

HABITAT

A new realty agency helps people get around co-op and condo pet bans

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A shareholder in a pet-free Manhattan co-op recently informed the board that he intended to acquire a large dog as an emotional support pet. The board sent the shareholder a letter stating that only support pets weighing less than 50 pounds were permissible. This infuriated the shareholder, who filed a complaint with the state Division of Human Rights.

Then nothing happened.

“The human rights division simply declined to find probable cause,” says the co-op’s lawyer, Glenn Spiegel, a partner at Becker & Poliakoff. “The basis for their rejection was because the board agreed to a reasonable accommodation and offered reasonable parameters.”

Score one for co-ops fighting to keep pets – including big dogs and bogus “support” pets – out of their buildings. But there is no shortage of pet lovers in the city who continue to try to find ways around the rules of pet-free condos and co-ops. And now they have a new ally.

“When you own a pet, you don’t want to be shuttled to only pet-friendly buildings because it decreases your choices and shortens your selection process,” says Hal Eisenstein, real estate broker and founder of Pet Friendly Realty NYC. “Agents will only show pet owners pet-friendly buildings.”

A service founded by Eisenstein called the Emotional Support Animal Center helps pet lovers locate a mental health professional who, for a \$150 fee, will assess them and provide a letter that can then be presented to property management companies, co-op and condo boards, stating that the person requires a support pet.

“The letter must specify the reason that the medical professional is recommending an emotional support pet and document that the individual has an emotional disorder, which under the Fair Housing Act is a condition that interferes with the performance of a major life function,” says Eisenstein, who is also an attorney. “It could be something as ordinary as persistent insomnia or fear of being alone in an apartment.”

The Emotional Support Animal Center serves several thousand people nationwide annually, including 200 people in New York City, according to Pet Friendly Realty.

The applicable law in these cases, as Eisenstein notes, is the federal Fair Housing Act (FHA), which prohibits discrimination based on “a physical or mental impairment which substantially limits one or more of such person’s major life activities.” The FHA defines discrimination as “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such

accommodations may be necessary to afford such a person equal opportunity to use and enjoy a dwelling.”

“Boards know they’ve been duped but there’s very little they can do without spending money on legal fees,” says attorney Kara I. Rakowski, partner with Belkin Burden Wenig & Goldman.

Co-op and condo boards are not completely helpless. Instead of costly litigation, many boards and management companies are setting rules for support pets that are consistent with pet-friendly buildings, such as dogs must be leashed or in a carrier when passing through the lobby. Some, like the Manhattan co-op represented by Spiegel, limit the size of support pets.

“This helps by at least controlling the animal so it’s not disturbing to other residents who want a pet-free residence,” says attorney Dale Degenshein at Stroock & Stroock & Lavan. “And if rules are violated, the board will have options depending upon their governing documents. Some may be able to fine or discontinue non-essential services in the event of repeated violations.”

Co-op and condo boards are reviewing letters from mental health professionals with increasing scrutiny.

“Boards are not taking documents submitted on face value,” Rakowski says. “They are consulting with counsel and other licensed professionals to make sure that the documents submitted are authentic and that the information provided, if true, would meet the legal requirements for reasonable accommodation.”

The bottom line: if the board can prove that there's no disability, they can ban a support pet without fear of being accused of discrimination under the Fair Housing Act.