Companion Animals In Multi-Family Housing

By Legislative Affairs

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Institute of Real Estate Management
430 N. Michigan Avenue
Chicago, IL 60611
(800) 837-0706

Introduction

At the November 2004 Legislative and Public Policy (LPP) Committee meeting there was open discussion on reasonable accommodations of service or companion animals in multifamily properties. The LPP Committee requested staff prepare a briefing paper on the topic. IREM Legislative Staff invited IREM members and non-members who are industry professionals to discuss best practices regarding reasonable accommodations for tenants with companion animals within the field of property management and recommend new approaches that may be advisable. To meet that objective, Legislative Staff posted background information and questions on the issue on the IREM website's Best Practices Forum. To promote the forum, Legislative Staff emailed IREM members interested in legislation, including the Legislative and Public Policy Committee, Chapter Legislative Chairs, and the Governing Council. Calls for input were promoted in the February IREM E-notes and the February IREM Legislative Bulletin as well. Three members posted comments at the forum were the topic was posted for 1 ½ months.

This paper includes background information on the issue of companion animals in multi-family housing, the challenges property managers face, and the questions posed on the Best Practices Forum. Appendix 1 contains the comments posted at the forum.

Background

Pets In Conventional Housing

IREM does not have a position on companion animals; however, it does have a policy on Pets in Conventional Housing. It states owners and managers of multi-family properties should have the right to set pet policies on a property-specific basis, and that such policies should not be mandated by municipalities or other governmental bodies. A number of reasons exist for owners to forbid or limit pets on their properties. Common household pets increase the normal wear and tear on a rental unit. Secondly, tenants do not always control their pets and properly dispose of animal waste. Even the most carefully controlled and well-behaved pets increase the maintenance costs of a residential rental unit and increase the incidence of fleas and other pests, both during habitation and after the resident has moved. Additionally, many people have allergies to pets, such as cats and dogs, and cannot live in an environment permitting pets.

In addition to maintenance and health concerns, pets present increased liability risk and challenge property rights issues. The most pressing concern is the cost of liability incurred by a property owner or manager because of the possibility of injury to a resident or visitor to the property by a pet. In the past, tenants, guests, and others have sought damages from the property owners and managers whom they allege know, or should have known, of a pet's vicious tendencies. Injury to a pet may need to be covered by the property owner or manager's insurance.

The presence of pets in rental housing can result in increased tort risks to the owner and manager; therefore they should be allowed to make the decision of whether or not to allow pets in their facilities without the worry of legal battles.

While IREM acknowledges the positive affect a pet can have on one's life, it strongly believes in the legal right of the property owners to determine whether or not to allow pets in a multiple unit rental property. IREM opposes any legislation requiring owners or managers of rental property to allow pets in their units.

Comparison of Service and Companion Animals

The Americans with Disabilities Act (ADA) provides protection to persons with disabilities who require service animals. The ADA stipulates that in order to change a dog's status to "service animal," thus entitling the disabled person to public access rights, the following criteria are necessary:

1. The dog's partner must have a disabling condition severe enough to impair one or more major life functions.
2. The dog must be trained to perform identifiable physical tasks to mitigate the disability.
3. The dog must be well behaved and under the control of its handler in public places.

The rationale for granting public access rights to disabled persons is that their guide, hearing, or service dogs function as assistive devices. Refusing to allow disabled people to rely on their service dogs in public places and on public transportation is comparable to depriving the disabled of their wheelchairs, hearing aids, or canes when they venture out into public, according to the law. A service animal that is individually trained to perform tasks to mitigate a disability cannot be treated like a pet by those operating public accommodations. A service animal has been officially classified as a form of assistive technology and not as a pet.

Both service animals and companion animals can provide comfort, stress relief, increased social interactions, and other therapeutic benefits; however, that is not enough to legally compel businesses to make an exception to their "no pets allowed" policies.

Companion animals are not service animals; they are typically for individuals with mental disabilities, such as depression, anxiety, or those in need of emotional support. These animals receive no specialized training.

Housing and Urban-Rural Recovery Act

The Housing & Urban-Rural Recovery Act of 1983 protects the rights of tenants in federally assisted housing for the elderly or persons with disabilities to have a pet, and further provides that the property owner or manager is entitled to charge a deposit for that pet to cover any resulting damage to the property. However, if a pet is more properly characterized as a "service animal," the tenant should be exempt from the deposit.

Fair Housing

The Federal Fair Housing Amendments Act of 1988 defines disability as a physical or mental impairment of a person that substantially limits one or more major life activities, a record of having had such an impairment, and being regarded as having had such an impairment. The term "physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple

sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, and alcoholism.

