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LYNCH DALLAS, P.C.
CEDAR RAPIDS, IOWA
WWW.LYNCHDALLAS.COM
319.365.9101

COMMONtary is a free publication intended to provide helpful and relevant information to Eastern Iowa Condominium Association Boards of Directors and Management Professionals. We hope that you will find COMMONtary to be a valuable resource in managing your community or portfolio of communities.

COMMONtary A NEWSLETTER FOR EASTERN IOWA CONDOMINIUM ASSOCIATIONS AND MANAGEMENT PROFESSIONALS

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About the Author: Steve Leidinger of Lynch Dallas, P.C. 3

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LYNCH DALLAS, P.C.
PO. BOX 2457
CEDAR RAPIDS, IA 52406-2457

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COMMONtary

A NEWSLETTER FOR EASTERN IOWA CONDOMINIUM ASSOCIATIONS AND MANAGEMENT PROFESSIONALS

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The Federal Fair Housing Act and You: Avoiding Discrimination Based on Disability

In this second installment of our segment on *The Federal Fair Housing Act and You*, we discuss the provision of reasonable accommodations and modifications for individuals with disabilities. Determining what is and is not a reasonable accommodation or modification under the Fair Housing Amendments Act ("FHAA") is often a legally-intensive and fact-dependent exercise. Even determining whether or not a resident is "disabled" for purposes of the FHAA is not as simple as it would at first seem. Considering that a violation of the FHAA may carry with it not only actual damages, but punitive damages, and even court costs and attorneys' fees, an association faced with a request for an accommodation or modification under the FHAA should not hesitate to seek the advice of competent legal counsel.

The FHAA defines discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled resident] equal opportunity to use and enjoy a dwelling." The FHAA also renders it unlawful to refuse a disabled resident a reasonable modification of existing premises if necessary to afford the handicapped person full enjoyment of a dwelling.

Parking

Perhaps the most frequently sought accommodations in condominium communities are special parking privileges. In both cases a community's organizational documents is a logical starting point, but by no means the end of an association's analysis. For example, how a particular community has defined its parking areas (e.g., common element vs. limited common element vs. unit component) will determine to a large extent what types of accommodations the association may reasonably offer. An accommodation may be considered reasonable if it is feasible and practical under the facts and circumstances at hand, but unreasonable if it imposes an undue financial hardship or administrative burden.

By way of example, it *may* be reasonable for an association with common element parking to designate a special parking space for a disabled resident, while it would likely be unreasonable for another association with deeded parking to require an able-bodied resident to swap parking spaces with a disabled resident. Consequently, identifying a way to provide a reasonable accommodation within the framework of your particular community may prove to be an exercise in creative problem solving.

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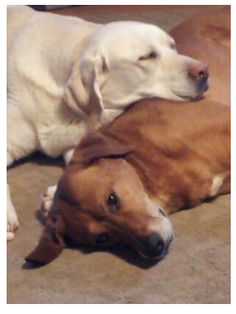
Discrimination

Continued from Page 1

At the end of the day, it may be apparent that an association simply does not have the authority to offer "reasonable" accommodation. It is nevertheless, imperative that the association conduct the necessary analysis before coming to this conclusion.

Pets

Other frequently sought accommodations include exceptions to pet policies. It likely comes as no surprise that associations have a duty under FHAA to make exceptions to pet policies for seeing-eye dogs and service animals for individuals with hearing impairments and limited mobility.

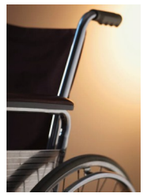


Courts in various jurisdictions across the country, however, have held that associations have an obligation to make exceptions to their pet policies to allow for emotional support animals. This presents very real difficulties for associations, as the disability of a resident, which may afford that resident the right to maintain an emotional support animal, may not be immediately apparent. It also makes requests for emotional support animals ripe for abuse.

