COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

Articles:

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Do We Have to Approve Every Accommodation Request for an Emotional Support Animal?

by | **Cynthia C. Hodge, Esq.**

Emotional support animal requests of varied species have become more prevalent in the last decade.

It is important to note that "service animals" and "emotional support animals" are different classifications of a specific assistance animal. This article focuses primarily on emotional support animal requests which are more common.

Can requests be denied? Yes, but only for specific reasons set forth within the Fair Housing Act (FHA). Let me explain in more detail, so that you and your board can better navigate emotional support animal requests.

Under the FHA, a "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including the public and common use facilities. Community associations (condominiums, townhomes, single family properties) are subject to FHA rules regarding reasonable accommodations.

When a resident believes that they were wrongly denied a reasonable accommodation, that party must show:

1) That they are a person with a disability;
2) That the association knew or should have known of the person's disability;
3) That the reasonable accommodation was necessary for the person to use and enjoy the dwelling, facilities, and common areas; and
4) The association failed to provide the reasonable and necessary accommodation.

To show that the requested accommodation may be necessary, there must be an identifiable relationship (or nexus) between the requested accommodation and the individual's disability. An accommodation is reasonable under the FHA when it imposes no fundamental alteration in the nature of the association or undue financial or administrative burden to the association.

So, what is the nexus in these situations? The nexus is that the resident has been diagnosed with a mental or emotional disorder and, with the written letter from a medical provider, has been prescribed an emotional support animal to provide the necessary comfort needed to alleviate one or more of those symptoms.

What is an emotional support animal? An emotional support animal can be any animal that does not violate your local zoning laws. An emotional support animal does not have to be specifically trained to perform tasks; rather, they provide well-being, comfort, or companionship. Put another way, the animal provides emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability. For explanatory purposes, a person who has been diagnosed with anxiety or depression may benefit from the presence of an emotional support animal because it provides companionship or comfort when the person is suffering from a panic attack or a depressive episode.

For many communities, associations have existing covenants or rules that limit or prohibit certain breeds, sizes of animals, non-household animals, or prohibit pets altogether. When a person has been diagnosed with a mental or emotional disorder and has been given a prescription for an emotional support animal by a licensed mental healthcare worker to offer the emotional support, they may submit a written request to the Board for consideration to allow a specific animal to reside with them. Given the nature of the disability, it may not be obvious or known to the association's board of directors. Here is what you can ask:

1) Do you have a disability that substantially limits one or more major life activities?
2) Can you provide the letter from a physician, psychiatrist, social worker, or other mental health professional?
3) How does the animal provide support in reference to your disability?

Often, the letter from a medical or therapeutic provider (also called the "ESA Letter") will address or respond to these questions. For these accommodation requests, the letter is needed for the board to properly assess the request.

In most circumstances, waiving a no-pet rule (or a specific breed or weight restriction rule) to allow a disabled resident the assistance of an emotional support animal is a reasonable and necessary accommodation.

However, a request may be denied if:

1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Any determination that an emotional support animal poses a threat of harm to others or would damage the property of others must be based on an individualized assessment of the specific animal's actual conduct. It needs to be based on evidence

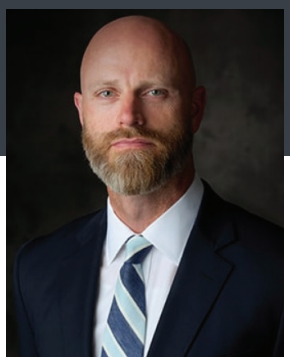
of harm that the specific animal has caused. In other words, a denial cannot be based upon the fear or suspicion that an animal might cause damage or harm.

Lastly, let me provide you with a few reminders for these requests:

1) Make sure to keep all requests confidential. Do not share any information with other residents or members (except members of the Board).
2) Take each request seriously, and request the supporting information (i.e., ESA letter) needed to make an informed determination in a timely manner. While there is no specific timeframe set forth within the FHA or any HUD rule as to the response time, an unreasonable delay can be considered an actual or constructive denial of the request.
3) Although you may be skeptical with residents going online to secure an ESA letter, every board should take each request seriously and conduct a meaningful review of the requested accommodation. Remember that denying a request or refusing to consider the request without the appropriate individualized assessment of an administrative or financial burden can be quite costly, including legal expenses, FHA penalties, and other monetary sanctions.

Finally, if your board has recently received an accommodation request and wishes to seek guidance on how to proceed, please contact your association's counsel for further assistance.

Corporate Transparency Act and Beneficial Owners: Latest Update as Reporting Requirements are Thrown into Legal Flux



by **Brendan R. Hunter, Esq.**

As many of you are now aware, the Corporate Transparency Act ("CTA") is a federal law that became effective on January 1, 2021, to prevent money laundering, terrorist financing, corruption, and tax fraud by making it easier for the government to identify the individuals who operate certain companies and corporations. The CTA requires companies, including community associations, to report certain information about their "beneficial owners" to the U.S. Department of Treasury before the end of the day on January 1, 2025.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued an Order enjoining the enforcement of the CTA, as well as staying the reporting requirement. This Order is a preliminary injunction that purports to apply nationwide, and the injunction remains in effect until further order of the U.S. District Court for the Eastern District of Texas or is otherwise appealed. It is likely that this Order will be appealed to the U.S. Court of Appeals for the Fifth Circuit.

As such, ***as of the press time and delivery date of this newsletter (December 16, 2024)***, pursuant to this Order, the Federal Government is enjoined from enforcing the CTA nationwide. Additionally, the deadline for companies, including community associations, is stayed so that companies are not currently required to file a Beneficial Ownership Information Report.

Despite this Order, community associations in Georgia need to proceed with caution. First, although the Order purports to apply nationwide, Georgia is not located within the Eastern District of Texas or the Fifth Circuit. As such, there are legal issues of whether the U.S. District Court for the Eastern District of Texas exceeded its authority in applying a nationwide injunction.

Second, the CTA was also addressed by the U.S. District Court for the Northern District of Alabama, which found the CTA to be unconstitutional. However, this ruling only applied to the plaintiffs in that case. Further, the Order was appealed to the U.S. Court of Appeals for the Eleventh Circuit and is currently pending. Georgia is located within the Eleventh Circuit.

As such, the U.S. Court of Appeals for the Eleventh Circuit may issue an opinion finding that the CTA is constitutional and that companies, including community associations, are required to file the Beneficial Ownership Information Report by January 1, 2025. Community associations would then be placed in the precarious position of determining whether they have a legal obligation to file the Beneficial Ownership Information Report.

Consequently, it is our law firm's recommendation that community associations should still be prepared to file their Beneficial Ownership Information Report by no later than January 1, 2025.

If you are interested in utilizing Lueder, Larkin & Hunter, LLC to file your Association's Beneficial Ownership Information Report, please contact boireport@luederlaw.com for additional information.

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