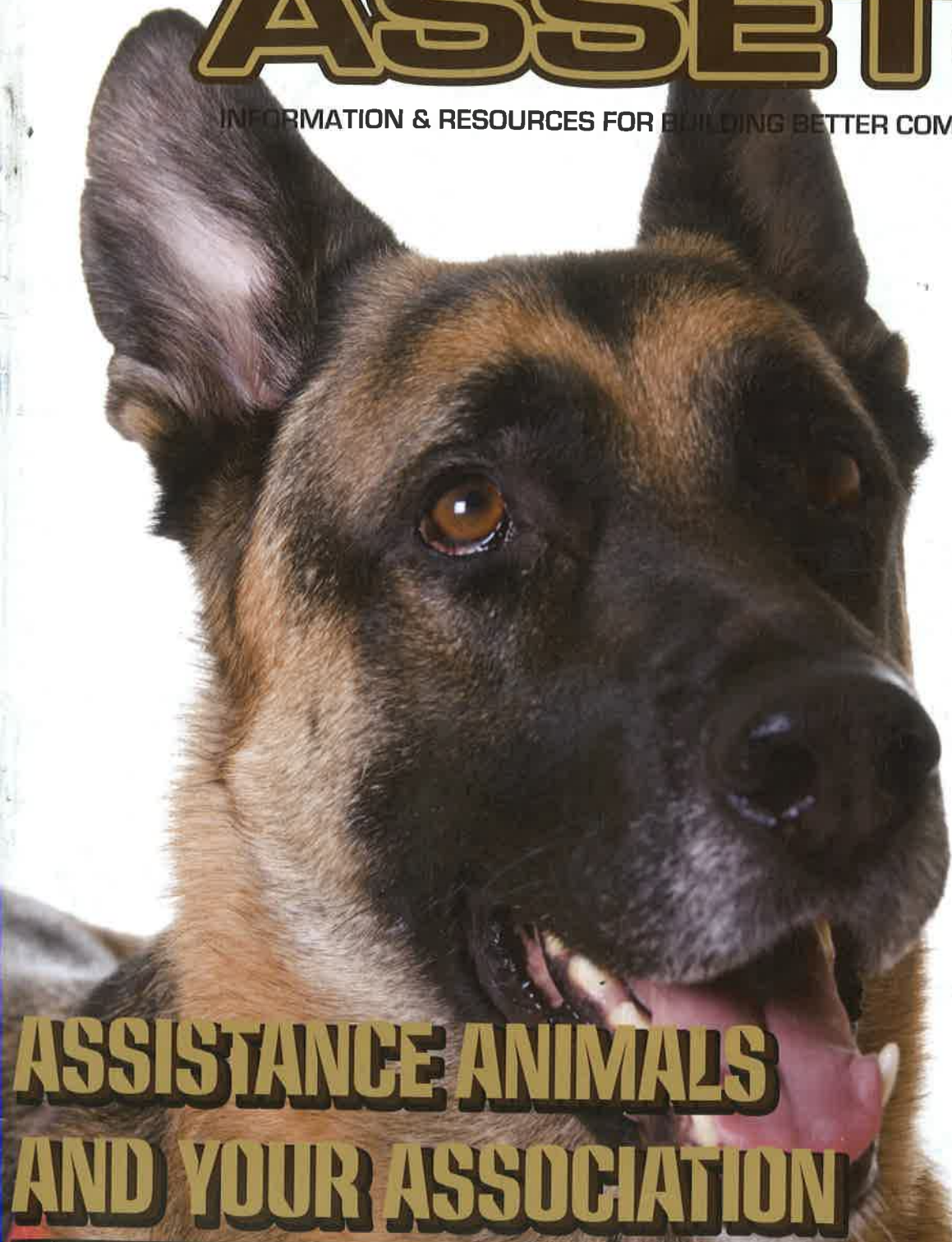


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REASONABLE ACCOMMODATION REQUESTS: ASSISTANCE ANIMALS AND YOUR ASSOCIATION

GARY A. KRIMSTOCK, ESQ. & JOSH HOVITZ, ESQ. | Fineman Krekstein & Harris

All common interest communities (condominiums, cooperatives, and homeowner associations) are governed by the federal fair housing laws. The federal Fair Housing Amendments Act (the "FHAA") applies to places of private accommodation (rather than public places, which are generally governed by the American with Disabilities Act, the "ADA"). The Department of Housing and Urban Development ("HUD") administers the FHAA and has adopted regulations to implement the law. Under such HUD Regulations, the governing bodies of common interest communities are considered housing providers, and therefore are legally prohibited from discriminating in the provision of such housing to its residents (not just owners or tenants).

