



**GERSTIN & ASSOCIATES**  
ATTORNEYS & COUNSELORS AT LAW

## ***Medically Necessary Pets***

### ***Board of Directors Insider's Guide to Email***

# ***Achieving Utopia Through the Enforcement of Community Association Documents.***

**Gerstin & Associates,  
40 S.E. 5th St., Suite 610 Boca Raton, FL 33432,  
Telephone (561) 750-3456,  
E-mail: [joshua@gerstin.com](mailto:joshua@gerstin.com)**

General purpose information, not legal advice. For legal advice, please consult an attorney.

Copyright ©, 2017, Gerstin & Associates, all rights reserved.



**GERSTIN & ASSOCIATES**  
ATTORNEYS & COUNSELORS AT LAW



## ***Medically Necessary Pets***

Copyright ©, 2017, Gerstin & Associates, all rights reserved.  
General purpose information, not legal advice. For legal advice, please consult an attorney.

# ***Background***

---

- ▶ There are a growing number of advocates who feel community association pet restrictions should be illegal.
  - ▶ Internet sites with sample doctor's notes to circumvent community association pet restrictions.
  - ▶ Harnesses and collar tags advertising pets as medically necessary are also sold online without any restrictions.
  - ▶ Community associations are being besieged with both legitimate and fraudulent requests for pet restriction waivers.
  - ▶ Federal and state agencies heavily favor removing pet restrictions.
  - ▶ Federal and state courts follow agency guidance and heavily favor removing pet restrictions.

# ***Legal Landscape***

---

- ▶ Federal Fair Housing Amendments Act of 1988 (“Act”) prohibits discrimination on the basis of a “handicap”, which is broadly defined to include most physical or mental maladies that impair a major life function.
- ▶ Florida has adopted the Act.
- ▶ The Florida Committee on Human Relations and the Federal Department of Housing and Urban Development (“HUD”) enforce the Act.

## ***Legal Landscape, continued***

---

- The Act requires community associations to make reasonable accommodations for disabled people to fully enjoy their premises.
- A waiver of pet restrictions is considered to be a reasonable accommodation required to be granted by a community association to qualified residents.

## ***The Process, Service v. Emotional Support Animals.***

---

- ▶ According to HUD: *“Animals necessary as a reasonable accommodation do not necessarily need to have specialized training. Some animals perform tasks that require training, and others provide assistance that does not require training”.*
- ▶ Community Associations are entitled to verify the existence of the disability and the need for the accommodation--if either is not readily apparent.
- ▶ Improper screening of a Service Dog v. an Emotional Support Animal can be very costly for the association.
- ▶ Pursuant to the Act, a “service animal” is defined as a dog individually trained to work or perform tasks for an individual with a disability.
- ▶ Service animals are *not* required to be professionally trained. Service animal owners do not have to submit their dogs for professional training and are allowed to train the service animal on their own.

## *Verifying Service Animals*

---

- ▶ In certain instances, the Association will not be able to discern whether a dog qualifies as a service animal.
- ▶ Nonetheless, the Association is limited to two questions for owners seeking to maintain a service animal: 1) is the service animal required because of a disability; and 2) what work or task has the dog been trained to perform?
- ▶ Unlike with support animals, the Association is not permitted to request any documentation regarding the dog's training, require the dog to demonstrate its task, or inquire about the nature of the person's disability.

