



Condominium Law Q&A

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Question - We own a condo in southwest Florida, and the association does not allow pets. We provided the association with a doctor's note 11 months ago, stating we are allowed to keep our pets because my husband has several years of documented clinical depression. They accepted this, but recently they sent us a letter saying we need to remove our pets. We aren't entirely sure of their motive, since we already gave them a note. There is another owner in our building who has a pet with doctors' approval. We feel we are being singled out unfairly. Our dog is 6 pounds and uses a litter box. He does not go outside except for taking him to the car. Our neighbors have never complained about the dog, as he has been trained not to bark. Is providing a doctor's note for depression sufficient, if our condo consults their lawyer? F.T.

Answer - The Fair Housing Amendments Act of 1988 requires an association to make reasonable accommodation to its covenants, conditions and restrictions, and rules and regulations, to allow "handicapped" individuals full use and benefit of their units. Making allowance for a trained service animal is a no brainer. Permitting untrained animals as "emotional support" animals is less clear. That said, the trend of the U.S. Department of Housing and Urban Development (HUD) and the courts is to permit the keeping of pets when a doctor, in writing, recommends a pet as a means of lessening the impact of depression, anxiety, and other debilitating illnesses. That said, a recent decision by the U.S. Federal Court for the Northern District of Florida held that the individual seeking a waiver of the no

pet policy must explain the nature of their handicap and how the pet will ameliorate the symptoms of the handicap. In addition, the doctor writing the letter in support of the handicapped individual must provide details as to his or her experience in the field of the alleged handicap and how the pet will ameliorate symptoms of the handicap.

Question - I was recently denied a seat on the board of directors of my association. In October and November of 2008, I held back my monthly assessment because I had an on going problem with a roof leak. I entered my name as a candidate for the Board and was affirmed in October to run for election by the Secretary, at the December 1st general meeting. Since there were only 5 running, I received confirmation that I was on the board. I paid my past due assessment in mid-November after the leaks were finally repaired. During weekly special meetings in November held by the presiding board, I know that my name was brought up relative to my being on the board. It was never brought to my attention until the December 1st meeting was upon us, and I was told that I could not be a board member. Our bylaws state that, if a director is late 30 days with an assessment, then he shall be removed from the office and someone else will be appointed to hold the unexpired term of office. My contention is that I was not officially an officer until the December 1st meeting, and the provision in the bylaws reflects on incumbent officers. The current board does not want me to be a board member and is using this to keep me off, so it is using the bylaw provision incorrectly for their own convenience. I

have stated my case, but to no avail. I will arbitrate this issue. But, now, I am examining the official documents, looking into errors in the budget and auditing the expenses. I have found many discrepancies, missing documents and valid expense bills. A group of owners is not very happy with the findings. I have found out that we have had a very uncooperative board that does not want to listen to their fellow homeowners who have valid recommendations or want to volunteer for committees. If a wrong doing is found, is there a legal organization that can help us remove some of the board members? Thanks for any help. N.G., W.P.B.

Answer - First, there is NEVER a valid reason to withhold payment of assessments, other than being

able to prove an assessment was not valid. The courts have held that the obligation to pay assessments and the duty to maintain the common elements are independent covenants. To allow unit owners to withhold payment because they do not like how the condominium property is being maintained can exacerbate the ability to have the funds necessary to maintain the condominium property. Also, effective October 1, 2008 an amendment to the Condominium Act provides that unit owners who are delinquent in payment of the common expenses are not eligible to serve on the board. So the question becomes, at the time you submitted your name as a candidate, were your maintenance payments current? If not, you were ineligible.

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