

COMPANION ANIMALS, PART III – You Have To Be All In To Handle Companion Animal Requests

The last two months we have discussed companion animals. We have learned that companion animals are also known as emotional support animals or therapeutic animals. We have also learned that companion animals are a form of assistive animal under fair housing laws. As a form of assistive animal, there is no difference between a companion animal and a service animal. This month we will examine why the number of companion animal requests are going through the roof, and what policies can be adopted to deal with companion animal requests.

Companion animal requests are skyrocketing for a several reasons. Money makes the world go round, and thus is the primary driver of the rapidly increasing number of companion animal requests. Because the companion animal is not a pet under fair housing laws, landlords cannot charge pet fees, pet deposits, or pet rent. Savvy tenants know this. So now Fido's owner is much more likely to suffer from depression. Websites spread the word that tenants do not have to pay pet fees for companion animals. Websites also encourage tenants to claim their dog or cat as a companion animal by selling assistive animal documentation, for a fee. Specifically, websites will certify an animal as a "certified service animal". Websites also sell letters (prescriptions) that document a tenant's need for a companion animal.

Certificates from websites stating that a dog is a "certified service animal" or an "assistive animal" can safely be ignored. Under fair housing laws, the animal's status is irrelevant. Does the tenant have a disability related need for a companion animal? This is the issue. Specifically, the tenant must be disabled, as defined by fair housing laws, and the companion animal must be necessary to lessen the impact of the tenant's disability.

Emotional Support Animal ("ESA") letters sold by websites should never be ignored. ESA letters are often written by LPCs (Licensed Professional Counselors). ESA letters are well written, look professional, and provide documentation on the exact

two issues relevant to a reasonable accommodation request for a companion animal under fair housing laws. Specifically, an ESA letter will always state that the applicant or tenant is disabled as defined by fair housing laws, and that the companion animal is necessary to lessen the impact of the tenant's disability (the tenant has a disability related need for the companion animal). On the surface, an ESA letter appears impervious to challenge. However, similar to any reasonable accommodation documentation, an ESA letter may be verified, clarified, or challenged depending on the surrounding facts and circumstance.

The Internet and modern technology have helped proliferate fake companion animal documentation. Remember, many tenants claim companion animals to avoid paying pet related charges. If the tenant doesn't want to pay pet fees, the tenant may not want to pay the cost to get an authentic ESA letter. One color printer, plus some software editing tools, and viola! You have yourself some genuine looking companion animal documentation. If you suspect, for any reason, that an ESA letter or any companion animal documentation is fake, you are always allowed to verify a tenant's documentation. You can authenticate (establish that the documentation is what it claims to be and was authored by the signer of the letter) companion animal documentation by contacting the provider and asking some simple questions. Did you provide this for this tenant? Are you the author of this letter or document?

If you plan on going beyond simply authenticating an ESA letter, you'll need to know much more about ESA documentation companies. Although professional counselors or even psychologists sometimes write ESA letters, web based ESA letter companies do not operate like a doctor or traditional health care provider in many ways. The need for companion animals is always based on a mental impairment, e.g. depression, PTSD. Persons with mental health issues see doctors to get diagnosed and treated. People go to ESA letter websites and pay to obtain a piece of paper (disability and need related documentation) so they can have a pet at a no pet community, and/or so they don't have to pay pet fees. Unlike a traditional health care provider, where the relationship is usually established and on going, the relationship with an ESA website is almost always very short term. ESA letter businesses also differ from other traditional

sources of reasonable accommodation (companion animal) documentation. In the past, charitable organizations, non-profit community based organizations, and even fair housing advocacy groups have all been the source of companion animal documentation. Similar to traditional health care providers, these organizations usually have substantial and ongoing contact with the tenant, have substantial exposure and experience with disabled individuals, and never receive financial compensation for opining that a tenant is entitled to a companion animal under fair housing laws.

