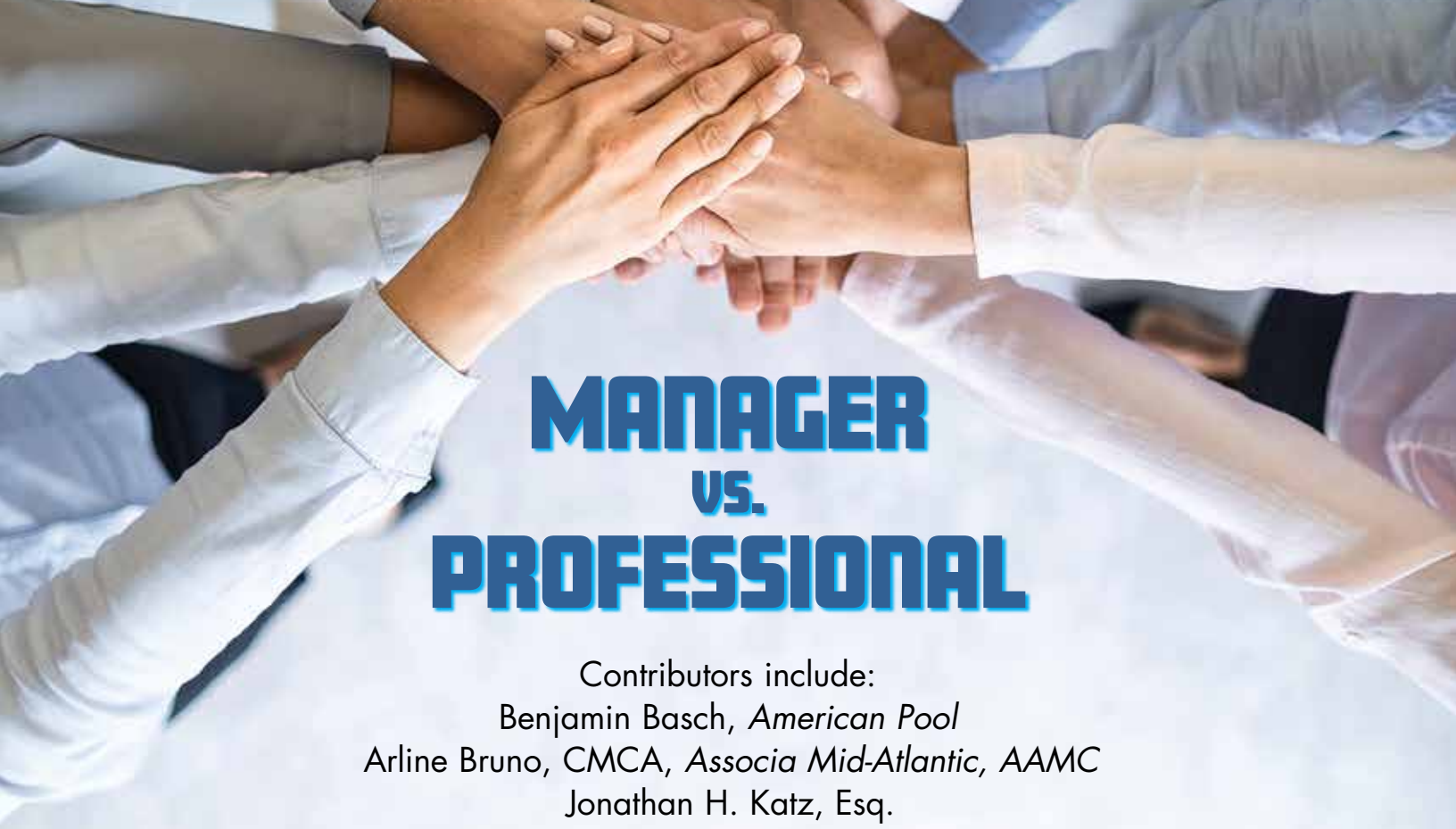

MANAGER VS. PROFESSIONAL

Contributors include:
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Brent Rivenburgh and Cathy Mazzoli, *Allen & Stults Co., Inc.*