## *Verifying Service Animals, Continued*

---

- ▶ The Association should not require an owner seeking to maintain a service animal to have his/her doctor complete the medical affidavit used by the Association for support animals.
- ▶ Further, the Association **cannot** charge any fees or deposits related to an owner seeking approval for maintaining, a service animal within the Association (no application or deposit fees allowed, recommended approach with support animals too).
- ▶ a Florida court held both the Association and its President personally liable for its failure to timely approve a service animal application. In the 2014 case of *Sabal Palm Condominium of Pine Island Ridge Association, Inc. v. Fischer*, the *Palm* court expressed anger with the Association's delay when the owner's need was so obvious



## *Verifying Service Animals, Continued*

---

- ▶ Service animals are not required, and cannot be required by the Association, to wear an identifying tag or vest.
- ▶ Service animals are allowed in communal areas where other animals, including support animals are prohibited. On site cafes, salad bars, pool deck areas (but not actual swimming) and meeting halls must allow for service animals.
- ▶ Although the service animal designation is limited to dogs, the type of dog is not limited. As such, the Association could not refuse a service animal based on its size, breed or weight.

# *Verifying Service Animals, Continued*

---

- ▶ Although the Association's authority in regulating service animals is severely limited, service animals are required to be vaccinated and are subject to the same licensing laws as other dogs in Palm Beach County.
- ▶ In 2015 the Florida legislature enacted a statute criminalizing as a misdemeanor the act of knowingly and willfully misrepresenting oneself as using a service animal or being qualified to use a service animal (only police can enforce a criminal statute, not the Association). F.S. § 413.08.

# *Regulating Service Animals*

---

- ▶ The Act requires service animals to be under a handler's control "at all times".
- ▶ The service animal must be harnessed, leashed or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In such instances, the person must use voice, signal or other means to maintain control of his/her service animal
- ▶ Maintaining a service animal under control extends to barking. A few instances of disruptive barking at the pool or emanating from a Unit is allowable. However, continual, incessant barking can be a cause for removal. If a service animal is out of control and the handler does not take effective action to control it, the Association may lawfully request removal of the service animal from the premises. In doing so, I strongly recommend the Association document with photographs (if possible) the service dogs conduct and issue at least two warnings prior to seeking removal.

# *Support Animals*

---

- ▶ The Department of Justice has stated Fair Housing laws require accommodations for “service animals” **as well as all “emotional support animals”**. Following Federal law and its guidance from The Department of Justice, The Florida Commission on Human Relations has stated:
  - ▶ - Prescriptions or letters from a doctor do not need to be notarized if the letter is on the doctor’s stationary. The doctor does not need to state the person’s disability. Declaring the person disabled, indicating the life functions that are limited by the disability and why the accommodation is necessary are the only requirements.
  - ▶ - Once a person has been allowed a support/service animal, the Association may within a reasonable time request the person to provide a letter from his/her doctor. The only exception to this is if in the original letter the doctor stated that the disability is permanent. For instance, a guide dog for the blind does not need to be re-certified. Usually, the only persons to be re-certified are persons with support animals. The re-certification cannot take place every year. However, every 5 years is reasonable.
- ▶ Community associations can no longer mandate the type of animal it will approve as an accommodation including, chinchillas, dogs, cats, ferrets and birds.
- ▶ Application or pet fees are strongly disfavored by the courts and are not recommended

## ***Do community associations have to “rubber stamp” all pet requests?***

---

- ▶ No. Recently, the United States District Court for the Northern District of Florida granted summary judgment in favor of a condominium association that requested more information from someone requesting a pet accommodation. In [Hawn v. Shoreline Towers Phase I Condominium Association, Inc., et al](#), the Court found the person requesting the accommodation “failed to establish the board knew the accommodation was necessary” because he did not provide sufficient information about the major life functions that were claimed to be impaired nor did he adequately described how the pet was necessary to overcome those impairments.
- ▶ Standard affidavit to be completed by the doctor or individual prescribing the pet is strongly recommended.

## ***Conclusion***

---

- ▶ Each case has to be reviewed by the Board on its own merits based upon submissions from the owner and the owner's doctor or similar professional. In conducting an analysis of a possible waiver of pet restrictions, the Board cannot share an owner's submitted medical information to the members at large. Further, other than stating a waiver for "medical necessity" was granted, the Board should not discuss an owner's condition with the members. All evidence submitted by an owner should be kept in a separate file marked "CONFIDENTIAL" and should not be released pursuant to any record requests from an owner. Violations can result in both state and federal lawsuits.





