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Landlord News

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Restrictions On Service And Companion Animals - Are They Allowed?

A resident made a reasonable accommodation request ("request") for three companion dogs. She had a licensed therapist advocating her cause that the three dogs dramatically improved her mental conditions. The request was conditionally granted in this case. The granting of the request did not fully resolve the issue because the request was conditionally granted. The property conditioned the request on the resident signing a Service Animal Addendum. The property imposed



this condition because the property wanted recourse if the companion dogs injured someone, the resident did not clean up after them, or they disturbed other residents. Pursuant to the Companion Animal Addendum we drafted, if the resident did not comply with these terms,

the dogs would be subject to removal.

The resident would not agree to sign this addendum until the property told her she either had to sign it or they would deny the accommodation. This real life factual scenario raises the following important questions.

Generally, can you impose conditions to granting a resident's request for a reasonable accommodation? Can you condition a companion animal request on the resident signing a pet addendum? Can you condition a companion animal request on the resident signing a service animal agreement? What, if any, are the differences between pet addendums and service animal agreements? What, if any, restrictions can you place on service animals or on requests for service animals?



CONTINUED ON PAGE 2

Website Adds Two Features To Better Serve Clients

In order to better serve our clients, HTS is proud to announce two new and very valuable features coming soon to our website. The first feature is a page for legislative updates, which has already been added to the site, but enhanced features will be added soon so you will be able to identify who your representatives and senators are and how to contact them. The second feature on the website will provide Automatic Electronic Notices for client-only use. These Automatic Electronic Notices will be available in the near future. These two implementations were specifically designed with you, the property manager, in mind!



The legislative website update allows you to take a proactive stance regarding legislation that directly affects your business. Every day, legislation may be proposed at a state or federal level that will negatively impact your property and employees and grant unprecedented legal protection to tenants. The Firm places a high degree of emphasis on keeping its clients informed about critical issues in the multi-family housing industry. The newly added page on our website will post the newest landlord/tenant-related bills in order to keep you well informed about legislation that can affect your business. Our site will also help you to identify your state and federal representatives so that you may contact them with your concerns on legislation that impacts your industry. It is through strength in numbers that the multi-family housing industry can be heard and impact the legislative process!

Automatic Electronic Notices will help resolve confusion as to which notice to post on a tenant's door. Using the new automatic notice system on htspsc.com, you can fill out forms online that you will be able to print and post. This system will prompt you with questions to be

CONTINUED ON PAGE 2

Restrictions On Service And Companion Animals – Are They Allowed?

CONTINUED FROM PAGE 1

Generally, these issues are not well understood. The industry tends to go overboard in one direction or the other. At one extreme are managers who make all pet rules apply to service animals. At the other extreme are those managers who don't place any restrictions on service animals.



Under certain factual scenarios, conditionally granting a request can be unreasonable, and thus amount to discrimination. It all depends on the nature of the conditions, given the factual background of the request. Conditions flowing from legitimate interests of the property are likely to

withstand challenge. Conditions that have no legitimate or rational basis to any legitimate property interest are barriers. You may not create barriers to deny a resident's request. If a condition is viewed as a barrier, the resident's request for a reasonable accommodation has been denied. What is a legitimate condition and what is a barrier can be fuzzy. As with all requests, whether or not a condition is based upon a legitimate interest or is a barrier, is a highly specific factual inquiry and depends on the acts of each case.

Remember, service animals are not pets. A service animal is any animal that assists or benefits an individual with a disability, allowing such person to have equal opportunity to use and enjoy his or her dwelling. Remember, service animals include companion animals. The law makes no distinction between animals traditionally regarded as true service animals, such as a seeing eye dog, and a companion animal that provides therapeutic benefit to someone with a mental disability. Because service animals are not pets, you can't condition a resident's service animal request on the resident signing a pet



addendum. You should never require a resident who has asked a service animal to sign a pet addendum. Nor should you charge a resident who has asked for a service animal the standard pet-related charges that your community normally charges.

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Website Adds Two Features To Better Serve Clients

CONTINUED FROM PAGE 1

sure you are filling out the appropriate notice to help keep you out of potential legal trouble. Being able to distinguish which notice to serve to a tenant is critical, especially when you would like to have someone evicted in a timely manner. Using the wrong notice is damaging to your case and can significantly set back your eviction process. Due to the busy schedules and responsibilities of property managers, it is sometimes difficult to find the time to research the differences between notices or when to use which notice. Therefore, the Firm is creating and adding this feature to our website to aid you in rapidly identifying the correct form.