This article focuses on how such a governing body (hereinafter, generically referred to as the "Board") must legally respond to a reasonable accommodation request for an assistance animal under the FHAA. Whether the board intends to grant or deny such a request, it must act carefully, preferably with legal guidance, to ensure that it does not run afoul of this complex law and suffer potentially serious consequences.

The law is intended to protect housing occupants from all types of discrimination (age, gender, race, religion, disability,

national origin, familial, sexual orientation, etc.) that would interfere with their right to equal enjoyment of their dwelling place. People with disabilities may have special needs, and simply treating them the same as others may not provide them with an equal opportunity to use and enjoy a dwelling. Many people believe they can determine whether someone is legally disabled merely by their physical appearance. However, in the case of a disabled person requesting an FHAA reasonable accommodation for an assistance animal, someone who otherwise appears completely healthy may nonetheless suffer from a disability, such as psychological depression or anxiety, and be legally entitled to a reasonable accommodation. If a board fails to properly handle a request for a reasonable accommodation for an assistance animal, it may be subjected to investigations by government agencies, administrative enforcement proceedings, or even litigation with HUD, which is prosecuted by the US Department of Justice. Illegal discriminatory conduct can result in a board being required to pay damages, penalties, fines, the disabled person's legal fees, possibly even punitive damages, submit to required training and governmental supervision.

A "reasonable accommodation" is a requested change, adaptation or modification to a policy, rule, program or service, which will allow a person with a disability to use and enjoy a dwelling equally as do others, including common areas.

Reasonable accommodations must be requested by or for a disabled person, and could require providing written materials in a large print format, providing a reserved accessible parking space near a resident's dwelling, or allowing a resident to have an assistance animal in a "no-pets" community. The person requesting a reasonable accommodation cannot be required to pay any costs for such a change, but the board is also not required to incur any unreasonable administrative or operational burden or costs in making such an accommodation. A reasonable accommodation is different than a reasonable modification. A reasonable modification for a disabled person involves a structural modification to a dwelling or common area, such as a wheelchair ramp or a swimming pool lift; and the disabled person is required to pay for the costs of such modification, as well as its removal.

A qualified assistance animal is not necessarily easily recognizable. Not surprisingly, a dog with an official-looking identification vest and registration certificate, that was easily purchased online, is not usually a legal assistance animal. An "assistance animal" is an animal that does work or performs tasks for the benefit of a person with a disability, or provides emotional support, comfort or other assistance that alleviates one or more symptoms or effects of a person's disability. The most

common assistance animals are dogs, although other animals may qualify as assistance animals. An assistance animal is not required to have specialized training, or to always accompany its disabled owner. By contrast, a "service animal" is specifically defined by HUD under the ADA as only a dog or a miniature horse (yes, a horse) that has been specially trained to assist a disabled person (such as a guide dog for the blind); and it is legally permitted to go into public places.


When considering whether a requested reasonable accommodation for an assistance animal should be granted, the first issue for the board is to determine whether the requesting resident is legally disabled. The request should be in writing on a form provided by the board, and should include a letter from a doctor or health or social service professional. Under the FHAA, the term "disability" or "handicap" means a physical or mental impairment which substantially limits one or more major life activities (such as walking, talking, seeing, hearing, smelling, breathing, sleeping); but such term does not include illegal use of or addiction to a controlled substance. The next issue to be determined by the board is whether the assistance animal actually alleviates one or more symptoms of the disability. The board can always request more information to make its decision, although it should not seek detailed information about the person's actual disability. It is important for the board to communicate in writing to the requesting resident within a reasonable time. Once a request is complete with all required documentation, the board must then make its decision promptly and notify the requesting resident in writing. If a request is being denied, an explanation should be given to the resident.

It should be noted that the reasonable accommodation must be "reasonable". Thus, the board is not required to allow a disabled resident or his assistance animal to be an unreasonable disturbance or imposition on the property or on other residents. Reasonable rules can still be imposed governing noise and other behavioral issues of an assistance animal and its owner, or limiting their access to special areas such as a pool or gym, or restricting the type, size or number of such animals. Like any other permitted animals in a community with other residents, an assistance animal should be required to be under the control and care of its owner at all times, to protect the rights of the other residents. Nonetheless, the board must realize that even if a particular assistance animal becomes such a nuisance that it can no longer be permitted, the disabled resident is legally entitled to obtain a replacement assistance animal.

This was intended as a brief summary of the law regarding reasonable accommodation requests for assistance animals. It is meant as a guide to community associations, to help them be prepared and understand how such request must be handled. As more community association residents are learning about these rights under federal law, the number of reasonable accommodation requests for assistance animals has been increasing. Some of these requests are legitimate, but some are not; and it is up to the board to figure out the difference.

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