

Red Rover, Red Rover, Come on Over? Understanding Pet Policies in Community Associations

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Many community associations have restrictions that limit and/or prohibit pets.

In general, as long as such restrictions are drafted clearly, the North Carolina Courts will uphold their enforcement; however, there are several factors community associations should consider when establishing and enforcing pet restrictions and policies.

What is a Pet?

The North Carolina Court of Appeals has defined a household pet as a domesticated animal kept for the pleasure of or relating to a family or social unit who live together in the same dwelling. Accordingly, unless your community association's pet policy contains a specific definition of "pet," the broad definition adopted by the Court of Appeals controls. Therefore, in order for a community association to successfully limit pets to those animals traditionally considered as pets, such as dogs and cats, it may need to consider amending its pet policy to clearly define the term "pets."

Types of Pet Policies – Restrictive Covenants v. Rules and Regulations

Pet policies are typically found in the community association's declaration of covenants, conditions, and restrictions ("CC&Rs") or in duly adopted rules and regulations. These policies often limit and/or prohibit the number, size, and types of pets that can be kept within the community.

Community associations that choose to implement pet policies through rules and regulations need to carefully consider the scope of authority for rules and regulations granted by the CC&Rs. Typically, CC&Rs only grant the authority to promulgate rules and regulations over the common area, not an individual owner's lot or unit. For example, a pet policy adopted by the Board of Directors can require pets to be leashed when in the common area and require pet owners to properly collect and dispose of pet waste from the common area. Unless the CC&Rs grant the Board of Directors rule-making authority over lots, regulations that limit and/or prohibit the number, size, breed, and types of pets must be specifically granted by the CC&Rs.

Be Cautious with the Fair Housing Act

The Fair Housing Act, codified at 42 U.S.C. §§ 3601-3619 ("FHA"), prohibits housing providers from discriminating based on race, color, religion, sex, national origin, familial status, and disability. While the FHA does not define "housing providers," it is well settled by federal courts that the definition of "housing provider" includes community associations.

Under the FHA, an assistance animal is not a pet but an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability or that provides emotional support that alleviates one or more identified effects of a person's disability. An assistance animal under the FHA may include any animal, such as a dog, cat, chicken, goat, bees, etc., and does not have to be specifically trained to provide any assistance. As a result, assistance animals include service animals and emotional support animals.

Consequently, a community association cannot enforce pet policies against assistance animals or emotional support animals. For a better understanding of the FHA's impact on pet policies, please check out [Home Owners Associations: Beware of the Fair Housing Act When Enforcing Pet Prohibitions and Restrictions](#).

Conclusion

Understanding how to properly adopt and implement pet policies is an important skill for all community associations; however, even more important is understanding those times when pet policies may or may not be enforced. Failing to understand these distinctions can lead to unintended consequences.

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