From the Law Offices of
PERKINS & ANCTIL P.C.
ATTORNEYS AT LAW

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IN THIS ISSUE

L A W Q U A R T E R L Y

Announcement!

Perkins & Anctil Welcomes Catherine Kane to the Reception Desk
We are pleased to announce that Catherine "Cathy" Kane has joined our team at Perkins & Anctil. Cathy brings an impressive and extensive work history with valuable experience in administrative support. In other related and important news, Samantha Gray will be transitioning to her new role as a Legal Assistant in the Lien Enforcement and Real Estate Departments.

Cyber Security

By: Rhonda L. Duddy, Esq.

With the increased convenience of technology comes an increased risk. No one is immune from cybercrime. For example, as we have recently heard, millions of people have been affected by the Equifax data breach. The list of corporations with data breaches is growing, but small business and individuals face harmful hacking and scamming schemes as well.

National Cyber Security Awareness Month occurs every October and is designed to educate people and bring awareness to the growing problem of cybercrime. The following are a few ways to identify types of cyber-attacks so we can all make an effort to be safer and more secure online.

Cyber criminals continue to continue to look for ways to hack into our computer systems and have become more creative and sophisticated in their strategies. One danger to be aware of is ransomware. Ransomware targets everyone from home users to businesses and government networks and can lead to temporary or permanent loss of sensitive information, disruption of business and financial loss.

Ransomware is defined as a type of malicious software designed to block access to a computer system until a sum of money is paid to unlock the data. Paying the ransom does not guarantee you will regain access to your data. The Tewksbury Police Department had found themselves victims of a cyber-attack and decided to pay the $500.00 ransom to get their data back, but some organizations have paid the ransom, sometimes in bitcoin, and were never provided with information to release their information.

Another cybercrime concern is phishing. Phishing is an attack used into giving up information. These attacks begin with a cyber-criminal sending a message pretending to be from someone or something you know, such as a friend, your bank or a well-known store. These messages then encourage you to take action, such as clicking on a malicious link or opening an infected attachment.

Cyber criminals craft these convincing looking emails and send them to millions of people around the world. The criminals do not know who will fall victim, they simply know that the more emails they send out, the more people they will have the opportunity to hack. Some Verizon customers were victims when they were targeted earlier this year and received legitimate looking emails attempting to lure them to a fraudulent website to input personal information or download a virus infected program.

There is an even more targeted type of phishing to be aware of known as spear phishing. Spear phishing is the same as phishing, except that instead of sending random emails to millions of potential victims, cyber attackers send targeted messages to a very few select individuals. The attackers research their intended targets such as by reading the intended victims' LinkedIn account, Facebook account, or company websites, as well as any messages they post on public blogs or forums. Based on

their research, the attackers then create a highly customized email that appears relevant to the intended targets. This way, the individuals are far more likely to fall victim.

Cybercriminals know the best strategies for gaining access to our sensitive data, but here are some steps to take to protect ourselves from cyber-attacks:

- Be suspicious of emails with grammar or spelling mistakes. Most legitimate businesses proofread their messages carefully before sending them.
- Use strong passwords and change them every few months. A strong password would be a phrase or something that would be difficult for a hacker to guess. It would be prudent to not use common passwords, such as "123456" or "password." You should keep a list of your passwords on a piece of paper, not on your computer.
- Be careful with links, and only click on those that you are expecting. Also, hover your mouse over the link. This shows you the true destination of where you would go if you clicked on it.
- Be suspicious of attachments. Only click on those you are expecting. If it looks suspicious, even if you know the source, it's best to delete the email or avoid clicking on the advertisement.

If you get a suspicious email from a trusted friend call them as their computer may have been infected or their account may be compromised.

- Don't click pop ups or suspicious links.
- Don't "click here". Log in to the company's actual website instead.
- Limit the type of business you conduct on public Wi-Fi networks as they are not secure.
- Regularly update your antivirus software and use a firewall to block access to known malicious addresses.
- Enable spam filters to prevent phishing emails from reaching you.
- Back up your data regularly and test those backups to verify they are working properly.
- Exercise caution when using email providers such as AOL, Google, Yahoo, and Hotmail as they are highly targeted accounts.
- Be careful what you download.
- Stay up to date and aware of emerging cyber threats.

