

Landlord News

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Companion Animals - An Evolving Area of the Law

Part II of a Two Part Article

Last month we outlined the topic of companion animals and covered some key concepts. This month, we take a hard look at how courts rule on companion animal issues, and how you can use these rulings as an analytical framework for your decision making.

While not agreeing on the final answer, most, if not all, courts agree on one key point.



There has to be a nexus (link or relationship) between the animal and the resident's disability. Under this test, if there is no apparent link, you can safely deny the request. For example, you could deny a request by a resident who suffered from depression for a Seeing Eye Dog.

Unfortunately, the nexus test has been of little practical value in guiding property managers when it comes to companion animal issues.

The problem with the nexus test is that the courts do not agree on the level of proof necessary to pass the test. On one end of the spectrum (arguably most favorable to residents), courts have held that any evidence of companionship and mental health necessity are sufficient to demonstrate that the animal lessens the effects of the tenant's disability. This is not a very high hurdle for the resident to clear. Furthermore, the animal need not have any special training. Under this rationale, you would have to grant any

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Client Party Proves Successful Kickoff to Holiday Season

Over 200 clients and friends of the firm joined us on Friday December 2nd for our annual client holiday party. As anticipated the party proved to be a very successful kickoff to the 2005 holiday season.



The highlight of the evening's festivities was the always-popular drawing for our special Secret



Mary Francis Hanna, St. Marks Sanders, Mauri Cohen, Jeremy Kingery, Mirna Tryon, Mark Tschetter

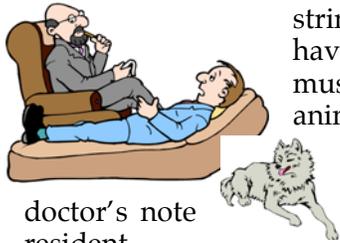
All attendees were entered in the drawing. Senior Partner Mark Tschetter drew five names and each of the selected individuals had an opportunity to pick a number to determine the sequence in which

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request based on mental disability and a doctor's note that the animal makes the resident feel better. Because this is by far the most common request, you would have to grant almost all companion animal requests.

On the other end of the spectrum (arguably most favorable to property managers), courts have adopted a more stringent test. These courts have held that the resident must show that the requested animal will specifically lessen the effects of the disability. A general doctor's note is not sufficient. The resident needs a statement from a doctor specifically trained in the area of the disability claimed by the resident. Further, where the primary disability is emotional, the animal must be peculiarly suited (trained) to ameliorate (lessen) the unique problems of the mentally disabled. Under this test, courts have specifically rejected the "dogs give unconditional love which makes people feel better" thinking. Under this test, you would be able to decline almost all companion animal requests.



Although the courts may disagree, the DOJ and HUD have made it clear that they do not accept the more stringent test. After the property manager won in state court under the stringent test, the DOJ on behalf of HUD came after the property manager at the first opportunity based on a new "emotional support animal case" at the property. This case was settled. While certainly not legal precedent, the terms of the settlement probably provide the clearest indication of HUD's and the DOJ's legal position on companion animals, therapeutic animals, or emotional support animals. This position appears to be in between the two far extremes adopted by the courts.

Based on the DOJ's settlement with a property manager in a companion animal case, the rules for companion animal cases would be as follows. In the case of an emotional support animal, the need for an animal be documented by a statement from a licensed mental health professional indicating, 1) that the applicant has a mental or emotional disability, and 2) that the designated animal would ameliorate the effects of the disability. A "licensed mental professional" means a person licensed by a public regulatory

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Client Party Proves Successful Kickoff to Holiday Season

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they could select a gift. All gifts were wrapped and undetectable as to content. The five winners were Jeremy Kingery, Colinas Point; Mauri Cohen, Ballpark Lofts; St. Marks Sanders, Thomas Property; Mirna Tryon, Terra Village ; and Mary Frances Hanna, Expert Realty & Management



pick was a Sony AM/FM Tape and CD player; Mauri's gift was an Apple Shuffle; St.Marks

Company. When the gifts were opened the recipients all seemed very happy with their selection. Jeremy's gift



selection turned out to be a Kawasaki 9"



a Samsung Hi Def DVD Player; and Mary Frances

portable DVD Player; Mirna's package contained



Hanna found a Nikon Coolpix 4600 Digital Camera in her package.



underway for the 2006 Holiday gathering. Watch for the date on our web site and plan on joining us for this fun event. As all of this year's partygoers will attest, it is a fun party - not to be missed.

