



Dealing With Assistance Animals

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With certain exceptions, it is discriminatory for an association to refuse to allow an assistance animal, that may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling unit or common use areas associated with association living, to reside in a requesting owner's unit.

SERVICE V. SUPPORT ANIMALS

California statutes distinguish between two types of “assistance animals,” namely, “service animals” and “support animals.”

“Service animals” are dogs and miniature horses trained to perform specific tasks to assist someone with disabilities, such as a guide dog trained to lead the visually impaired. Service animal training can be conducted by a professional, a person with a disability, or a third party. This training usually results in a well-behaved, well-trained service animal. Residents with disabilities are allowed to have service animals in all dwellings and common areas, subject to certain restrictions mostly related to health and safety concerns, such as in a common area pool.

To determine if the animal is a service animal, the board can only ask two questions. 1) Is the animal required because of a disability? (2) What work is the animal trained to perform [to accommodate the disability]?

If the answer is yes and a task/work has been identified, allow the animal. If not, the animal is likely not a service animal. BUT... it could be a support animal.

“Support animals” are any animals that provide emotional, cognitive, or similar support to someone with a disability. Some of the stranger support animals that we have heard of include a turkey, bearded dragon, rats, spiders, snakes, etc. Anything goes if it does not pose a threat to the health and safety of other residents. Unlike service animal owners, those who have a support animal must request an accommodation related to their need for the support animal, including a specific request for the animal to be allowed in the common area. A support animal does not need any training or certification. As a result, they may display the same behavioral issues as pets.

And so the trouble begins; the animal's behavior or the owner's maintenance of the animal could violate the association rules. Any nuisance issues, such as barking, leash laws, aggression, or the owner not picking up after the animal, must still be enforced by the association.

RULE ENFORCEMENT

In order for rules to apply, SwedelsonGottlieb advises its clients to rename “pet rules and restrictions” to “animal rules and restrictions.”

Some rules, however, are not enforceable against persons with disabilities. For example, assistance animals do not count toward a pet limitation, such as size or weight restrictions, or the number of pets allowed in each household. While an individual may have multiple assistance animals, the owner must seek a reasonable accommodation for each support animal.

When the board encounters an animal in the community that violates the rules, the board has a right to inquire about how the resident will comply with the governing documents. For example, if the person is blind with a seeing-eye dog, you can't ask why the resident needs the dog. But, you can ask how the resident will be able to pick up the animal's waste in the common area. Or, if the person has hand deformities that prevent them from holding a leash, you can ask how the animal will be controlled if it is off-leash. The reasonable accommodation to the leash rule lies in the animal's training and the owner's ability to control the animal.

PLANNING FOR ACCOMMODATIONS

Adopting a formal procedure may aid individuals with disabilities in making requests for reasonable accommodations. However, the person seeking the reasonable accommodation does not have to submit an application or written request, even if one is provided in the policy. They, or anyone acting on their behalf, may make an oral request.

The board may wish to include best practices in the policies, including a recommendation that individuals seeking reasonable accommodations for support animals submit a letter from their health care provider, which includes:

- That the resident is currently under their care
- Whether the resident has a physical or mental impairment,
- Whether the resident's impairment(s) substantially limits at least one major life activity or major bodily function, and

- Whether the resident needs the animal(s) because it performs at least one task that benefits or alleviates a symptom the resident experiences because of their disability.

Requests for reasonable accommodations must be promptly considered. The time necessary to respond to a request depends on many factors, including:

- The nature of the accommodation under consideration;
- Whether it is necessary to obtain supporting information because the disability or the need for the accommodation is not obvious or known to the person considering the request;
- Whether the accommodation is needed on an urgent basis; and
- Whether it is necessary to engage in the interactive process to resolve the request.

An undue delay by the board in responding to the request, including asking for additional information, may constitute a denial of a reasonable accommodation. An unreasonable denial may be considered discriminatory by the Department of Employment and Fair Housing (DEFH).

Ultimately, if a DEFH complaint is filed against the association for denying a request for reasonable accommodation, remember there are no do-overs. Therefore, do not attempt to respond to the request yourself; obtain legal counsel.



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