Accommodating Disabilities in Co-ops and Condominiums: What Boards and Property Managers Must Know

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Pursuant to the Fair Housing laws, individuals with a disability (physical or emotional) are deemed to be in a protected class. This means that no person with a disability may be discriminated against in connection with his or her search for a home and ability to live comfortably in such home. For cooperative and condominium boards, this can sometimes be difficult to understand; however, the consequences for non-compliance are steep.

When it comes to disabilities, there are protections under both the Fair Housing laws and Americans with Disabilities Act (ADA). In the co-op and condominium world, this raises issues such as the need for parking spaces, handicapped rails, ramps, doorway width and service or emotional support animals. The conversation generally boils down to whether the special needs of a person with a disability amount to a reasonable accommodation. In essence, when dealing with a person with a disability, real estate agents, board members and property managers alike must ask themselves: "What accommodations does this person need and are they reasonable?"

Generally, this conversation starts with the real estate agent. Every agent needs to understand the needs of its clients, especially when disability is involved. For starters, if a person claims to have a disability (whether physical or emotional) then the agent must assume that there is a disability. Under no circumstances should anyone, whether it be the real estate agent during the property search or a board member during the interview, inquire as to what the disability is. If a person claims to have a disability, the follow up needs to be: "What special accommodations do you need?" Although one may have the best intentions, it is crucial to understand that the exact type of disability one has is protected information. At this point, a prospective purchaser with a disability should be advised that he or she will need a letter from a doctor confirming a disability and advising as to what special accommodations are needed. Once this letter is issued, the disability should be deemed confirmed and no further inquiries should be made by anyone.

In the case of physical disability, it is often apparent what one's disability or physical impairment is. However, it is never wise to assume that a person in a wheelchair cannot walk or can only live in buildings with elevators. It is important to understand the needs of the person involved and whether such can be addressed via reasonable accommodation. If a wheelchair bound person is looking at a small condominium building with no elevator, it would certainly not be reasonable to expect the condominium to install an elevator. However, if a wheelchair bound person requests the closest parking space to the building's entrance (resulting in another owner's space being moved) then that would generally be deemed reasonable. When it comes to the board process, whether it be for initial approval or alteration approval, cooperative and condominium boards alike must understand that individuals in wheelchairs have the right to make modifications to the apartment, which include expanded doorways, installation of railings and other renovations. So long as all work is done by licensed contracts and necessary municipal approvals are in place, a board cannot deny the alteration request. These renovations would be deemed a reasonable accommodation. The person with the disability would to pay for the alterations and then be required to return the property to its original condition when moving out.

Emotional disabilities often result in more complicated situations and decisions for board members. By the time the person with an emotional disability reaches the board process, the hope is that he or she already has the necessary doctor's letter confirming the existence of a disability. At this point, all board members must understand that the discussions concerning the existence of a disability must cease and the exact disability is,, irrelevant.

The most common reasonable accommodation for a person with an emotional disability is the need for a support animal, which is generally a companion or service dog. When considering an applicant's request for a support animal, a board can ask for two items: 1) the doctor's letter confirming the existence of an emotional disability; and 2) documentation regarding the certification of the animal itself. Once these two items are presented, there is sufficient evidence of a necessary reasonable accommodation. While granting the reasonable accommodation, a board can still require that: a) dogs be in the company and control of their owners in common areas; b) owners remain responsible and liable for all damage caused by the dog; and c) the dogs be subject to the building's noise and nuisance requirements/policies. These conditions would be completely appropriate.

This begs the question: "Is it a reasonable accommodation to allow an emotional support animal in a non-pet building?" This is a complicated and political issue; however, the general answer is that the disabled person is entitled to the animal regardless of pet restriction. However, the reasonableness standard remains. For instance, it would not be reasonable to permit the animal if other people in the building have severe allergies. Understanding what questions can be asked and what amounts to a reasonable accommodation are the keys to complying with Fair Housing and ADA laws. When it doubt, a board should always consult its counsel.

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