Although the HTS Team has just recovered from the fun of putting together the 2005 Client Holiday Party, Plans are already



Companion Animals - Part II of a Two Part Article CONTINUED FROM PAGE 2

authority to provide therapy or counseling to persons with mental or emotional disabilities.

However, these rules do not address the situation presented in Part I last month; the request for a rottweiler (a community banned breed) for the tenant's "emotional well being. To address this specific issue, further analysis is needed. For discussion purposes, let's change the facts a little, and assume that the resident obtained the required documentation from a licensed mental health professional. Thus, the resident has now shown disability and need. But disability and need are not always conclusive. The resident's request must be reasonable on balance. This reasonability requirement has been recognized by both the DOJ and by at least one court.

In a very similar case involving a pit bull and a resident with AIDS, the court found for the property manager. The property manager had argued that having a pit bull in the building constituted a nuisance and created a substantial interference with the comfort, safety or enjoyment of the landlord and tenants in the building. The court reached this conclusion after hearing expert testimony about pit bulls in general, and the particular pit bull in question. It's important to note in this case that the community did not say no dog. The community just said no pit bull.

The DOJ also recognized that requests must be reasonable in its settlement of the case discussed above. The settlement, while allowing emotional support animals, specifically provided that the animal not constitute a threat to the safety of others. Rottweilers have been restricted for a reason. Rottweilers have been restricted because they constitute a threat to the safety of others. In fact, the pit bull case above was decided shortly after two rottweilers mauled a San Francisco woman to death. Accordingly, based on the overall state of the law on companion animals, you are within your rights to deny a request for a companion animal that is a vicious breed such as a pit bull or a rottweiler. As with any request for a reasonable accommodation, if you deny the request, you must attempt to establish a dialog with the resident to explore other possible accommodations.

While legally defensible, denying such a request is not without risks. There is no guarantee that the resident won't sue or file a fair housing complaint. Even if you prevail, this costs time and money, and of course is not very pleasant.

Further, the outcome of the case may come down to dueling experts. One expert will say rottweilers are very friendly. Others will say rottweilers are very dangerous. As attorneys, we like the odds of a judge or jury exercising some common sense and finding that rottweilers are in fact a danger to other residents. But until such time some legal precedent gets established in Colorado, you will not know the outcome of any given case until the ruling is issued in that case.

If you have companion animal questions or scenarios you would like to discuss, please do not hesitate to contact us.



Eviction and Fair Housing Workshops Set for January

With the start of a new year it is time to think about signing up for the HTS Workshops dealing with Evictions and Fair Housing issues. The first workshops of the year are scheduled for January. Vic Sulzer will teach a Basic Evictions workshop on Tuesday January 17th and Mark Tschetter will teach a Basic Fair Housing workshop on Tuesday January 31st. All classes are held in the Hopkins Tschetter Sulzer Meeting Room in the Pavilion Tower 1, which is located at 2851 South Parker Road. The classroom is on the lower level and is accessed from the parking lot behind the building. There is ample parking behind the building or in the garage, which is also located behind the building. All classes are scheduled to begin at 8:45 a.m. You can register for class on line at our web site www.htspsc.com or by calling Nancy at 303-699-3484. Space is limited so please register early. Remember that those who plan to attend Advanced Fair Housing or Non-Monetary Evictions in February should attend or have already completed the Basic workshops in Evictions and Fair Housing.