ESA companies usually base their letters (companion animal prescriptions for tenants) on online psychological tests, and a couple of phone or Skype interviews with the tenant. According to one website, the entire process takes from several days to two weeks. Additionally, some ESA companies also state that their opinions are also based upon a review of the tenant's medical history or records. Based on the process, the short time frame, the lack of an on going relationship, and the ESA companies' overall lack of familiarity with the tenant, we have challenged ESA letters for clients on numerous grounds. Fair housing laws generally require that the person providing documentation, regarding the tenant's disability, (the opinion that the tenant has a mental impairment that substantially limits a major life activity) has to be a person "who is in a position to know" about the tenant's disability. Given the law and how ESA companies operate, we ask ESA companies to answer some questions. Why are they in a position to know about the tenant's disability? What are their opinions based on? How does the psychological testing determine if somebody is disabled as defined by fair housing laws? Has any other medical professional reached your conclusions? Are you the first to reach these conclusions about the tenant? Obviously, the questions asked will depend on the circumstances of each case.

The ever-increasing number of companion animal requests has everyone talking and complaining. As a whole the industry is fed up with the situation, especially because more and more of these requests appear, on the surface, to be made for the blatant reason of avoiding pet related costs. The illegitimate requests also have the unfortunate effect of delegitimizing the requests of disabled persons who truly benefit from a companion animal. Being fed up is one thing. Being committed to do something

about it is an entirely different matter. Without a substantial ongoing commitment, you will never correctly handle a large number of companion animal requests at acceptable risk levels.

Commitment means devoting substantial resources on a continuing basis to ensure each companion animal request is handled timely and correctly. Correctly means granting legitimate companion animal requests, and denying companion animal requests that do not satisfy applicable legal tests. Generic or basic fair housing training won't cut it. Your team (meaning the entire team from regional managers to assistant managers) will need to be proficient in handling and evaluating companion animal requests. Because the multifamily industry is infamous for turnover, this training and education effort will have to be on going. You will also need to be able to generate specific forms and letters to both document companion animal requests, and to maintain the legally required on going dialog to resolve companion animal requests. You will need to adopt standard form and letter templates that facilitate the evaluation and determination of companion animal requests. If you have forms, they may need to be improved. User-friendly forms, while great for tenant relations, many times aren't helpful in resolving companion animal situations. Frequently, when we review fair housing forms that clients have designed to be tenant friendly, we have to start at ground zero because the form doesn't provide any of the key factual information we need to provide precise legal advice.

You will have to accept that handling companion animal requests consistently and properly will consume time and money. The better educated your team, the less time these requests will take. However, even with skilled personnel, companion animal requests often do not quickly resolve themselves. Companion animal requests can be extremely complicated. There are no shortcuts. You have to spend the requisite amount of time to properly discuss the situation with the tenant, draft appropriate documentation, and consult with legal counsel if necessary. You also have to be committed to take acceptable risks over companion animals. When appropriate, commitment means investing the time and spending the money to defeat bogus

companion animal requests; either through the eviction process or in defending a fair housing discrimination complaint.

When it comes to companion animal policies, you do have alternatives to an “all in” policy. One alternative is to grant all requests for companion animals that are supported by proper documentation. Let’s call this the proper documentation policy. If the tenant has provided you with documentation that the tenant is disabled and needs a companion animal because of the disability, you will grant all requests. You won’t question the documentation, attempt to authenticate suspicious looking documentation, or attempt to resolve any apparent discrepancies through an ongoing dialog. You certainly wouldn’t challenge a professional looking ESA letter that supports a tenant’s request for a companion animal. With a proper documentation policy, you will certainly spend less time on companion animal issues, and substantially reduce the risk of being sued. If you allow all companion animals, the tenant has no grounds to sue. The disadvantages are that you will make less revenue by allowing some residents companion animals when they may not or do not legally qualify for a companion animal, and this sum will become greater over time as the number of illegitimate requests increase; maybe to the point that your pet revenue policy becomes meaningless.

If you’re not going to make the substantial and ongoing commitment needed to properly handle companion animal requests, a proper documentation policy is less risky than the haphazard policies we frequently see. Too often we see managers and landlords trying to be handle companion animal requests without having made the necessary commitment. Obviously, they are trying to preserve the pet revenue stream. However, without the necessary commitment, and given the number of requests, it is nearly certain that a mistake will eventually be made. A legitimate request for a companion animal will be denied, and the community will incur the significant costs of defending either a housing discrimination administrative complaint or lawsuit. If you want the reduced risk of a proper documentation policy but the revenue too, you should assume a certain percentage of illegitimate companion animal requests, and consider increasing the rent to offset revenue losses from these requests.