



Condominium Law Q&A

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By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question - I hope that you may answer a question for me. I am a retired Police detective who lives in New York. I am also an Honorable Discharged Vietnam Veteran with a service connected disability. My Mother lives in a condo in Daytona Beach Shores; she is recovering from cancer. Her condo permits dogs up to 25 pounds. My wife and I will be staying with her for a month. My dog is a 65 lb. German Shepherd and is registered as a Service dog. I have a "service dog" certification for my dog, plus a letter from my Doctor stating that I need the dog for my hearing. I also have a letter from my veterinarian stating that my dog is not a hazard to anyone and that her shot records are up to date. My question is: Would I be covered under the law in the event the condo gives me a problem? P.X., New York

Answer - Among the most frequently asked questions are those related to the requirements of a community association making reasonable accommodations in rules, policies, practices, or services (and/or allowing modification of the unit and premises) when such accommodations (modifications) may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. Translated, this means that notwithstanding a provision in the covenants which precludes alterations or additions to the unit or common areas without the prior approval of the board or members, at the request of a handicapped person, subject to meeting all code and permit requirements, the disabled individual would, for

example, be allowed to widen doorways for wheelchairs, or install ramps and walkways to the beach or common areas. But, perhaps the most common request relates to allowing pets in a no pet building. There are essentially two types of pets at issue, service animals and emotional support animals. Allowing a service animal trained to guide visually impaired persons, alerting hearing impaired persons to sounds and noises, or pulling a wheel chair, is what we call a "no brainer." Most disputes arise around whether an "emotional support" animal, which has no special training, but by its very nature is capable of ameliorating the effects of a person's mental and emotional disabilities, such as depression, anxiety, or reduction of stress-induced pain, must be accommodated? The U.S. Department of Housing and Urban Development recently issued its guidelines. Inclusive in the rule discussion is the statement that a person with a disability must show that a requested accommodation may be necessary, and that there is an identifiable relationship, or nexus, between the requested accommodation and the person's disability. To determine the foregoing the association has the right to be informed of the nature of the disability and be provided documentation from a physician, psychiatrist, social worker or other mental health professional, which demonstrates that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability. In March 2009, when presented with the question of whether a unit

owner was allowed to keep a dog in a no pet building, the United States District Court for the Northern District of Florida rejected the request, citing inadequate demonstration from the attending physicians that the dog would in fact ameliorate the symptoms of the alleged disability. On September 22, 2009, The United States Court of Appeal for the Eleventh Circuit affirmed the lower court decision. In doing so, the Court in dicta noted that the medical certification forms submitted by the unit owner seeking the accommodation appeared to be “generic forms obtained from the Florida Commission on Human Relations that merely required the unit owners’ doctors to check “yes” and “no” boxes and, in some spaces, provided blank lines for brief comments.” The forms did not ask for, and

the doctors did not provide, other information requested by the association, such as the unit owner’s doctor’s credentials. So the bottom line is that I am of the opinion that, as a guest of a unit owner, you can bring your certified service animal into the condominium, but, I hasten to add that allowing pets, be they service animals or emotional support animals, does not preclude associations from adopting reasonable rules and regulations governing the keeping of pets, nor must an association allow any pet which causes substantial physical damage to the property of others, or has a history of dangerous behavior. For those seeking accommodations of pets in shared ownership communities, I invite you to visit the website of Citizens for Pets in Condos, Inc., at www.petsincondos.org.

Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.

Mr. Poliakoff is co-author of Florida Condominium Law and Practice, The Florida Bar Continuing Legal Education, 1982, and author of a national treatise, The Law of Condominium Operations, West Group, 1988. Mr. Poliakoff can be contacted by emailing gpoliakoff@becker-poliakoff.com.