**GERSTIN & ASSOCIATES**  
ATTORNEYS & COUNSELORS AT LAW

---

## ***Attention Directors, Email at Your Own Risk.***



***Board of Directors Insider's Guide to Email***

---





## ***Emails, Board Meetings***

---

- ▶ Pursuant to both condominium and homeowner association law, whenever a quorum of the Board, meet and discuss Board business, no matter the location, a meeting has been convened.
- ▶ Meetings of the Board of Directors must be publicly noticed at least 48 hours in advance.
- ▶ Group chats about Board business or decision making (polling of members) via email, group text or chat are considered meetings.
- ▶ Don't turn email discussions into email decisions.

# ***Email Law***

---

- ▶ Fla. Stat. § 718.112 (2)(b)(5)(c)

Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners.

*Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. . .*

- ▶ There is no reciprocal statute for homeowner associations (720). However, that does not make the practice allowable.
- ▶ Condominiums and HOA directors are *not* required to respond to owner emails.
- ▶ Emails are discoverable in litigation and the trend is to classify Board emails as “Official Records”.

# ***Email, Do's and Don'ts***

---

## **Do's**

- ▶ Do get an email address just for Board business and avoid an Official Records Request containing personal information.
- ▶ Distribute information to Board members you think is relevant.

## **Don'ts**

- ▶ Do not “reply all”.
- ▶ Never assume your email is private.
- ▶ Don't mix business and pleasure. If you are emailing about Board business do not mention personal business in the same email.

# ***Email, Do's and Don'ts, Continued***

---

## **Do's**

- ▶ Draft your Board related emails professionally.
- ▶ Read and then reread your email before sending.
- ▶ Establish a steady pattern of answering your emails to avoid being “chained” to your computer or cell phone.

## **Don'ts**

- ▶ Don't use your personal email address for Board business or vice versa.
- ▶ Send or forward jokes, advertisements or spam.
- ▶ Make personal comments about anyone.
- ▶ Turn a directors' email discussion into an email decision.

# ***Email, Do's and Don'ts, Continued***

---

## **Do's**

- ▶ Have an established Board policy for answering emails from members.
- ▶ Acknowledge receipt of each email. For chronic repeaters consider “the board is in receipt of your email and understands your concerns. However, no action will be taken at this time”
- ▶ *Emails to members should be prefaced with a statement saying the director is offering a personal opinion in response not an official Board statement.*

## **Don'ts**

- ▶ Don't bicker over minutiae with members or go back and forth.
- ▶ Quick fired responses always fail, take a breath.
- ▶ Answer emails that should be answered by the property manager. Tell the owner you are forwarding it to the property manager and for them to follow up with him/her.

# ***Email, Do's and Don'ts, Continued***

---

## **Do's**

- ▶ Ask the member to bring their email to the next Board meeting to discuss the issue.
- ▶ Bring emails from members to Board meetings discuss their issues.

## **Don'ts**

- ▶ Assume minor decisions can be made via email.
- ▶ Quick fired responses always fail, take a breath.
- ▶ Answer emails that should be answered by the property manager. Tell the owner you are forwarding it to the property manager and for them to follow up with him/her.
- ▶ Copy people outside of the Board or legal representatives.





**GERSTIN & ASSOCIATES**  
ATTORNEYS & COUNSELORS AT LAW



Should I take minutes using the names owners call us or our real names?

