

# “Tackling Fraudulent Emotional Support Animals,” Florida Community Association Journal

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Chances are that your community has some type of pet restrictions. It's also a good bet that you have received one or more requests you deemed questionable with regard to a dog that does not meet those restrictions but the owner insists, nevertheless, that the dog is his or her emotional support animal (ESA).

Many boards and association residents have become weary and wary of dealing with ESA requests. Boards have found themselves in the unenviable position of having to spend their community's precious resources to investigate fraudulent accommodation requests only to be told in many cases that there is not much they can do. Some boards have even begun accepting patently false requests because they no longer have the resources to investigate the flood of fraudulent requests they receive each year.

The question I am asked time and again is whether or not there is anything that can be done to rein in the abuse, particularly when we are dealing with both federal and local fair housing laws and a culture in the U.S. Department of Housing and Urban Development (HUD) which seems to give preferential treatment to some association residents over others.

In order to gauge what the future might look like in terms of seeking reform in this area, let's take a look backwards at how organized community association lobbying initiatives can effect change.

## A Look at the Past

In 2002, I received my first call from a high-rise condominium director who was concerned about a recent conversation with his local fire marshal. That conversation revealed the need for his building, which had been constructed in

1982, to be fully retrofitted with sprinklers inside the units and in the common areas. I remember the board member wondering out loud not just how his community would pay for such a retrofit but the impact the installation would have on his mostly elderly residents.

I assured him I would research the matter and circle back with some options. It quickly became apparent that older high-rise communities throughout the state could fight back against what many thought was an arbitrary failure by Florida's government to grandfather in these buildings at the time the National Life Safety Code updates were adopted. That was the genesis for the creation of Becker & Poliakoff's Community Association Leadership Lobby (CALL), and I was honored to serve as its Founding Executive Director from 2003 to 2007.

In 2003, we passed a bill which allowed associations to opt out of sprinklers inside condominium and cooperative units and which also allowed associations to opt out of an Engineered Life Safety System (ELSS). In 2010, we went back to the Legislature to seek opt-out rights for the association's common areas as well. The 2010 bill added common areas into the opt-out mix but removed ELSSs. Thus, associations that had not yet taken a vote during 2003-2010 no longer had the ability to opt out of an ELSS, but they had acquired the right to fully opt out of sprinkler systems. During the years since then, CALL has helped shape the community association legislative landscape in Florida. During the reform-heady years of 2004-2012, we fended off numerous ill-advised proposals, such as onerous one-year term limits and the need for volunteer directors to provide three years of past tax returns. We also passed helpful proposals which provided boards with new tools to offset delinquencies, such as the right to demand rent from tenants in delinquent properties and the ability to suspend the right to use certain recreational amenities for owners who were not paying to maintain those amenities.

This last year, we approached the ELSS conundrum with the brilliant strategy mapped out by our lead lobbyist, former State Senator and Becker & Poliakoff shareholder Ellyn Bogdanoff. We successfully passed HB 653 with just one dissenting vote only to receive a crushing blow when the governor vetoed our bill due, in large part, to the Grenfell Tower tragedy in London. Our story doesn't end there, though. We have already secured sponsors to revisit the issue next year in order to give impacted Florida buildings more time to grapple with the costs and disruption of retrofitting occupied buildings. The main lesson we've learned since CALL's creation 15 years ago is that private residential communities have much more power than they know in terms of shaping positive legislation and fending off harmful bills.

## **Why Fraudulent ESA Requests Hurt Everyone**

In 2018, we will be looking to address a growing topic of concern for all types of shared ownership communities: fraudulent emotional support animal (ESA) requests. People who perpetrate a fraud when obtaining an ESA in an otherwise "no pet" or pet-restricted community often rationalize their selfish behavior by

believing that their animal is not hurting anyone. The purpose of the Fair Housing Laws is to protect the rights of the disabled; sadly, the proliferation of fraudulent requests for accommodation has created an atmosphere of cynicism and skepticism that negatively impacts the rights of those submitting bona fide requests. Fraudulent accommodation requests can result in an unintentional, heightened level of discrimination against handicapped individuals, and they negatively impact the residents who have moved into a pet-free or pet-restricted community to protect themselves from the issues that living with pets can bring. The proliferation of pets in pet-restricted communities where the ESA requests are not bona fide adversely impacts the rights of the other residents, many of whom may have relied upon the pet restrictions when making their purchase decision.

The push to rein in ESA abuse is certainly not designed to denigrate the legitimate need for service and support animals. Those animals can mean the difference between a more fulfilling life and one which is much smaller in scope for the handicapped individuals in question. However, the plethora of fraudulent service and support animal requests these days hurts everyone. Frankly, ESA abuse makes a mockery of the spirit and intent of the Fair Housing laws, and the legislative reforms we are seeking are intended to protect the rights of the handicapped and preserve the integrity of the Fair Housing laws.

Housing providers such as community associations are required to incur administrative costs and, in many cases, legal fees to evaluate accommodation requests which are supported by businesses and individuals advertising online to mass produce letters which issue diagnoses and prescribe ESAs without the benefit of ever having met or, in some cases, even spoken with the person requesting same. These costs can be reduced when fraudulent requests are eliminated or greatly diminished. Unlike service animals that must possess certain skills in order to assist individuals with handicaps involving sight, hearing, mobility, seizures, and more, an ESA need not possess any skills other than the owner's perception that the ESA makes him or her "feel better." The association is often forced to evaluate letters from medical professionals who have never treated or even seen the person in question, and the dog has typically been a pet for years prior to morphing into an ESA when its owner moved into a pet-restricted community. In addition to the frustrations associated with the one-sided approval process, experience has also taught that, in some cases, an individual who is willing to defraud the housing provider in an attempt to pass off a pet as an ESA is also not willing to train, muzzle, or otherwise adhere to local ordinances when it comes to maintaining a pet in a multifamily community.

### **What Can Your Community Do if Fraudulent ESA Requests Are a Concern?**

In addition to sending requests for a reasonable accommodation to experienced association counsel to evaluate, you can consider lobbying for a real change.

Naturally, any effective lobbying initiative must have well-defined goals. Our ESA Lobby has two goals.

Our first goal is to reduce the number of fraudulent requests to which your community must devote resources by establishing a threshold, which must be met before your community is compelled to investigate. A face-to-face meeting within the previous six months of making the request would seem a reasonable approach when so many current requests are accompanied by letters obtained over the Internet or years prior to the request.

Our second goal is to deter fraudulent requests by punishing those who would submit same, including medical professionals who issue fraudulent letters and the individuals who attempt to use those fraudulent letters in an effort to obtain a reasonable accommodation. Currently, making a fraudulent service animal request is a crime under Section 413.09, F.S; specifically, it is a misdemeanor in the second degree per 775.082 or 775.083 punishable by a fine. This change in Florida law, which was made several years ago, has helped public accommodations like restaurants and theaters to better distinguish between owners who simply want to bring pets to their establishments and those needing true service animals. The threat of criminal prosecution can also be extended to and employed by private, residential communities to reduce and deter fraudulent ESA requests as well by amending that law.

It is important for every association leader and resident to become involved in the legislative processes, which shape your communities. As is the case with ESA abuse, we need to inject some much-needed clarity and common sense into a vexing problem for so many Florida communities.

For more information about the ESA Lobby to rein in fraudulent ESA abuse, please email [BPLObby@beckerlawyers.com](mailto:BPLObby@beckerlawyers.com).