Scenario: *Condo X is a community with lots of families with children. In the summer the association's large pool is very popular every day of the week. Many of the parents are attentive to their children at the pool. However, some families drop off their children at the pool and leave them there to swim unattended. Other parents stay at the pool but are occupied with socializing or looking at their phones and pay little to no attention to their children. One family sends its three children to the pool with a teenage babysitter who has her hands full with the youngest, who is a baby but cannot keep track of the older two who go in opposite directions.*

Pool Company Professional Response: A professional swimming pool operator loves seeing an active, well-used amenity, but there are some serious safety issues at hand here with Condo X! The good news is that the solutions are not so complex when working in partnership with an effective community manager.

According to the CDC, drowning is the number 2 cause of death for children age 1-4 after birth defects. Safety concerns have to be addressed as they arise throughout the day. If the issue is chronic or part of a pattern of risky behavior, then the contributing factors need to be resolved to improve the overall safety of the pool. In terms of working through Condo X's safety challenge, we can break it down the same way.

Whether kids are left unattended, the parents are distracted, or a babysitter is overwhelmed, the immediate solution is the same. A child cannot be allowed to be in the pool area unless supervised by a parent or designated adult. The lifeguard or pool manager should calmly remind the adult of their responsibility to be "Lifeguard #1" for the child who is counting on them. In the event, there's an issue finding the responsible adult, or the adult isn't willing/able to accept their responsibility, the group must be asked to leave the facility. It would also be important to advise the community manager and work with them to improve the situation moving forward.

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Because there is a bad pattern of behavior at the Condo X Pool, a review and clarification of the pool rules are needed. The use of the pool must be contingent on complying with the facility rules and regulations. Working with the community manager to better communicate and reinforce resident conduct at the pool is an important step in solving the underlying safety issues.

BEN BASCH
American Pool

Manager Response: As part of the amenities which homeowners pay for as part of their monthly maintenance, we all want the safe and fun enjoyment at the pool at Condo X; however, safety comes first. Condo X needs to partner with a reputable and reliable pool company who have lifeguards who enforce the rules and report back to management any issues or concerns which occur during their shift.

The lifeguard must stop children being dropped off at

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the pool by escorting the children out of the pool area and notifying management right away. The manager should contact the owners by phone to explain why their child cannot be dropped off and left alone at a pool and then memorialize the conversation in writing to the owner and the board.

For the babysitter who is overwhelmed, the lifeguard must advise her that her attention needs to be supervising all children and not just the youngest. A suggestion could be that they all play together in the same area. The lifeguard has a duty to notify management, and the manager must notify the parents of their concerns for safety.

To help break the continuous cycle of these bad behaviors, the manager should ensure all homeowners are aware of the rules and enforcement. Rules, regulations and enforcement should be distributed and signed off on by each owner at the beginning of the season prior to releasing pool badges or guest passes. Reminders in newsletters and other publications as well as aquatic safety events can be held throughout the season to assist in reinforcement.

Safety is the top priority and everyone's goal.

ERIN O'REILLY, CMCA, AMS, PCAM
FirstService Residential, AAMC

Scenario: *Condo Z has a 6-unit building, each unit with a basement. Unit 1, on the end of the building has a concrete block fire wall separating its basement from Unit 2. Unit 2's basement is finished. A washing*

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machine hose in Unit 1 breaks flooding the basement of Unit 1. Water leaks through the party wall and damages the carpet and finishes in the basement of Unit 2. The owners of Units 1 and 2 have never been friendly and now Unit 2's owner is hopping mad.

