

7--May an Association Ban or Restrict Animals?

An Association may ban or restrict animals, if the restriction is: reasonable¹; enforced uniformly; and included in the Governing Documents.² The Fair Housing Act and Washington Law Against Discrimination provide that an Association must permit service animals. There is a question as to what extent an Association must permit emotional support animals.

Service Animals

An Association may not ban service animals.³ A service animal is an animal⁴ that is trained for to assist or accommodate a disabled person's disability. There are no legal requirements for service animals to be specially identified.⁵ Service animals are not required to have any special harnesses, badges, or certifications.⁶

To establish a right to a service animal, a resident must notify the Association that he or she is disabled and that a service animal is required in order to use and enjoy their home in the same way that a non-disabled resident would. The Association is permitted to ask only for information necessary to determine whether the animal is a reasonable accommodation because of a disability.⁷ If the disability is not obvious, the Board may ask for documentation that the resident is disabled but may not ask what the disability is. The Board may also ask for documentation that the animal is necessary to help the resident cope with the disability.

"Emotional Support" Animals

An emotional support animal is an animal that is not specially trained to assist a disabled person, but instead allows a person with a mental health disability to function better or normally.⁸

The Washington Law Against Discrimination (WLAD) does not define nor does it mention "emotional support" animals. "Service

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animals” are required to have special training under the WLAD, and “emotional support” animals do not possess special training, so it seems that Washington law does not preclude Associations from banning “emotional support” animals.

The Fair Housing Act (FHA) does not mention or define “emotional support” animals. However, the FHA’s definition for “service animal” does not require that the animal have special training. Under the FHA, a “service animal” is an animal that is a necessary reasonable accommodation for a person with a disability. Under this definition, a resident’s animal is a “service animal” if:

- (1) the resident has a disability,
- (2) the resident requests the animal as a reasonable accommodation for that disability, and
- (3) the animal is necessary because of the resident’s disability⁹

An “emotional support” animal would likely be considered a “service animal” under the FHA’s broader definition.

Under the FHA, if a resident claims a disability and has an animal that meets the definition of a “service animal,” that animal should be allowed in the resident’s dwelling even if the Association has a “no pets” policy. There should be no charge or “pet fee.” If a resident does not provide any information about how the animal assists with a disability, the animal may be prohibited, but the risk to the Association of denying a claimed service animal is high.¹⁰

¹ No Washington court has ruled on this exact issue, but Washington cases ruling on other kinds of restrictions, as well as cases from other jurisdictions regarding pet restrictions, support this conclusion. See, for example, *Shorewood West Condo. Assn. v. Sadri*, 140 Wn. 2d 47 (2000) (citing *Noble v. Murphy*, 34 Mass. App. Ct. 452 (1993) (upholding pet restriction) and *Nahrstedt v. Lakeside Village Condominium Assn.*, 8 Cal. 4th 361 (1994) (pet restrictions enforceable if reasonable and uniformly enforced).

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² RCW 64.34.216, RCW 64.32.090 and RCW 64.90.225 provide that any restrictions on use of a condominium be included in the Declaration. For this reason, if the Declaration does not already contain a pet restriction and a community wishes to restrict pets, it is probably best to vote on and pass an amendment to the Declaration. If a pet is a nuisance or threat, it may be restricted by rules based on specific facts and circumstances.

³ This is true under both federal and state law.

RCW 49.60.224(1) (Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void - Unfair practice) provides, in pertinent part:

Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability **or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled**, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability **or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled** is void.

RCW 49.60.040 (Definitions) provides, in relevant part:

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

- (i) Is medically cognizable or diagnosable; or
- (ii) Exists as a record or history; or
- (iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

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(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

RCW 49.60.222 (Unfair practices with respect to real estate transactions, facilities, or services) contains similar provisions relating to real estate transactions (such as sale of a unit).

⁴ It should be noted that RCW 49.60.218(3)(a) (Use of dog guide or service animal – Unfair practice – Definitions) defines "service animal" as ". . . any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability . . ." (emphasis added). However, RCW 49.60.040 (Definitions) defines "service animal" as ". . . any **animal** that is trained for the purpose of assisting or accommodating a disability . . ." (emphasis added). However, the definition of "service animal" in RCW 49.60.218(3)(a) is only applicable to provisions within RCW 49.60.218, whereas the broader definition of "service animal" in RCW 49.60.040 is applicable to all other sections of RCW 49.60.

⁵ See, *Storms v. Fred Meyer Stores Inc.*, 129 Wn. App. 820 (2005); *Timberlane Park v. Human Rights Comm'n*, 122 Wn. App. 896 (2006). The animal must have some training specific to assisting a disabled person that sets it apart from an ordinary pet. No particular kind or amount of training is required by law; the owner must demonstrate that there is a relationship between his or her ability to function and the companionship of the animal. See, e.g., *Majors v. Housing Authority of the County of DeKalb*, 652 F.2d 454 (5th Cir. 1981) (Federal court determined that the act may require an apartment building to accommodate a woman's depression by modifying their no pet policy.); *Housing Authority of the City of New London v. Tarrant*, 12480, 1997 WL

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30320, at *1 (Conn. Super. Ct. Jan. 14, 1997) (Connecticut court determined that an apartment may be required to permit animals in building but that the facts of this case do not support the tenant.); *Whittier Terrace v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989) (Massachusetts court permitted a woman with an diagnosed mental condition to retain her cat arguing “[i]f the overall costs are reasonable in light of the anticipated benefits, and the burdens imposed are not undue, then it can be reasonably concluded the handicapped have suffered discrimination...”); *Durkee v. Staszak*, 636 N.Y.S.2d 880 (N.Y.App.Div. 1996); *Crossroads Apartments v. LeBoo*, 578 N.Y.S.2d 1004 (City Court of Rochester, N.Y. 1991). (A New York court determined that a no pet clause may need to be suspended if a tenant has a disability.)

⁶ For more information, the following websites may be helpful:

http://www.ada.gov/service_animals_2010.htm (this site discusses the ADA which does not apply, but many courts refer to the ADA's definitions when discussing service animals and emotional support animals under the FHA)

http://www.hud.gov/offices/fheo/FINALRULE/Pet_Ownership_Final_Rule.pdf (discussing the HUD rules about service and emotional support animals)

⁷ *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850 at 856 (2009). (“[P]rovider of housing is entitled to obtain only that information necessary to determine whether the requested accommodation is necessary because of a disability.”)

⁸ *Ass'n of Apt. Owners of Liliuokalani Gardens v. Taylor*, 892 F. Supp. 2d 1268, 1270-71 (D. Haw. 2012).

⁹ *Guide to Service Animals and The Washington State Law Against Discrimination*, Washington State Human Rights Commission, (Oct 2013) at 7.

¹⁰ Our experience is that the Washington Human Rights Commission leans heavily in favor of any individual claiming a need for accommodation.