

Are You Tired of Dealing With False Service Animal and Emotional Support Animal Claims? Pennsylvania Fights Back Passing Assistance and Service Animal Integrity Act

By Bradley S. Dornish, Esq.

Over a decade ago, I experienced a protracted fight between my client landlord who had a “no pet” building, and a long time tenant who had and wanted pets. The tenant paid to certify a dog as an “assistance” animal, and had the dog wear a vest declaring this role. She asked for and got a local therapist to give her a prescription for a “support” animal to calm her nerves and aid in treatment of anxiety. The tenant bought and added to her household another dog, without training or certification, to help the first dog. She added parakeets which flew around the entire apartment, to let her know when her tea was ready or her stove was left on.

Even then, the fight to evict her went on for many months, through several courts, costing thousands of dollars. Tenants in other units complained about the dogs barking, the birds chirping, and smells coming from the apartment. The tenant was physically limited in her ability to take the dogs out, so they and the uncaged birds did their business in the apartment, which smelled like a kennel or a bird cage.

At each level, the courts struggled to require reasonable accommodations for the tenant’s disabilities while protecting the landlord’s property and contract rights, and the rights of other tenants in the building to a clean, safe and quiet building. There were no easy answers, and the tenant eventually got social service help in assisted living, where no dogs or birds were allowed.

Since that time, the pendulum has swung further and further toward supporting the rights of tenants and HOA residents who need service or support animals, and members of the public who seek to include such animals in public accommodations or travel. Just search emotional support turkey, peacock or squirrel to see what airlines have been dealing with as passengers seek to bring their animals into cabins, and do so without paying fees. Many support groups for those who truly need service or emotional support animals share the frustration of landlords, HOAs and business owners toward those who abuse the system to have their pets in violation of housing and public accommodation rules against pets.

My most recent case involving questionable service or support animals is going on right now, and involves a tenant not controlling two alleged support dogs in a no pet building, and another tenant threatening to move because of issues involving the dogs. Service and support animal abuse in housing may not make the news as frequently as cases involving turkeys, peacocks and squirrels on airplanes, but HOAs and landlords have to deal with these issues and reasonable accommodations on a daily basis.

For the record, I am not at all against pets. I have a Bichon Poodle who greets me every morning and night, keeps me company while I work at my home desk, is on my lap as I write this article, and even comes to work with me on occasion. I allow pets in my rental units, charging appropriate fees and deposits, and requiring pet owners to control their pets so as not to cause annoyance to others. I do oppose those without medical need who use laws designed to protect and help those whose medical conditions are benefitted by animals to get around rules against pets in apartments and HOAs.

With the support of PROA, as well as real estate brokers, and many advocates for those with real need for such animals, the Pennsylvania Legislature passed the Assistance and Service Animal Integrity Act on October 17th, it was signed by the Governor on October 24th, and becomes law on December 23rd.

The new law defines assistance and service animals consistently with federal law, and specifically permits landlords and associations with pet policies to request written documentation of both the disability and the disability related need for the animal, unless either is readily apparent or already known to the landlord. The law further establishes minimum standards for the documentation to be provided. That documentation must be in writing, and must be “reliable and based on direct knowledge of the person’s disability and disability-related need for the assistance animal or service animal”. That requirement should help to curb the use of mail order certifications. The final requirement is that the documentation must describe the disability-related need for the assistance or service animal.

The law then takes the important step of making misrepresentation of entitlement to an assistance or service animal a crime under PA law. The acts which constitute crimes include lying about a disability or disability related need for an animal in housing, and lying about a disability to obtain documents for use of a service or support animal in housing. These crimes are misdemeanors of the third degree, and can lead to jail time on conviction.

Lesser crimes under the law include creating a document misrepresenting that an animal is a service or support animal for use in housing, providing a false document indicating service or support animal status to another for use in housing, and fitting an animal not an assistance or service animal with a collar, harness vest or sign designating the animal as an assistance or service animal for use in housing. These violations are summary offenses, each subject to a fine up to \$1,000.00 per occurrence.

Equally important to landlords and HOAs dealing with residents who have service or support animals, the law grants landlords and associations immunity from liability for injuries to others caused by an assistance or service animal permitted on the property as an accommodation to one with a disability.

Hopefully, the Assistance and service Animal Integrity Act will curb the attempts by some residents to abuse the designation of service and support animals in rental and HOA housing. It will certainly provide some protection to HOAs and landlords from liability for injuries caused by such animals, and an opportunity to refer suspected abusers of service and support animal status for criminal prosecution.

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