



Everything you Need to Know About Pets in Your Community Association

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

MULCAHY LAW FIRM, P.C.

3001 East Camelback Road
Suite 130

Phoenix, Arizona 85016

Phone: 602.241.1093

Toll Free: 877.206.7164

Facsimile: 602.264.4663

E-mail:

bmulcahy@mulcahylawfirm.com

www.mulcahylawfirm.com

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According to the 2015-2016 APPA National Pet Owners Survey by the American Pet Products Association, the number of households in the United States that have at least one pet was 79.7 million or approximately 65% of the households in the United States. With this high percentage of households owning pets, it is no surprise that pets are a hot topic and common issue within community associations. This cheat sheet is designed to provide answers to frequent questions and common issues regarding pets and animals in community associations.

RULES AND REGULATIONS ON PETS

Most associations have some sort of pet restriction located in the CC&Rs or Rules and Regulations. Common restrictions include: the type of animals allowed within the association; a limit on the number of animals allowed per household; a requirement that pets be on a leash when on common areas; or a limitation on the size (weight) of the animals allowed. Further, many associations have provisions that require a pet Owner to clean up after the pet and to prohibit the pet from becoming a nuisance within the community.

If the CC&Rs or Rules and Regulations for your association do not contain pet provisions, the association may consider amending the CC&Rs and/or Rules and Regulations to contain pet restrictions.

A rule or regulation regarding pets should be:

- Reasonable;
- Serve a purpose;
- Acceptable to Owners;
- Enforceable; and
- Consistent with the other governing documents and Arizona law.

The association should have legal counsel review the proposed changes to ensure the amendments are legally proper and enforceable. Further, if your association adopts new pet restrictions that would affect owners that have pets in violation of the new restrictions, the association may have to “grandfather” in those current owners.

LIABILITY FOR COMMUNITY ASSOCIATIONS

Under Arizona law, associations have a duty to maintain the common areas in a reasonably safe condition. This responsibility extends to lot/unit owners, their tenants and their guests. In addition, the association has a duty to take reasonable measures to protect against foreseeable activities that create a danger on the land it controls. Therefore, if a specific pet is creating a danger within the association, it is my opinion that the association has a duty to take reasonable measures to protect its residents.

In a recent case in Missouri, the court in *Mary Beth Taticek v. Homefield Gardens Condominium Association, et al.* (502 S.W.3d 645 (2016)), held that the association had a duty to enforce the rules it had written pertaining to pets for the association. The association had enacted rules including, the requirement that pets be on a leash, that Owners pick up pet waste, and that pets should not be unattended or create a nuisance, disturbance, or noise. Further, the association’s Bylaws stated that no dog should be over 25 pounds. The Association also had a rule that it would regularly inspect buildings to enforce compliance with the rules. When a homeowner within the association was attacked by another homeowner’s pitbull, she sued the Association, arguing that the association was negligent because it failed to enforce the rules and to ensure compliance with the rules regarding pets. The court of appeals remanded the case back to the lower court for the jury to decide if the Association exercised an ordinary degree of care in their duty to enforce the rules. The court stated that whether a party exercised ordinary care is a question of fact. Therefore, the jury will consider whether or not a reasonable person under the circumstances would have known the pitbull was there in violation of the rules and would a reasonable person have taken reasonable measures to protect its residents.

ASSISTANCE ANIMALS

If your association has a no-pet policy, an occupant in the association may request a reasonable accommodation from the association's no-pet policy pursuant to the Fair Housing Acts. A reasonable accommodation is an alteration to or variance of the association's restrictions or rules and regulations to provide a person with a disability to have an equal opportunity to ensure full enjoyment of his/her home.

If your association receives a request for a reasonable accommodation for an assistance animal, in order to be protected by the Fair Housing Acts, 1) the person must have a disability as defined by the Fair Housing Acts, 2) the assistance animal must serve a function related to the person's disability, and 3) the request to have the assistance animal must be reasonable. Common requests include: depression, anxiety or emotional support.