You may not be able to prevent a cyber-attack, but you can take these steps to maximize defenses and minimize the impact.

Revisiting Reasonable Accommodation Requests

By: Scott J. Eriksen, Esq.

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.

To Fly or Not to Fly? That is the Question Posed by the City of Newton!

Summary by: David R. Chenelle, Esq.

With the emergence of the use of the pilotless aircraft, commonly known as drones, there has been an increasing number of news stories concerning the use or abuse of drones. We are no longer talking about the flying toy helicopter that a child would get as a present, but commercial quality drones capable of flying ranges in the thousands of feet. So from the claims that my neighbor is spying on me to the more Machiavellian purposes claimed, drone use has now become one of the hot topics that condominium associations have to deal with.

In the City of Newton, an ordinance was passed in December of 2016 in an attempt to regulate the use of pilotless aircraft within the city limits. That ordinance indicated the intent was to "promote the public safety and welfare of the City and its residents … to work in harmony with all relevant rules and regulations of the Federal Aviation Administration". ("Ordinance") It further defined pilotless aircraft as "an unmanned, powered aerial vehicle, weighing less than 55 pounds, that is operated without direct human contact from within or on the aircraft" ("FAA"). The ordinance provided, in part, the following:

1. Local registration requirements applicable to owners of all pilotless aircraft;

2. A ban on the use of a pilotless aircraft below an altitude of 400 feet over private property without the express permission of the owner of the private property;

3. A ban on the use of a pilotless aircraft "beyond the visual line of sight of the Operator"; and

4. A ban on the use of a pilotless aircraft over Newton city property without prior permission.

Once passed, along comes Michael Singer, a resident of Newton to challenge the ordinance. Singer thereafter filed for Declaratory and Injunctive Relief in the U.S. District Court for the District of Massachusetts ("Court") challenging the portions of the ordinance listed above. The trail of the case was abbreviated as both sides agreed to file reciprocating Motions for Summary Judgement.

As previously stated, the position of the City of Newton was for the safety and welfare of its citizens. Singer, however, had a much more robust response stating that the Ordinance went too far in that it is preempted by federal law as it attempts to regulate a nearly exclusively federal area of law; namely airspace.

Backing up a bit, in the fall of 2012 the FAA Modernization and Reform Act was passed directing the FAA to incorporate into its regulations the control and use of drones. This directive was codified at 49 U.S.C. §40101 resulting in the promulgation of 14 C.F.R. part 107, which as its stated purpose "applies to the registration, airman certification, and operation of civil small unmanned aircraft systems." In review of the FAA guidelines, the Court found that the Ordinance conflicted with or undermined the directive of the FAA in regards to the required registration and flying restrictions imposed within the Ordinance. In fact the Court went so far as to state that the restrictions contained within the Ordinance "essentially constitutes a wholesale ban on drone use in Newton."

The Court then went into a very long dissertation on the Supremacy Clause of the U.S. Constitution. Following references to multiple U.S. Supreme Court cases involving air space and its control, the Court concluded that "where a state's exercise of police power infringes upon the federal government's regulation of aviation, state law is preempted." The Court further concluded that where Congress has given the FAA the responsibility of regulating the use of drones, the challenged portions of the Ordinance were in fact preempted. The Court's closing statement seemed to leave the door open to future attempts by municipalities when it stated "of course, nothing prevents Newton from re-drafting the Ordinance to avoid conflict preemption."

About Our Law Firm

Perkins & Anctil, P.C. is a leading firm in all facets of real estate law. Our diverse experience includes all aspects of condominium and community association law, real estate conveyancing (including the representation of numerous local and national lenders), developer representation (from the municipal approval process through the sale of property), landlord-tenant matters and real estate litigation. In addition, we offer years of industry experience in general litigation and bankruptcy cases, as well as the full spectrum of employment related matters. Our attorneys have been acknowledged for their expertise in Massachusetts and New Hampshire.

Perkins & Anctil, P.C.
6 Lyberty Way, Suite 201
Westford, MA 01886
(978) 496-2000 |
www.perkinslawpc.com