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LEGAL TIPS

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Competing Needs: Balancing Emotional Support Dog Requests Resident Allergy and Anxiety Issues

Emotional support dogs ("Assistance Animals") in "no-dog" buildings continue to raise sticky legal issues for community association boards and managers. As you will recall, the Illinois Assistance Animal Integrity Act (or "Act," full text linked here) became effective on January 1, 2020. The Act mandates that if a community association receives an accommodation request for an Assistance Animal, the board must generally accommodate the request even in "no dog / no pet" buildings. The board may require the requesting resident to present "reliable documentation of the disability and disability-related need for the animal" provided by an individual or entity with a "therapeutic relationship" with the resident (if the disability-related need is not readily apparent or known to the board). With the Act now effective, there is little that a board can do to stand in the way of a resident keeping a dog in a no-dog building if the resident follows the Act processes. For a refresher on the Act and its requirements, see our prior article linked here.

The issue that frequently arises in community associations is what happens when an *existing* resident makes an accommodation request to keep the dog *out of the building*, citing a severe allergy to dogs or a debilitating fear or anxiety issue. That resident with the allergy or fear may go so far as to assert that he/she chose to purchase or rent in the association specifically because of the "no-dog" policy. We'll refer to this as the "competing needs" issue.

Unfortunately, the Act fails to address the issue of competing needs adequately. The Illinois legislature effectively left managers and boards to figure out the phrase in the Act "However, a housing provider may not deny an assistance animal solely due to the disability-related needs of another resident; rather, a housing provider must attempt to balance the disability-related needs of all residents" on their own via the Illinois court system, putting community associations into the crossfire as residents fight over whose disability is *more* debilitating and thus more "important."

While the Illinois courts have not yet provided any applicable case law, the Iowa Supreme Court recently handed down a ruling that sheds light on the issue. The Iowa Court ruled on a conflict between one tenant who sought to bring his Assistance Animal into a "no-dog" apartment building where an existing tenant with a dog allergy already resided. The tenant with the allergy had specifically chosen the apartment because of its "no dog" policy.

The landlord decided to allow the Assistance Animal while requiring that the dog-owner and resident with allergies use different stairways to minimize contact. He also provided the allergic resident an air purifier for her unit. The measures failed to prevent the allergic tenant from having allergy attacks, which forced her to temporarily move out of her apartment. She then sued the landlord and her neighboring tenant for interfering with her use and quiet enjoyment of her apartment. The landlord's defense was that he allowed the Assistance Animal *despite* the no-pets policy as a reasonable accommodation under the Iowa Civil Rights Act, stating that he had no other choice under the law.

The Iowa Supreme Court, however, disagreed with the landlord and applied a legal doctrine referred to as "first in time, first in right." Since the allergic tenant moved into the building *first* and specifically chose the apartment because of its no-dog policy, the court held that the landlord had to honor the no-dog policy even when someone made an Assistance Animal request. The landlord effectively had to prioritize the allergic tenant's requirement for a dog-free building, as her documented need was "first in time" and *preceded* the dog-owner's need.

The question then becomes, can Illinois community associations use the Iowa Supreme Court's "first in time" ruling to reject accommodation requests for Assistance Animals when there is an existing resident with a "documented disability" related to dogs? Our answer is, unfortunately, no.

First of all, the Iowa Supreme Court decision is not binding on Illinois – Iowa law = Iowa law, and Illinois law = Illinois law. The case was not federal and thus, while *informative* to us in the Land of Lincoln, is not legally binding on Illinoisans. Moreover, the Iowa case cannot be directly applied to community associations. The Iowa landlord owned multiple buildings, and thus had the option of offering the tenant with the Assistance Animal an apartment in a pet-friendly building. Condo and HOA boards do not have such a choice, and that lack of alternative housing option well have changed the Iowa Court's holding. Furthermore, while Illinois courts have previously used the "first in time" doctrine, they have rarely done so in the context of disability cases and never with Assistance Animal requests.

Finally, the "first in time" doctrine's application to Assistance Animal disputes could make it nearly impossible for someone who truly requires an Assistance Animal to treat to ever reside in a "no dog" association. Given the breadth of the Act and the legislature's clear intention to make it *easier* for folks to have Assistance Animals in apartments and condo buildings, we believe it is unlikely that an Illinois court would hand down a ruling that would so clearly conflict with the statute's intent.

So, where then does that leave associations concerning balancing accommodation requests? Our opinion is that anything short of a documented accommodation request from a person with a severe allergy cannot be used as a basis to block a resident from bringing an Assistance Animal into a no-dog building. Even then, a documented severe allergy cannot be the *sole reason* for the association's denial of an Assistance Animal request; the denial would have to be compounded with other issues the association would face if it granted the request. We also believe that an Illinois court would unlikely consider a resident's fear of dogs as a valid reason to deny an Association Animal request. The court would likely reason that the association can implement policies to accommodate both individuals – the dog-owner and the individual with the fear of dogs. A recent Illinois ruling (*Geraci v. Union Square Condo Ass'n, 2017*) included a unit owner claim that a board failed to accommodate her fear of dogs adequately. The association in the *Geraci* case, however, implemented rules that included limiting the number of dogs on an elevator, requiring all dogs to be leashed, and even permitting the unit owner to ask those with dogs to take the next available elevator. The *Geraci* court found that the association's rules reasonably accommodated the individual with a fear of dogs and that the board was not required to take any further steps.

Ultimately, associations should default to *accepting* accommodation requests for Assistance Animals (after consultation with legal counsel) provided the requesting resident follows all necessary steps detailed in the Illinois Assistance Animal Integrity Act. In the event of a true conflict between residents emerges ("competing needs"), the board should rely on guidance from the association's attorney to resolve the issue.

