



KEOUGH MOODY

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Newsletter

August is upon us, and soon we will be discussing budgets for next year. But let's not go there just yet. I recently returned from a trip with my wife and kids and I was reminded why it is important to take time away from the office and our professions in order to reenergize ourselves. Taking a break from deadlines, idiosyncratic owners and the daily grind is something we all must do from time to time. Before Labor Day greets us, I urge each of you to take a day off, and do something that you have put off - so much the better if it is something fun and enjoyable. Take a page from Ferris Bueller!

Please enjoy this month's article. It discusses the recent passage by the Illinois House and Senate entitled the Assistance Animal Integrity Act (HB367) which currently awaits Governor Pritzker's signature. This new law creates a process for a board to inquire into an owner's request for an assistance animal.

Chuck Keough



WHEN FIDO IS MORE THAN A PET: PROCEDURAL CLARIFICATIONS COMING TO HELP ADDRESS REQUESTS FOR SERVICE AND SUPPORT ANIMALS

It is not uncommon for a condominium building to have either a straight prohibition against pets of any kind, or to limit the size, type or number of pets allowed. Such rules are instituted for various reasons - out of concerns for safety, noise, cleanliness, or even allergies of residents. However, it has become well established that these rules are not set in stone and that an association must address requests for the allowance of service and support animals.

"Service animals" such as guide dogs for the visually impaired or signal dogs for the hearing impaired - are generally exempt from no-pet policies. Service animals are those that have been specially trained to perform specific tasks for their owners who, due to a diagnosed disability, are unable to perform the task for themselves.[i] Pets that provide and perform less of a concrete function, such as providing emotional comfort for its owner may also be allowable, but are often times more difficult to distinguish from a regular pet and to establish as a bona fide accommodation.

Very often, board of directors and property manager view such accommodation requests with skepticism because it is believed that the person making the request is simply trying to subvert a no pet policy. While some requests may be bogus, be careful not to simply immediately address such requests, since doing so incorrectly could have liability for the association.

The Legal Basis for Accommodation

There are two bases to require a Board in a pet-free building to allow certain residents to maintain service or other animals in the building - the Federal Fair Housing Act and the Illinois Human Rights Act.

The Fair Housing Act prohibits discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap.[ii] The Fair Housing Act defines discrimination as, among other things, the refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy their dwelling.[iii]

Like the Fair Housing Act, the Illinois Human Rights Act provides that it is a civil rights violation to refuse to sell or rent or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of that buyer or renter.[iv] Also like the Fair Housing Act, the Illinois Human Rights Act makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.[v]

While the Federal Fair Housing Act and the Illinois Human Rights Act each mandate reasonable accommodations for handicapped individuals, the Illinois Condominium Property Act too requires a condominium board to reasonably accommodate the needs of a handicapped unit owner as required by federal law, state law, or any applicable local ordinance. [vi] But how does a Board or property manager navigate this inquiry to ascertain the truthfulness of the request and reach the correct decision without being threatened with discrimination claims.

Help is on the Way!

Both the Illinois House and Senate have passed the Assistance Animal Integrity Act (HB367) (the "Act") and it is awaiting Governor Pritzker's signature. This new legislation would create a process for making inquiry into the request, ascertaining the truthfulness of the request and denying or accepting the request.

The Act combines emotional support and service animals into a signal term and category - "Assistance Animal". The Act grants a "Housing Provider" (which includes property management companies, property managers, condominium boards and associations) the authority to require a person to provide reliable documentation of their disability and disability-related need for the animal. The Housing Provider can request the person use a standardized request form (but cannot deny a request if the proper information is submitted).

The requested documentation must: (1) state the disability and state that the use of an Assistance Animal is reasonable under the Federal Fair Housing Act and the Illinois Human Rights Act; (2) be in writing; and (3) describe the individual's disability-related need. The Housing Provider may deny the request if: (1) the accommodation imposes either and undue administrative or financial burden or a fundamental alteration of the nature of operations of the Housing Provider; (2) after conducting an individualized assessment, objective the evidence shows the specific assistance animal possess and direct threat to the health or safety of others, causes substantial physical damage or has engaged in a pattern of uncontrolled behavior. The Housing provider may request additional documentation to further establish the disability or need or relationship requiring the animal. Last, the Act states that Housing Provider may not require a resident to pay a pet-related deposit, pet fee, or related pet assessment, even if other residents are required to pay such costs.

This new legislation should help associations navigate their way through Assistance Animal requests and clarify the respective rights of the person requesting the accommodation and Housing Provider.

In any event, the Board should consult with an attorney well-versed in anti-discrimination and association laws to assist them in navigating this complex and ever evolving area of law. The attorneys at Keough & Moody, PC have extensive experience dealing with these issues, and are always happy to work with the Board to develop a workable solution.

[i] 28 C.F.R. §36.104 ("Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.")

[ii] 42 U.S.C. §3604(2) ("Handicap" means, with respect to a person-- (1) a physical or mental

impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or, (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)(42 U.S.C. §3602(h)).

[iii] 42 U.S.C. §3604(3)(B)

[iv] 775 ILCS 5/3-102.1(A)

[v] 775 ILCS 5/3-102.1(C)(2)

[vi] 765 ILCS 605/18.4(q)

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