Insurance Professional Response: The scenario described would in many ways be no different than if the washing machine hose was on the first floor of adjacent units on slab, or for that matter a condominium where Unit 2 (where the hose broke) is above Unit 1. Although there can be different limits and exclusions that may apply, it appears that the entire damage is to unit owner personal property and unit owner improvements and betterments. Assuming the Master Insurance policy is "original specifications", each unit owner is responsible for their own clean-up and repair/replacement of their own contents. This also presumes that the "maintenance responsibilities" in the by-laws stipulates that the interior finishes are unit owner responsibility. The exception to the aforementioned could be if Unit 1's owner violated a replacement schedule edict and the hose was negligently ignored. Then the owner of Unit 2 could seek reimbursement from the owner of Unit 1 which would in many cases be covered by the Unit 1's owner's liability section of their HO-6.

Each owner should be advised to report it to their own HO-6 insurance company. Unit 2's owner would be paid subject to their deductible, assuming the policy was properly written. Said insurance company would do what is known as "subrogate" against the Unit 1 owner. If they were successful, they would recover Unit 2's deductible as well. With the relationship being as described, leave it up to the insurance companies. They will investigate. It might also be determined that Unit 2 recently had a repair or installation done by a plumber. In this case Unit 2's owner's insurer may subrogate against the plumber and their liability insurance carrier.

By the way, this is not that unusual of a situation but in our experience, it generally is resolved peaceably when left to the insurance companies. Also, we always remind managers and owners to refer to these losses as "water damage

from plumbing system", not flooding. Flooding in a basement is an entirely different story.

BRENT RIVENBURGH and
CATHY MAZZOLI
Allen & Stults Co., Inc.

Manager Response: Management's attention would be needed in multiple ways when handling the above series of events. The first step would be to instruct all parties to contact their own homeowner's insurance agent. When speaking with the homeowners, I would make sure they verify current contact information and confirm the best way to reach each party. As an agent for the association, I would contact the master insurance agent and the board to alert them of the situation and possible claim.

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My next step would be walking each homeowner through the process of remediation. This can be a trying time for any homeowner and there are many emotions involved when something like this occurs. I would inform both parties that I would be there as a resource for them during this difficult time. Understanding the above-mentioned homeowners may be hostile toward each other I would act as a liaison between the parties to prevent any further emotional escalation. I would recommend that both owners exchange insurance company information and encourage them to allow their corresponding insurance companies to handle their respective claims.

As a manager, I would want to document all aspects of the process including, but not limited to, type of loss, contact information, as well as, photos of damage and remediation until completion. I would also monitor water remediation services, working closely with the professionals, ensuring moisture had been properly removed to prevent mold growth and conclude with verification of remediation.

ARLINE BRUNO, CMCA
Associa Mid-Atlantic, AAMC

Scenario: *The Dogs N' Cats Condominium Association is — ironically — a no-pet building and has a restriction in its Master Deed prohibiting any pets (dogs, cats, reptiles, etc.). However, an owner, Diane Lane, recently requested to be able to live with her emotional support animal, which was allegedly prescribed by her doctor to treat an unknown disability.*

Manager Response: When managing a community association, it is important to have full knowledge of the governing documents in relation to pet ownership, as well as an understanding of the various distinctions between pets and service/assistance animals. While the governing documents here may not permit any pets, Diane says that she requires an "emotional support animal" that has been prescribed by her doctor in order to treat an unknown disability.

Comfort, assistance, or emotional support animals fall into a different category. According to the Humane Society, such animals "do not need to be trained to perform a service. The emotional and/or physical benefits from the animal living in the home are what qualify the animal as an assistance animal." In addition, the Fair Housing Act (FHA) requires the housing provider, which includes condominiums and homeowner's association, to make "reasonable accommodations" regarding a request for an assistance animal. Consulting with the association's legal counsel is a necessity before any denial is issued. The association's attorney will know best what kinds of questions can and cannot be asked of the resident which take medical privacy into consider-

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ation. Some points to consider: has Diane made a formal request in writing for a reasonable accommodation? Has Diane's doctor been provided with a questionnaire from the legal counsel to support the reasonable accommodation request?

