



Condominium Law Q&A

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Question - We are long time snowbirds who divide our time between our condo in Florida and another home in Virginia. Our Florida condo rules do not permit pets, and we have an indoor cat we would love to accompany us when we are in Florida. In fact, not allowing him in Florida restricts the time we can be in Florida because of pet care concerns. Your March 30, 2008, column indicated that proposed HUD rules will pretty much eviscerate no pet restrictions. On October 27, 2009, HUD published new rules. How do these new rules affect the no pet restrictions in Florida? R.S. and J.S., Onancock, Va.

Answer - 1988 Congress passed the Fair Housing Amendment Act, which added "handicapped" individuals to its cloak of protection. What the law says is that, if a person qualifies as having a handicap, the association must make reasonable accommodations in its rules and regulations such that the handicapped individual will have an equal opportunity to use and enjoy their dwelling. Thus, if a community is a "no pet" condominium, if a person has a sight or hearing impairment, they would be allowed to keep a trained service animal and not be in violation of the no pet restriction. As time went by, doctors started writing letter for unit owners seeking to evade the no pet restriction by claiming the need for "emotional support" animals. I refer to these pets as "Prescription Pets." With the recently expanded broad definition as to what constitutes a handicap, and HUD's liberal policy of accepting, without challenge, every conceivable excuse as to why a pet is necessary, I did write that, for the most

part, restrictions against pets have been eviscerated. Then, on March 12, 2009, the United States District Court for the Northern District of Florida entered an order adverse to the attempt by a unit owner to compel the association to allow him to keep his Labrador Retriever, named Booster, thereby rejecting letters from two doctors who claimed that a pet was necessary to help alleviate the unit owner's handicap. The Court relied heavily upon an earlier decision of another Federal Court which opined that an association has the right to inquire of the doctors writing the prescription letters as to the doctor's practice and medical licensing, an explanation of the nature of the alleged disability and why the disability requires the unit owner to have a pet. Perhaps the Court was influenced by testimony that, before the unit owner sought permission to keep his dog for medical reasons, he had written the board a letter in which he stated that his recently acquired puppy had become his close companion, who taught him "to be more responsible, caring, and less self-centered" and who "sleeps at the foot of my bed, and has even jumped into the shower with me." A year later, according to the unit owner, Booster had been trained to bring him his shoes and socks, open the refrigerator, bring him water, pull him from his chair and give him hugs to calm panic attacks. Sounds to me like the pendulum is beginning to swing back toward the center; prove your claim.

Question - My wife and I have been condo owners and residents in our complex for over 5 years. The developer continues to hold responsibility for the homeowners association and, therefore, controls the

complex. He also still owns a large number of units, as he overbuilt and/or had units returned from investors. The majority of the complex is owned and occupied by owners. Is there a timeframe for the developer to turn the complex over to the owners? Five years is a long time to retain control. Is there a requirement for the developer, as the homeowners association, to hold meetings and/or present status of financials of the condominium association/complex? None have been forthcoming during the entire period the complex has been in existence. J.P., Cape Canaveral

Answer - Historically homeowners associations were not covered by statutory laws. Translated, that meant that, unlike the Condominium Act, which mandates with particularity the conditions and

timing of transition, developers could pretty much keep control as long as the documents allowed. In 2000, the Homeowners Association Act was amended to require transition 3 months after 90% of the units which would be operated by the association were closed. That section of the Act does not apply to associations created before its effective date. The fact that a developer is in control of a homeowners association does not mean that the members have no legal rights. Keep in mind that all directors, developer designated or unit owner elected, are fiduciaries of the unit owners and must carry out their duties of a director in the best interest of the corporation and its members. Also, the members do have access to the books and records and can hold the board's feet to fire, if it is not acting in the association's best interest.

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