## ***Achieving Utopia Through the Enforcement of Community Association Documents.***

Gerstin & Associates, 40 S.E. 5th St., Suite 610 Boca Raton, FL 33432  
Telephone (561) 750-3456, e-mail: [joshua@gerstin.com](mailto:joshua@gerstin.com)



# *Enforcement, the Governing Documents.*

---

- ▶ Read the Governing Documents (Declaration, Articles of Incorporation, By-laws and Rules). You need to know what they say before you can enforce.
- ▶ HOAs, have your governing documents expired? 30yr renewal requirement (“MRTA”). Self renewing provisions are invalid.
- ▶ Governing Document hierarchy:
  - ▶ Declaration
  - ▶ Articles of Incorporation
  - ▶ Bylaws
  - ▶ Rules and regulations

Cannot enforce a provision of an inferior document that conflicts with a superior document provision.

# *Enforcement, the Governing Documents.*

---

- ▶ Vague or ambiguous Governing Document provisions are unenforceable. *Bendo v. Silver Woods Cmty. Ass'n, Inc.* (Fla. App., 2015).
- ▶ Don't assume the past is prologue. Enforcement in the past, to which no one objected too, is not an indication the enforcement is proper.
- ▶ Be willing to accept you will not be able to enforce against everything that is costly, bothersome or annoying to others.

# *Common Enforcement Issues*

---

- ▶ Directors have a duty to enforce all of their Association's legal governing document provisions.
- ▶ Failure to enforce can result in an aggrieved owner filing a lawsuit.
- ▶ Do not ignore "harmless violations", they turn into bigger ones and selective enforcement cases.
- ▶ The defense of selective enforcement may be established by demonstrating that an association failed to enforce the restrictions in its governing documents against comparable violations. *Killearn Acres Homeowners Assoc. v. Keever*, 595 So.2d 1019 (1992).

# *Enforcement, the process.*

---

- ▶ Do not take self help, let the legal process play out. The legal process is slow, but deliberate.
- ▶ Make sure the Board has a detailed process for handling violators.
- ▶ Notify the owner of the violation and educate them of the requirements of the governing documents and seek their voluntary compliance.
- ▶ Take pictures before contacting the owner, after the cure period expires and prior to initiating the legal process.

# *Enforcement, Fining.*

---

- ▶ Not a fan, strict construction of the law results in a fine that may go unpaid or liability on the association.
- ▶ No longer required to have fining in your governing documents.
- ▶ Boards may levy fines against members, tenants, or their guests and invitees if any rules or other governing documents are violated.
- ▶ The fining committee's role is solely to approve or disapprove the fine imposed by the Board.
- ▶ If the fine is confirmed by the fining committee, the association must send a letter to the owner, tenant, their guest or invitee, by mail or hand-delivery advising the fine was imposed. If the fining committee rejects the fine, the fine may not be imposed.

# *Enforcement, Fining.*

---

- ▶ Failure to pay a fine, can result in the Board suspending common area privileges. Board has to meet to decide.
- ▶ For both homeowners and condominium associations, a fine cannot exceed \$100.00 per day for up to ten (10) days of a continuing violation, for an aggregate of \$1,000.00, unless otherwise stated in the governing documents.

# *Enforcement, Lawsuits*

---

- ▶ Must first send a demand for mediation (arbitration is required in condominiums).
- ▶ The consequences of either the association not sending the pre-suit mediation before filing a lawsuit, or the owner not agreeing to participate in mediation, is the party failing to comply loses their right to recover prevailing party attorneys' fees in the event that they are the prevailing party in any subsequent litigation.
- ▶ If mediation fails (HOA) the association or owner can proceed to court.
- ▶ Arbitration rulings (condos) are binding and appealable in circuit court.





# ***Stay Informed, Subscribe to the Gerstin & Associates Newsletter.***

---

▶ *Stay one step ahead of new legislation, recent case law and new developments that impact your community association.*

▶ Name: \_\_\_\_\_

▶ Mailing address: \_\_\_\_\_

▶ E-mail address: \_\_\_\_\_

▶ Community name: \_\_\_\_\_

▶ Position on board, if any: \_\_\_\_\_

▶ *Fax this completed page to (561) 750-8185 or email the above information to: [joshua@gerstin.com](mailto:joshua@gerstin.com).*