

Pets, Parks and Problems — Oh My!

BY PATEE L. BARTA



Associations in California and throughout the nation often face pet problems that seem insurmountable. One association's 12-year veteran handyman in Ontario was working in a garage when the pungent smell coming from the house led him to believe the elderly woman living inside may have died. Instead the fire department removed 26 cats living afoul of governing document rules that require homeowners to follow pet laws enacted to govern common interest development and guide their management company agents.

Animal Control whisked the cats away, and details of the incident were not made available to the association. One fact remained, the governing documents of the association limited pets to two dogs or three cats per town home. New laws say you must allow at least one pet per unit. According to the San Diego Animal Control, Section 62.668 Conditions of Animal Ownership, "animals' premises shall be kept sanitary and shall not constitute a fly breeding reservoir, a source of offensive odors or of human or animal disease."

If homeowners in an association disregard pet laws and rules, unsanitary conditions and harm to animals and humans could prevail. Many associations are not pet-friendly and deem themselves "no pet complexes" because of past pet problems.

Homeowner associations often seek the advice of industry attorneys to interpret and enforce current pet laws.

Attorneys Track Pet Laws

Upon passage of Assembly Bill 860 also known as the "one pet bill," effective in 2001, HOAs with a "no pet" rule began fighting to keep their no pet status, citing reasons such as homeowners with allergies, fear of animals and fear of property damage. The impact on associations regarding the one-pet-okay rule has been significant.

Pet laws have changed dramatically over the years, said Attorney Ken

Dillingham. "Laws have gone from no regulation at all, with several legislative attempts at requiring that an association allow pets, to the passage of a bill requiring associations to allow at least one pet. Some [associations] have decided not to proceed with revisions of their governing documents or their rules and regulations for fear their ability to restrict pets would be jeopardized... however, for the vast majority of associations, this has simply not presented a problem because most documents already allow pets." Anderson & Kriger Attorney Lauri Street said, "They grandfathered in those communities that were 'pet-free' according to their CC&Rs... meaning these associations do not have to allow 'one pet' per the law until they rewrite or change any part of their existing CC&Rs, rules and regulations and bylaws."

There is evidence that homeowner associations want to weigh in on the pet issue. Dillingham has written to local, state and federal legislators, and traveled to Sacramento on behalf of clients. The media have also been a forum to discuss the issue.

"Once a month one of our attorneys speaks on community association law on the "Home Show," KPOP radio, 1170 AM, hosted by John Jedynak," said Dillingham. "The subject of dog bites, barking, children and pets, as well as rules enforcement have all been talk show topics."

Pet Laws Prevail

"Many of our lawsuits have been focused on barking pets, too many pets, hidden pets, illegal pets and unreasonably sized pets for small condo complexes: Not to mention the 'biter' as a liability," Streeter said. The law passed in 2001, through Assembly Bill 860, mandated, "You must allow one pet per unit." The size of the animal must be reasonable for that type of complex; in other words, "a great Dane would not be an acceptable pet in a small 1,200 sq. ft. condo on the top floor," she said.

The pet horror story that stood out in Dillingham's career was a 175-lb. hairy Akita in an 800-sq.ft. one bedroom condominium. The board of

directors enforced the pet rule and the oversized pet was relocated.

Despite the dangers, there are homeowners in associations who hide illegal pets such as ferrets, racoons and skunks. According the California Domestic Ferret Association, "In California it is illegal to own, breed, transport within the state (even vacations and pass through to other states), or possess, in any form, a ferret. The responsible party, in addition to losing their animal(s) may be fined or jailed, . . . and depending on the circumstances, the animal may be euthanized."

Service Animals

Attorney Streeter has attended many seminars related to service animals for those with disabilities and special needs. She defines the categories as follows:

There are three categories of "service" dogs:

- (1) "Guide" dog for the blind
- (2) "Signal" dog for the deaf
- (3) "Service" dog is the catch all for

assistance dogs for persons with disabilities other than blindness and deafness.

"Companion" and "Therapy" animals are also used by emotionally disturbed individuals, however, there is no law in California giving protection to "mere" companion or therapy animals, said Streeter. "Service animals are protected under California law set forth in Civil Code 54.1, 54.2 and 54.7, parts of the Unruh Civil Rights Act... where a landlord has to ignore the existence of a bona fide service animal for purposes of setting and collecting rent and security deposits and limiting access of the animal to the building."

A bona fide service animal must have certification from a private school or public agency such as County Animal Control which is probably sufficient for an association to rely on for legitimacy purposes. According to Streeter, "The Americans with Disabilities Act may require 'reasonable accommodations' for service animals and their owners."

Rules apply to all pets in a community association including service dogs, using the CC&Rs and rules and

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regulations as guidelines. Many disabled owners consider their animals "untouchable," even after verbal or written warnings. Streeter muses, "The service animal is not 'untouchable'... and the landlord, property owner or property manager is entitled to make a nuisance claim, or a claim for breach of governing documents." Related to civil law, a "dangerous" service animal is entitled to no greater legal rights than a "dangerous" pet, she said.