As always, our website is available for you to register to receive our monthly newsletter, sign up for educational workshops and events, and download crucial forms, documents, and articles. Visit the Firm website at htspc.com or milehighsevictions.com.



While you can't require a disabled resident to execute a pet addendum, you can impose certain conditions or restrictions on the resident's request for a service animal. Both case law and federal regulations support the conclusion that some conditions may be placed on requests for service animals. Just as with any condition put on any request, as discussed above, conditions must be reasonably related to furthering a legitimate interest of the property owner, such as the owner's interest in providing a decent, safe, and sanitary living environment for existing and prospective residents and in protecting and preserving the physical condition of the property and the owner's financial interest in it.

Requiring a resident to pick up after a service animal is a legitimate condition. Requiring the resident to pay for any damages caused by a service animal is a legitimate condition. Requiring that a service animal not disturb other residents is a legitimate condition. However, the Colorado Civil Rights Division ("CCRD") recently expressed concern over this condition to us in connection with the 3 companion animal request. The CCRD's concern centered around potential bogus complaints from other residents. Specifically, a non-disturbance agreement may allow a property to remove service animals under the pretext of neighbor complaints. If neighbors complain about service animals, systematic procedures should be consistently followed

CONTINUED ON PAGE 3

Restrictions On Service And Companion Animals – Are They Allowed?

CONTINUED FROM PAGE 2

to avoid these types of charges. You should always clearly communicate to the disabled resident the nature of the problem and that you are attempting to and willing to maintain a dialogue for the situation to be resolved. Such communication should always take place prior to the service of any formal demand letters, and especially prior to the service of any eviction notices. In fair housing, intent is key. Reaching out in good faith (attempting to establish a dialogue) to solve the problem is strong circumstantial evidence that you lack any discriminatory intent. Plus, once you have fully considered the request, you do not want your next course of action to appear retaliatory in any way. In other words, you never want a situation that circumstantially suggests that you are now evicting or not renewing a resident because you granted the accommodation request but did not really want to. Thus, keeping that open dialogue is critical.

A sampling of service animal agreements, available on the internet, shows that some managers are utilizing much more extensive agreements with numerous and significant conditions. Service animal agreements should be simple and to the point. They should not be a set up, meaning they should not impose unreasonable restrictions that the disabled resident will not be able to meet. Rather, they should cover only the most essential issues such as picking up waste, damages, and non-disturbance of other residents. These agreements should err on the side of being conservative. The more conditions the more likely the resident will assert that you are putting up barriers and not legitimate conditions. Simple agreements are more likely to avoid charges that conditions are being imposed as barriers. If a resident refuses to sign your service animal agreement or challenges any provision as a barrier, you need to promptly respond to the resident. Your response should inform the resident of the legitimate reasons for adopting the condition, that you are willing to discuss the issue further with the resident by maintaining a dialogue, and that you will always consider any further information provided by the resident in evaluating whether the imposition of the condition is necessary. Your response should also ask the resident to indicate why the condition is illegitimate or is viewed as a barrier from the resident's perspective.

You may impose some conditions on service animals. However, the law is clear. You may not apply certain pet-related rules to service animals. As stated above, you may not charge any standard pet-related charge or fee on a service animal, including pet fees, pet rent, or pet deposits. Ironically, pet-friendly properties are most likely to charge pet fees, rent, or deposits for service animals. Because the property already allows pets, service animal requests are mistakenly viewed as another run of the

mill pet request to which all pet rules apply.

The ultra-conservative approach is not to place any conditions on granting requests for service animals. However, service animal agreements are desirable and necessary in our opinion. Service animals can cause problems or problems can result because the resident does not properly care for a service animal. In our case, the resident brought the 3 dogs in prior to even requesting a reasonable accommodation. While a dialogue has been maintained with this resident to satisfactorily resolve this particular request, the resident had consistently failed to pick up the dogs' waste, which had been deposited in the common areas. If you have no service animal agreement, you have little or no recourse when service animal problems arise.

A copy of the Firm's service animal agreement is available for download on our website (htspc.com- Documents, Lease, "Companion Animal Addendum").