Simply denying a resident's request for an emotional support animal because the resident "seems healthy," however, is a dangerous proposition. Each request for a service or emotional support animal should be given the association's full attention. It is always a good practice to issue a requesting resident a temporary waiver to keep the pet in question while the association conducts its due diligence. This may include requesting and reviewing information necessary to verify that a resident does in fact have a disability entitling them to keep an animal. Before taking this step, however, it would be wise for an association to consult with legal counsel, as an association could easily overstep its bounds without proper legal advice as to what is and is not allowable in terms of verifying a disability.

Accessibility

Requests by residents to modify the common elements for purposes of providing access (e.g., wheelchair ramps) are also quite common.



Generally, in cases where a resident seeks to provide accessibility to the resident's unit by constructing a ramp, or similar device, the resident should be permitted to do so, albeit at their sole cost and expense. This does not necessarily mean, however, that an association cannot require plan and design review of proposed modifications, provided that requirements imposed by the association do not unreasonably increase the costs of the project or compromise safety or functionality.

Conclusion

For the reasons discussed, above, dealing with requests for accommodations and modifications pursuant to the FHAA can be a virtual minefield for associations. An association faced with such requests should not hesitate to consult with an attorney.

Regulating Home Occupations

More and more individuals seem to be operating businesses out of their homes today than ever. This can present unique problems in a condominium community where individuals live in close proximity to one another, where they jointly own common property, and where they share in the costs of maintaining that property.

To illustrate how a home occupation can wreak havoc on a community, consider an actual scenario faced by one of the author's clients, which involved a resident operating an automotive and motorcycle repair business out of that resident's garage.

First, there was the noise. During operation hours, this included revving engines, pneumatic tools, and banging hammers, while at night neighbors could look forward to being awakened by the noise of tow trucks dropping off disabled vehicles for service.

Second, there was the waste generated by the business. Not only did tires and other discarded parts begin to accumulate in the common elements surrounding the resident's garage, which presented aesthetic concerns, but hazardous and flammable waste materials stored in the resident's garage presented safety, liability, and insurability concerns.

Third, there was the parking shortage created by the excessive number of vehicles being parked upon the common elements awaiting service or pick-up. Finally, there was the excessive traffic created by customers continually coming and going.

While this is somewhat of an extreme example, it helps to illustrate many of the ways in which a home occupation can negatively impact a condominium community (e.g., excessive noise, traffic, parking issues, liability concerns, and the generation of disproportionate levels of garbage). Perhaps a more common and less extreme example that results in some of the same issues is an in-home child care operation.

Not all home occupations, however, are problematic. There is no reason, for example, why an individual working from home on a computer and making telephone calls, who has no employees reporting to work, and does not receive customers, should not be permitted to do so as long as it does not inconvenience or impose on the individual's neighbors.

So what is an association to do about problematic home occupations? One way to attack the problem is to enforce appropriate use restrictions if your association is fortunate enough to have them as part of its governing documents; or to adopt such restrictions if your association does not. Of course, the best time to adopt such restrictions is before a problem arises.

Other methods of attacking problematic home occupations might include pursuing the matter under public nuisance laws, contacting appropriate government agencies if the business requires a license, or notifying zoning authorities and requesting that they enforce zoning violations (e.g., the operation of a commercial use in a residential zoning district).

An attorney presented with a particular set of facts and circumstances would likely have additional suggestions on how to rid your community of the ill-effects of a problematic home occupation.

About the Author

Steve Leidinger is an attorney with Lynch Dallas, P.C., in Cedar Rapids, Iowa, with a general practice, which includes representing condominium and other homeowners' associations. Steve has served as general and special counsel to associations since 2006. During this time, he has represented associations on a host of matters, including collections, enforcement, document amendment and interpretation, litigation, operational issues, corporate governance, and others.

He also has years of experience drafting condominium documents for both residential and commercial developers.

Steve would welcome the opportunity to meet with your board to discuss the possibility of representing your association, whether as general counsel or special counsel with respect to a specific project or matter. Lynch Dallas, P.C. provides services to condominium and homeowners' associations at competitive hourly rates.