circumstances where owners or prospective owners appear to have abused the leverage they perceive under federal and state law to exempt themselves from condominium covenants.

Many of my board member clients have expressed considerable frustration – even outrage – at these abuses. They feel, quite reasonably, that individuals who buy a unit in a "pet-free" community do so for a reason, and expect that these covenants will be consistently enforced. Unfortunately, however, knee-jerk reactions to deny requests for accommodations, even when they seem unwarranted, can lead to considerable cost for your community.

Consider the following scenario: Allergen Meadows Condominium prohibits pets of any kind from the property (including any units). Everything at Allergen Meadows is roses until one day Andy Warhowl comes along. Andy is not yet an owner, but is strongly considering purchasing a unit. In the course of his diligence, he discovers that the Master Deed prohibits pets. For Andy, whose 180lb Great Dane, Bruiser, is a constant companion, this presents a problem. Andy suffers from depression and Bruiser has been instrumental in Andy's treatment. Andy does not have a formal letter from his treating physician to this effect; however, he goes online and obtains a "Deluxe" emotional support animal kit for $199.00. The kit comes in the mail and includes a "Lifetime Registration of Bruiser," a certificate, ID card, dog tags, and an ill-fitting, fire-engine red vest.

Thus armed, Andy approaches the Allergen Meadows board and requests a "reasonable accommodation" from their pet prohibition so as to allow him to keep Bruiser should he purchase a unit there. The Board does some research online and discovers that Bruiser's certification is "bogus" – that anyone willing to shell out the $199.00 could get the same nifty vest, etc. What's more, they say, Andy isn't even an owner! They conclude that he may not be cut out for life at Allergen Meadows if he insists upon bringing Bruiser with him and decline his request. Andy

backs out of the sale, and the next day heads down to the Massachusetts Commission Against Discrimination to file a claim against the Allergen Meadows Association.

While the names in this hypothetical are farcical, the facts are not. I've cobbled these facts together from all-too-real cases my clients have faced to highlight what I believe is the most important point for board members and managers to remember in considering these matters. All too often the facts will seem ridiculous, contrived, convenient or down-right deceitful. Many times, animals "become" support animals after owners are issued violation notices (but not before). Many times, these internet certifications, or notices from medical professionals from across the country who have never seen the "patient" are proffered in support of these requests. When faced with such questionable behavior or credentials, the tendency can be to quickly deny requests. This is a mistake.

If you take just one thing away from this article, remember this: ***It doesn't matter what kind of animal you are dealing with or whether that animal has any particular training or certification (or vest)***. The relevant analysis under both federal and Massachusetts law is whether an individual is entitled to a "***reasonable accommodation***" from the condominium's covenants and restrictions. Federal and state law make it unlawful for an association to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

Generally speaking, if an association does not attempt to address a disabled unit owner's (or ***prospective*** unit owner's) request for a "reasonable accommodation," it is possible that the individual may bring an action against the association for discrimination. Any person alleging discrimination under the federal or Massachusetts law must make a *prima facie* showing that (1) he suffers from a handicap, (2) the association knew or should have known about the handicap, (3) the accommodation sought was reasonably necessary to afford the owner an equal opportunity to use and enjoy the premises, and (4) the association failed to make the requested accommodation.

Assuming a reviewing authority finds that the requested accommodation is reasonable, then if the association fails to address the request in an appropriate fashion, the individual may be able to prove a case of discrimination. In certain situations, an association may still refuse to grant an accommodation if doing so would present an "undue hardship" on the association. While there is no "bright line" test for what constitutes an "undue hardship," the term generally encompasses a measure that would cause significant administrative burden or expense to the association. Ultimately, however, whether a requested measure would constitute an "undue hardship" or not would be resolved on a case-by-case basis by a reviewing authority.

We advise all clients faced with ***any*** request for an accommodation to take the process seriously, to document their consideration of the request, and to avoid the human inclination to immediately discredit or deny requests. Regardless of whether or not you think the request is "legitimate," you

would be well advised to engage the requesting individual in a dialogue in order to mitigate the likelihood of a potential discrimination claim or finding. Associations may be entitled to request additional information from the individual seeking the accommodation, and should do so to the extent lawful and appropriate. In this respect, involving counsel early is often prudent so as to avoid missteps and unnecessary escalation. I have seen many cases where this interactive process results in either the withdrawal of the request, a refinement of the request or an agreement to accept appropriate conditions in the context of the accommodation. All of this is far preferable to potentially costly and time-consuming administrative claims or litigation.

In closing, I do not mean to suggest that you would be advised to "throw in the towel" and approve every off-the-wall request presented to your board. We are not so diffident as that. I do believe, however, that board members have fiduciary obligations, among which is the duty of care, and that the satisfaction of this duty requires a certain dispassionate and informed approach. Board members and managers who apply this due care, even to questionable requests, are more likely to avoid the dog-house in the long run.