Doggone Friendly Pet Parks

Innovative ways of solving the space restrictions on pets in an association have been developed in many communities around the country. Much like children, pets need to play and explore for their mental health. It is important to assess the space availability in the common areas or, in some cases, in canyons or adjacent county areas.

According to an article in *Common Ground Magazine*, a Florida planned unit community decided to create a 100-by-150 foot fenced in dog area. They considered their association to be very "dog friendly," and boasted that puppies could run around leash-free while owners took a breather at tables and benches. A separate area invited aggressive dogs, addressing the safety issue.

Similarly, Anderson & Kriger Attorney Joel Kriger works with the board of directors of Park Place Homeowner's Association in Cardiff, Calif., on a pet park it is creating that has a canyon next to the common areas. The county owns the property and allows dogs to visit unleashed even though the association has established pet park protocol.

"This project has certain rules and safety issues to be concerned with," said board member Dahlia Torres. "We use legal counsel to guide us... and would be remiss if we tried this on our own."

Torres said, many meetings of the board of directors are needed to come to a meeting of the minds, and the general membership of the association must be notified along the way. There are many issues to be addressed.

Like the Florida pet park, Park Place began formulating rules and deciding what items needed to be mandatory for pet owners. Who keeps track of the dogs entering the park? What identifies dogs? Who will enforce the rules? What about the mess dogs bring?

Park Place Pet Park Protocol

(1) **Identification tags in bright red** – At a cost of \$5.00, the owners' lot number and dog license number appear;

(2) **Signs** – Posted with rules for canyon use and self-policing;

(3) **Security Guard** – The security guard will patrol the canyon at a pre-determined cost and will enforce rules using dog owners' lot numbers and dogs' license number. Police will be called to issue a ticket for noncompliance. A warning letter goes directly to the dog owner's home for an infraction: the dog owner is fined. Revocation of the dog tag disallowing privileges to walk is the last resort.

(4) **Disposal bag dispensers** – Three disposal bag dispensers at \$75 each and six trash cans will be available for disposal. Responsibility lies with the dogs' owner or handler.

Stringent rules in Florida require an application for the pet park with health information, shot dates, tag numbers and friendliness of the dog with children and other dogs before the combination to the lock on the park's gate is revealed. According to the article, female canines in heat and puppies less than five months are not permitted.

California community managers who keep their associations informed, educated and legally represented on current pet laws and rules, may eliminate pet problems inherent in an association's day-to-day operations. Legal resources are available to associations and their managers through the California Legislative Action Committee accessible through their Web site at www.clac.org. Skip Daum is the representative who lobbies Sacramento on behalf of community associations.

Responsible Pet Ownership

The American Kennel Club and The Humane Society of the United States are two pet-friendly organizations with guidelines for responsible pet owners. There are 10 logical steps to help keep pets from becoming statistics:

1. Clean up after pets on public property and dispose of waste in a sanitary manner
2. Ensure that pets are licensed and wearing up-to-date ID tags and ear chips
3. Keep cats indoors and away from situations where they can be a nuisance
4. Obey state and local animal laws
5. Maintain a flea and tick control program to keep pests from spreading to other units

6. Keep dogs clean and work to control excessive barking
7. Take pets to the vet for a yearly checkup and adopt your next pet from an animal shelter
8. Take dogs to obedience school or teach five basic commands: heel, sit, stay, down, and come
9. Spay or neuter your pet
10. Have a family disaster plan to provide for your pets in the event you can't

Conclusion

Pet laws have been and will continue to be a hot-button issue in common interest developments run by homeowner associations and their management company agents. It is important to keep current on new developments in legislation, rules on service animals, educational offerings and pet problem solutions, such as a pet park, that can enhance a perfectly-run community association. Industry resources such as Community Association Institute and California Association for Community Managers offer on-going information on pets, parks and problems. Visit CAI National at www.caionline.org and the CACM site at www.cacm.org.

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Pet Life in a Community Association

Contact the following entities should you need help training your pet:

ORGANIZATIONS:

Association of Pet Dog Trainers

P.O. Box 385

Davis, CA 95617

600-PET-DOGS or log on to www.apdt.com

National Association of Dog Obedience Instructors (NADOI)

Attn: Correspondence Secretary

729 Grapevine Hwy., #369

Hurst, TX 76054

(No phone number available)

PUBLICATIONS:

The Humane Society of the United States Complete Guide to Dog Care. 1998. Little, Brown, and Company. Available at bookstores and through HSUS online marketplace at www.hsus.org for \$24.95.

Pet Policies. Gap28 Report. California Association Institute. Available online at www.cai-grie.org for \$25.00.



Craig Stern, of Dana Point, California, is the founder of ENTRE-MANURE Dog Waste Removal Service on the web at <http://www.entre-manure.com/>



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you might as well think big!"*

— Donald Trump



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