Handicapped persons may require the use of service and/or assistive animals. Under the law, an individual who is disabled and whose doctor determines that a service/assistive animal is needed may ask their housing provider for a reasonable accommodation to "no pets" policies. To deny the reasonable accommodation, the landlord must prove that such an accommodation is not reasonable or causes an undue burden to the landlord.

A growing number of property managers are faced with tenants who argue that they need a companion animal to reside with them in their apartments for health reasons. There are tenants and attorneys who interpret the Fair Housing Amendments Act of 1988 to prohibit property owners and managers from refusing to rent to persons who need a companion animal in their homes for mental or physical health reasons. They argue that property owners and managers should be required to make reasonable accommodations in their pet policies.

Litigation in California

In the 2004 case of *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission, et al* a couple purchased a condo in which the Association permitted two pet birds or house cats, but specifically prohibited dogs. Despite the ban on dogs, the owners bought a small terrier to help them with the depression they suffered. The husband had been in an auto accident which caused severe brain damage, leaving him with a bipolar disorder and depression. The wife also suffered from depression. Their physicians wrote that the presence of the dog had substantially improved their emotional well-being. The Association argued that since the owners could have a cat, there was no need to have a dog and would impose penalties if the dog were not removed. The owners put their condo up for sale in response.

The couple filed a complaint with the Department of Fair Employment and Housing on the ground that the condo association had violated the Fair Employment and Housing Act by refusing “to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.” The administrative law judge found a violation by the association and awarded emotional distress damages to the owners. A writ of mandate was filed and the trial court found that there was no evidence that a companion dog was a necessary reasonable accommodation. The appellate court reversed the trial court, finding that denying a disabled residents’ request to keep a companion dog on the premises constituted a violation of the Act. The court made it clear that each case is fact-specific and requires a case-by-case determination.

The October 29, 2004 edition of the *Housing Affairs Letter* highlighted a recent settlement of a lawsuit between an apartment management company and a tenant who argued the company’s pet policy was unjust. A mentally disabled female tenant submitted three physicians’ notes to her landlord stating her pet provided a “therapeutic benefit.” The apartment tenant claims the property management company refused to allow the pet and would ask her to move out of the building if the pet was not removed.

The tenant's attorney argued the company violated federal fair housing and disability laws when its management refused to waive its no-pet policy and grant a reasonable accommodation. Current law provides a landlord has a right to exclude pets and set other lease terms to assure sanitary and safe conditions for tenants; however, he or she must give good faith consideration to reasonable accommodation requests when a handicapped tenant has provided certification of a statutorily covered handicap and need for the animal.

A settlement was reached; however, the property management company did not admit liability or misconduct. The property management company will pay the tenant $185,000. The company has also agreed to begin using reasonable accommodation forms and guidelines prepared by the Fair Housing Council of Orange County. Further, the company's employees will attend fair-housing training annually. Sanctions of this magnitude are disproportionate with the alleged offense and have a chilling effect on landlords who might believe they have bona fide grounds to deny a reasonable accommodation request for allowable reasons.

Property Managers' Dilemma

The core question at hand is whether there is a reasonableness standard property managers and owners can rely upon for the total number of companion animals a residential landlord is obligated to allow a handicapped individual to harbor in their dwelling unit. While there is good availability of overviews and guidance on how a handicapped individual meets the threshold qualifications to have a service or companion animal, there is a lack of guidance on how to address the issue of the maximum number, size, or type of such animals in an apartment.

The range of problems some IREM members are encountering is as follows:

1. No broadly accepted standards as to the maximum number of service or companion animals in a household have been promulgated by the HUD FHEO division or other enforcement entities. Some professionals in the real estate industry have suggested that the reasonable number could be assessed by limits in local health or building codes as to limitations. Others reply with concern that the maximum domestic animal count under zoning and/or health would be far in excess of animal occupancy standards for pet policies maintained by apartment owners and the reasonable number of animals that would be compatible with a multifamily environment considering lifestyle and normal wear and tear expectations. Abnormal wear and tear and housekeeping problems could be the outcome if code limitations were to be the standard.

2. Property managers have also been concerned with a practice some refer to as "forum shopping," which represents situations where tenants in "no pet" apartment communities become aware through a neighbor that a medical practitioner has a propensity to loosely interpret the definition of "handicap" and prescribe companion animals on a wholesale basis to anyone claiming stress, depression, or other maladies, but not meeting the statutory and clinical definitions of mentally handicapped.

No apartment owner or management company wants to be a test case on issues such as described above. It is clear, however, that the system is currently subject to abuses and unreasonable

expectations by some tenants and medical practitioners. Multifamily property managers are reluctant to contest physician's letters or question the medical necessity of companion animal(s) because of the risk of severe financial and/or legal sanctions.