**ALL COURTS WILL BE
CLOSED ON
MONDAY JANUARY 16TH**

**MARTIN LUTHER KING
HOLIDAY**

First Lunch of 2006 at North Location

The 2006 Free Monthly Client Luncheons kick off on Friday January 20th at our North location, The Rock Bottom Restaurant and Brewery at 10633 Westminster Blvd. As attendance continues to grow at these popular lunches, it is important to make a reservation early because space is limited to 45 attendees. Mark Tschetter will present further information on the issue of Companion Animals as well as covering other current topics of interest to our clients. As always all of the Firm attorneys will be in attendance and will be happy to answer any questions that those at the lunch would like to discuss. You may make a reservation for lunch through our web site www.htspc.com, by calling Nancy at 303-699-3484 or telling any of the staff you may be speaking with that you are planning to come to the lunch.



Why Is January 1st the Beginning of the New Year?

The celebration of the new year on January 1st is a relatively new phenomenon. The earliest recording of a new year celebration is believed to have been in Mesopotamia, c. 2000 B.C. and was celebrated around the time of the **vernal equinox**, in mid-March. The Egyptians, Phoenicians, and Persians began their new year with the fall equinox, and the Greeks celebrated it on the **winter solstice**.

Early Roman Calendar: March 1st Rings in the New Year

The early **Roman calendar** designated March 1 as the new year. The calendar had just ten months, beginning with March. That the new year once began with the month of March is still reflected in some of the **names of the months**. September through December, our ninth through twelfth months, were originally positioned as the seventh through tenth months (septem is Latin for "seven," octo is "eight," novem is "nine," and decem is "ten").

January Joins the Calendar

The first time the new year was celebrated on January 1st was in Rome in 153 B.C. (In fact, the month of January did not even exist until around 700 B.C., when the second king of Rome, added the months of January and February.)

Julian Calendar: January 1st Officially Instituted as the New Year

In 46 B.C. **Julius Caesar** introduced a new, solar-

based calendar that was a vast improvement on the ancient Roman calendar, which was a lunar system. The **Julian calendar** decreed that the new year would occur with January 1, and within the Roman world, January 1 became the consistently observed start of the new year.

Middle Ages: January 1st Abolished

In medieval Europe, however, the celebrations accompanying the new year were considered pagan and unchristian like, and in 567 the Council of Tours abolished January 1 as the beginning of the year.

Gregorian Calendar: January 1st Restored

In 1582, the **Gregorian calendar** reform restored January 1 as **New Year's Day**. Although most Catholic countries adopted the Gregorian calendar almost immediately, it was only **gradually adopted** among Protestant countries. **The British, for example, did not adopt the reformed calendar until 1752. Until then, the British Empire—and their American colonies—still celebrated the new year in March.**



SO YOU THINK YOU KNOW EVERYTHING?

A dime has 118 ridges around the edge.

A crocodile cannot stick out its tongue.

A "jiffy" is an actual unit of time for 1/100th of a second.

Cats have over one hundred vocal sounds. Dogs only have about 10.

"Dreamt" is the only English word that ends in the letters "mt".

February 1865 is the only month in recorded history not to have a full moon.

If you are an average American, in your whole life, you will spend an average of 6 months waiting at red lights.

Leonardo Da Vinci invented the scissors.

"Stewardesses" is the longest word typed with only the left hand and "lollipop" with your right.

The cruise liner, QE2, moves only six inches for each gallon of diesel that it burns.

The microwave was invented after a researcher walked by a radar tube and a chocolate bar melted in his pocket.

The words 'racecar,' 'kayak' and 'level' are the same whether they are read left to right or right to left (palindromes).

There are only four words in the English language which end in "dous": tremendous, horrendous, stupendous, and hazardous

There are two words in the English language that have all five vowels in order: "abstemious" and "facetious."

Now you know a lot more about everything!