To comply with the Fair Housing Act, the association can require the resident to 1) provide proof of the claimed disability from a physician (unless the disability is obvious, apparent or already known to the association), 2) require a physician's statement that the animal is necessary for the resident's disability (unless the disability and necessity of the animal are obvious, apparent or already known to the association), and 3) require the resident to follow policies for the cleanup of animal waste, leash requirements, etc.

An assistance animal does not have to have specific training, unlike a "service animal" under the Americans with Disabilities Act. Typically associations are covered by the Fair Housing Acts, not the Americans with Disabilities Act, because the Americans with Disabilities Act require that the association have a place of public accommodation, such as a clubhouse or restaurant that is open to the public.

DOGS

- **Barking**
 - Dogs bark for all kinds of reasons, but there are ways to limit dog barking in the association. For several suggestions on ways to limit dog barking, please see our firm's cheat sheet on barking dogs.
 - If the association receives a complaint about a dog barking in the association, the association should determine whether or not it has a nuisance provision in its documents. If it does, then the association can send a warning letter to the Owner letting the owner know that the barking dog is creating a nuisance. If the dog owner fails to comply with the warning letter and the CC&Rs have a nuisance provision, then the association has a right to impose a reasonable fine for the violation after notice and an opportunity to be heard is given to the owner.
 - Maricopa County Ordinance No. 6 states, "[i]t shall be unlawful for any person having custody or control of a dog in any unincorporated area of Maricopa County to permit that dog to bark excessively. For purpose of this Ordinance, a bark, yowl, yip or any other noise made naturally by a dog shall be deemed a bark. Upon receiving a complaint about a barking dog, the County Enforcement Agent shall investigate the circumstances and recommend a mediator to resolve any dispute between any person violating this ordinance and any aggrieved person."

CHICKENS

Depending on where your association is located in Arizona, your city, town or county may have restrictions on chickens. Cities like Phoenix don't prohibit chickens outright, but there are specific restrictions regarding chickens for lots in Phoenix. For instance, in Phoenix, chickens may only be kept in the backyard and may not be kept within eighty feet of another residence without the written permission from the lawful owner of the adjacent residence. Further, if the lot is less than one-half an acre, no more than twenty chickens are allowed. Finally, the enclosures for the chickens shall not be an annoyance or inconvenience to any inhabitant of the neighborhood.

Whereas, Glendale currently views chickens as farm animals, not pets, and therefore chickens are only allowed in six zoning areas. Last year, the Glendale City Council discussed allowing Glendale residents to keep chickens as pets in residential parts of the city. (Ultimately this did not pass in Glendale).

POT-BELLIED PIGS

Most associations have restrictions in their CC&Rs or Rules and Regulations regarding “common household pets”. Some may have restrictions on specific animals, like cats and dogs. However, association governing documents may not address animals like pot-bellied pigs. If your Association documents have restrictions on “common household pets” or “household pets,” the Association may consider defining what these terms mean in order to determine what types of pets will be allowed within the Association.

There have been some lawsuits around the country regarding the issue of whether pot-bellied pigs should be considered a “household pet.” An HOA in Texas was sued by a family for attempting to enforce a rule which would require the family to remove a pot-bellied pig from their home. The HOA’s rule permitted “domestic animals commonly and traditionally kept as household pets.”

The court held that the pig breed was a household pet and therefore the family was allowed to keep the pot-bellied pig in the Association.

JAVELINAS

Does your association have a duty to protect its residents and pets from wild animal attacks, like javelinas? What should your association do if javelinas are spotted within the HOA?

The association may consider adopting community policies designed to reduce the likelihood that javelinas, or other wild animals, will enter or linger in the association. For instance, the Association should require that garbage be securely stored and that pets are on leashes.

The Association will not be able to predict when wild animals will enter the community. However, if the Association becomes aware of a wild animal, like a javelina, on the community property, I would recommend that the Association let the residents in the community know about the possible threat and provide the residents with tips to limit the dangers and risks that the animals poses. If the javelina engages in aggressive behavior toward residents or pets in the community, the Association should call the association’s local Arizona Game and Fish Department.

Javelinas are classified as big-game animals in Arizona and protected by Arizona state law. However, if a javelin is damaging your property, you have the legal right to use reasonable measures to protect your property, not including capturing, injuring or the unlawful killing of the animal.