<u>Questions Posed</u>

1. What experiences, favorable or unfavorable, have you or other members of your firm had with tenants requesting exceptions in pet policies to allow a reasonable accommodation request for a companion animal?
2. Have you experienced situations where you or the property owner has believed the number, size, or variety of companion animals is not compatible with the apartment and/or common areas?
3. In your experience, how common or uncommon are requests for companion animals?
4. Have you observed patterns at any of your "no pet" properties where it appears that a specific health care provider or providers gain a reputation for being an "easy sell" and can be convinced to prescribe companion animals for a certain handicap?
5. What remedies or sanctions could reduce abuse by health care providers in declaring a tenant as disabled and in need of a companion animal without a good faith basis for that declaration?
6. Have you experienced litigation and/or regulatory enforcement as a result of your refusal to make a reasonable accommodation in your pet policy to allow for a tenant's companion animal? What was the outcome?
7. Are you aware of any case law or regulatory decisions at a local, state, or federal level that would set maximum density constraints for companion animals?
8. What are the local or state laws, if any, regarding the number of companion animals a handicapped tenant might have, particularly in rental housing?
9. What do you think is a reasonable number of companion animals for a tenant to have? What is the legal and/or business foundation of that position?
10. Should IREM adopt a statement of policy and position on companion animals and, if so, what position would you recommend?

APPENDIX 1

RESPONSES:

(1) The most serious of challenges to our reasonable accommodation policy for a companion animal was from an individual who readily disclosed that he was legally blind, but had some vision. He submitted a reasonable accommodation form with a letter from a doctor requesting a variance from our normal pet animal policies regarding payment of an additional deposit, monthly pet rent, and size of pet to allow for a large dog over 15 pounds. This written request was approved, even though this pet was not considered to be a service animal. Shortly after move in, neighbors and staff complained about the individual's lack of compliance with our pet cleanup policy; this issue continued to escalate until the sight-impaired resident agreed to vacate as he could not comply with the remedy notice for not complying with lease contract and pet addendum.

Our acknowledged liberal best business practice is to allow any reasonable type, size, or number of companion or service animal as long as a signed reasonable accommodation form is provided and supported by a medical official's letter which is verified to be valid by leasing and management before approval is granted. The waiving of pet rent, pet size, number of pets, or pet deposit must be specifically requested and substantiated in writing. Leasing and Management are continually trained on Fair Housing issues and concerns. To date, we have not been challenged with disapproved requests that exceeded our acceptability. The doctors or mental health provider professionals have been responsible in their requests. I would say that reasonable accommodation requests for companion pets/service animals are occasional, but illegitimate requests are usually discouraged once the requirement for written verification for the request is found to be harder to obtain than expected.

I believe IREM should form a coalition of related professional groups/organizations to work with HUD to address this gap in the Fair Housing Act's reasonable accommodation provisions and help to formulate written guidelines for residents with disabilities, property owners, property managers, and medical professionals to follow. This would also be true for occupancy standards as well; rather than depending upon the Keating memo. This may be well worth the effort and possibly provide some peace of mind when dealing with unreasonable requests or expectations.

Clark Lindstrom, CPM
Regional Property Manager
The Peterson Companies

(2) Resource to Ensure You Lease to Responsible Pet Owners
While not directly related to companion animals for people with disabilities, here is a great resource for policies and forms to ensure you rent to a responsible pet owner: www.rentwithpets.org It is a division of the Humane Society of the United States, and it provides two booklets (one for landlords; the other to give to incoming residents with pets). There are also articles about the pros and cons of renting to pet owners and how to eliminate the cons.

Name: Natalie D. Brecher, CPM

(3) Companion animals
In the practice of property management, I see recurring problems related to companion animals all too frequently. (1) Requests for a reasonable accommodation for companion animals that follow-on to issuance of notices to residents for violation of not pet policies; (2) the appearance of a low threshold for (soft hearted) health care professionals quick to diagnose a disability supporting a request for a reasonable accommodation for a companion animal; (3) no apparent federal bright line standards for the industry to rely upon in determining how many companion animals must be allowed in a household; (4) evidence of tenants sharing information with other tenants about "user friendly" health care providers that just can't say no to issuing documents supporting the need for an animal for companionship purposes, resulting in multiple overrides of an apartment community's no pet policy; and (5) non recovery of the cost of damage to carpets and other building elements by poorly supervised companion animals in affordable housing communities where the residents are effectively judgment proof.

In a perfect world, there would be sanctions available in response to bad faith disability declarations by residents and health care providers, but the world is not perfect. What would be reasonable is for HUD FHEO counsel to issue a guidance letter stating that absent clear and convincing evidence to the contrary, one companion animal per qualified household shall be the standard considered reasonable in investigating and adjudicating a fair housing complaint related to the denial of a reasonable accommodation request for a companion animal.

Name: John M. Bennett, CPM