Free Client Lunch Packs a Punch

We've all heard of a dinner and a movie, but isn't it time we treat you to a lunch and some education? Every month, the Firm shows its client appreciation by hosting



Vic Greets New Clients David Masi & Gene Tenberg (Cypress Equity Investments) At Feb. Client Lunch

a FREE client lunch. This is an excellent opportunity for you to meet others in the multi-family housing industry and hear Senior Managing Partner Mark Tschetter speak about what you need to know regarding current legislative issues that impact property management, as well as updates on current legal issues. The cli-

ent luncheons also provide you with an opportunity to get better acquainted with the Firm attorneys and staff on a one-on-one basis outside of interaction in the office or courtroom. It also provides you with a forum to discuss legal questions with attorneys, as well as receive input from peers with similar issues. The next luncheon is March 16th at the Rock Bottom Brewery in Westminster. To register, contact Rebecca at rebecca@htspc.com or 303-699-3484, but hurry—space is limited!



Mark Talks About Fair Housing & New Upcoming Legislation At Feb. Client Lunch



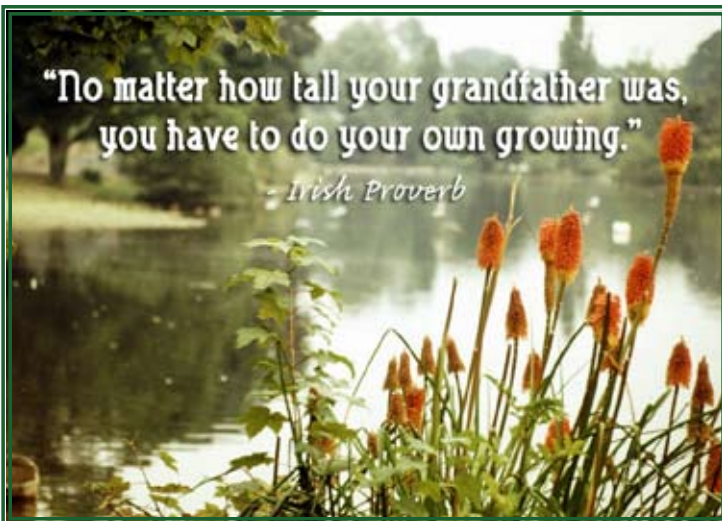


**Share Your
Bright Ideas
Or Suggestions
For Articles
You Would Like
To See In Your
Newsletter**

Contact Rebecca at rebecca@htspc.com

Test Your March Trivia!

- In the original Roman calendar, March was the first month.
- March is named for Mars, the Roman god of war.
- The jonquil and violet are considered to be the flowers for March.
- The behavior of hares in the breeding season gave rise to the saying, "Mad as a March hare."
- Perhaps the best-known saying about March is, "March comes in like a lion and goes out like a lamb." This saying is meant to demonstrate the unpredictable weather that often occurs as the seasons change.
- Caesar was told, "Beware the Ides of March." The ides are on the 15th.
- If rain falls during the first three days in March, it is supposed to foretell a bad harvest. Some superstitious farmers wait until the fourth of March before sowing crops. These days are known as "blind days."



2007 AACCS Expo Wildly Successful

Designated "King of the Jungle" by the Apartment Association of Colorado Springs, Hopkins Tschetter Sulzer had a fantastic time on February 16th at the AACCS's Education Conference and Expo.



Vic Makes A New Friend

The Firm's booth helped bring the tradeshow's "It's a Jungle Out There" theme to life with authentic African music and tribal mask. Our booth even featured a 3 foot stuffed lion perched atop the marquee sign to represent the Firm's prestigious title of "King of the Jungle."

Many visitors "ooh'ed" and "ahh'ed" at our engaging slideshow presentation, which included movie clips and special animations, and our theme-driven, clever decorations, which included vines and jungle animals. As the event's primary sponsor, Senior Managing Partner Mark Tschetter was honored to introduce the luncheon's keynote speaker, Dr. Joseph A. Michelli.



Vic, Pat Stanforth (Griffis/Blessing), Mark Talk About Expo



Vic Congratulates Prize Winner Britany Hendrix As Sheridan Carter (Expo MC) Looks On

As the event's primary sponsor, Senior Managing Partner Mark Tschetter was honored to introduce the luncheon's keynote speaker, Dr. Joseph A. Michelli. At the end of the expo, Partner Vic Sulzer had the pleasure of awarding Britany Hendrix of Grand River Canyon Apartments the winner of the JellyBelly guessing game, making her the recipient of a 4gb iPod. Yes, we did count them; there were 7,001 JellyBellys, and Britany guessed 7,000—How close can you be? As always, the tradeshow has proven to be a wonderful opportunity for the Firm to meet with old friends and clients as well as be introduced to some new ones.



IMPORTANT MARCH DATES

March 16th - Client Luncheon

(You can wear your green a day early if you'd like)

