By W. Alexander Noland

Dogs

What are Homeowner's Rights Regarding Service, Companion & Therapy Dogs?

There tends to be a great deal of confusion over service, companion and therapy animals, and, particularly, service, companion and therapy dogs. While the Americans with Disabilities Act does not generally apply to community associations unless an association opens its common areas and recreational facilities to the general public (e.g. allowing people other than residents and their guests to use the association's pool, rent the association's clubhouse or take lessons at the association's tennis court), state and federal fair housing laws do apply to community associations. Association boards and managers should be aware that homeowners do have the right, subject to certain restrictions, to bring service, companion and therapy dogs into their separate interests, even when those dogs violate pet restrictions contained in an association's governing documents (e.g. keeping or bringing the dog into the association's development violates restrictions on the number of dogs, dog weight limits or dog breeds).

Be aware that homeowners do have the right, subject to certain restrictions, to bring service, companion and therapy dogs into their separate interests, even when those dogs violate pet restrictions.

A **service dog** is a dog that is individually trained to perform tasks for a person with a physical disability, such as guiding a person who is blind, alerting a person who is deaf, pulling wheelchairs, providing stability while a person is walking, or alerting and protecting a person who is having a seizure. Service dogs are generally thought of as working dogs, not pets.

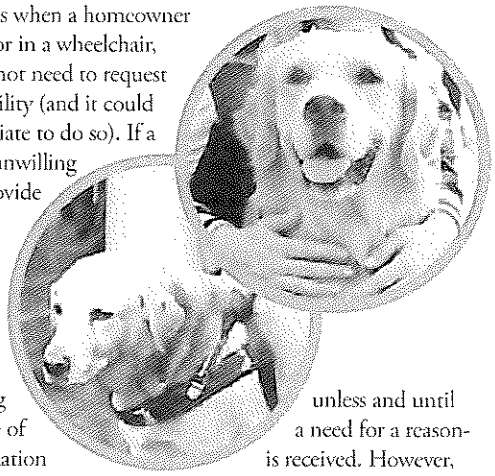
A **companion dog** is a dog that provides emotional support to a person with a psychiatric disability, such as depression or post-traumatic stress disorder. As with service dogs, companion dogs are generally thought of as being assistive aids and not pets. No certification or training is required to be a companion dog.

A **therapy dog** is a dog that is owned by a therapist who uses the dog as a component of therapy for a person with a disability. In the community association context, a therapy dog would typically be brought into a residence from outside the association's development by a homeowner's therapist. Were a therapist to house a therapy dog at his/her residence, or use the therapy dog for patients at his/her residence, that action would be a commercial use which is likely prohibited under the association's governing documents.

As mentioned above, state and federal fair housing laws apply to service, companion and therapy dogs, and associations must make reasonable accommodations for a physically or psychiatrically disabled homeowner to bring these types of dogs into the association's development. This does not mean, however, that these dogs are not subject to reasonable governing document restrictions, nor does it mean that the association can't require proof or validation of the need for such dogs by the homeowner's medical care provider. For example, it is reasonable for an association to require that all dogs must be in the company and control of their owners while in the common area, that all dogs are subject to the association's noise and other nuisance requirements, and that an owner is responsible for all damage that his/her dog causes to the common area. An interesting dilemma occurs when a service, companion or therapy dog violates an association's weight restrictions – it can be difficult for an association to prove that a lesser weight dog will suffice to accommodate a disability (especially when the dog is a companion dog that a homeowner has had for an extensive period of time).

As noted above, a board of directors

can require a homeowner to provide proof that he/she requires a service, companion, or therapy dog. This proof generally consists of a letter from a licensed medical doctor confirming the type of dog, or a specific dog, needed to accommodate homeowner's disability. In some cases, as when a homeowner is visibly blind or in a wheelchair, the board may not need to request proof of a disability (and it could seem inappropriate to do so). If a homeowner is unwilling or unable to provide proof of his/her need for a reasonable accommodation, then the association could prohibit the dog unless and until proper evidence of a need for a reasonable accommodation is received. However, the board and management have no right to know what the homeowner's specific disability is, as medical records are generally private (e.g. it would be intrusive to force a homeowner with HIV-related physical disabilities or schizophrenia to disclose their disability to the association).



Assuming the board receives reasonable proof that a homeowner is due a reasonable accommodation, the board should document that reasonable accommodation by board resolution. This documentation is important, as the board needs to protect itself and the association from claims that the board is not enforcing specific provisions of the association's governing documents as they relate to pet restrictions. The board or management can explain to a complaining homeowner that the other homeowner has been granted a reasonable accommodation for his/her dog in accordance with fair housing laws, but the board should not disclose any known facts regarding the disabled homeowner's disability. If a board member (or the board member's family member, cohabitant or tenant) is requesting a reasonable accommodation for his/her service, companion or therapy dog, that board member should recuse himself/herself from deliberating on the accommodation request. And, boards should remember that tenants and non-owner residents of an association are protected by fair housing laws, and must receive the same reasonable accommodations as homeowners.

A board facing an issue with a service, companion or therapy dog/animal should consult with association legal counsel to discuss the various legal and fair housing issues related to same. ☼

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