Once the association's legal counsel has provided their advice on the topic, assuming the proper documentation was presented and the board has approved the assistance animal request, the job of the property manager continues. Reasonable requirements may be imposed on the approved animal. The animal must always remain leashed on the property. The owner must be sure to clean up after the animal. The animal cannot create a nuisance to other residents. It is imperative that managers and boards are fully aware of legal limitations and make allowances based on sound legal advice.

NICOLE MARTONE, CMCA, AMS, PCAM
Associa - Community Management Corporation, AAMC

Attorney Response: As luck would have it, the answer to handling this scenario just became much clearer thanks to guidance issued by the United States Department of Housing and Urban Development ("HUD"). On January 28, 2020, HUD issued guidance clarifying how housing providers can comply with the FHA when assessing a person's request to allow an assistance animal because of a disability.

Under the FHA[1] and its regulations, housing providers[2] are required to make reasonable accommodations to disabled persons with respect to policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.[3] Under the FHA, assistance animals are not pets so long as the animal provides some type of assistance to an individual. So long as an animal alleviates the effects of any kind of disability, it is considered an "assistance animal" under the FHA. There is no requirement that the animal be specially trained or possess any special skills.

A request from a resident to relax a no-pets policy is a request for a reasonable accommodation under the FHA. In such cases, appropriate considerations include: (1) whether the resident has a disability-related need for the animal; (2) whether the animal would alleviate one or more identified symptoms; and (3) whether granting the request would result in an undue financial burden or fundamentally alter the nature of the housing provider's operations. A resident has an absolute right to reside with a service animal; however, in order to make a determination as to whether an association needs to accommodate a resident's request for an emotional support animal, the association has a right to ask for more information when the resident's disability is not readily apparent or known.

Here is where the new HUD guidance is instructive. The new guidelines provide that a "service animal" is different than a "support animal" with regard to the approach to deciding whether to grant a reasonable accommodation.

"Note that a service animal can only be a dog except in very rare circumstances."

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A "service animal" is a dog specifically trained to perform tasks for the benefit of a disabled person. Note that a service animal can only be a dog except in very rare circumstances. The only questions you can ask the resident seeking an accommodation for a service animal are, "is the animal required because of a disability?" and "what task has the animal been trained to perform?"

A "support animal" can be any kind of animal that is normally kept a house (examples given are dogs, cats, small birds, rabbit, hamster, fish, or turtle). For any other type of animal (barnyard animal, monkey, reptiles other than turtles, etc.) the disabled person has a burden of demonstrating why a traditional household pet cannot provide the needed support. If the person seeking the accommodation for a support animal does not have an observable disability (blindness, deafness, mobility limitations, etc.), the association may request information that reasonably supports that

the person has a disability. A disability is a physical or mental impairment that substantially limits one or more major life activities (seeing, hearing, walking, talking, breathing, performing manual tasks, caring for one's self, learning and working). Acceptable information to support the claim of a disability includes a determination of a disability by a federal or state agency, receipt of disability benefits, eligibility for housing benefits based on a disability or information from a health care professional. Please note: a certificate obtained from a website does not constitute sufficient proof of a disability if the healthcare professional does not have personal knowledge of the patient and so states in the document submitted.

As discussed above, even with the new HUD guidance, these issues are not always cut and dry, which is why association boards should seek the advice of legal counsel before denying any request from a resident for an assistance animal. The association's legal counsel is best suited to advise and assist the board with implementation of appropriate procedures should the board receive such a request.

JONATHAN H. KATZ, ESQ.
Hill Wallack LLP

ENDNOTES:

1 See 42 U.S.C. §§3601-3619, as amended.

2 As defined by the FHA, housing providers include all forms of community associations, including condominiums, homeowners associations, and cooperatives.

3 In addition to the FHA, the New Jersey's Law Against Discrimination ("LAD") also requires that associations provide reasonable accommodations for disabled persons. See N.J.S.A. 10:5-1 et seq.

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