

Ask Attorney Pete:

Q: May a common interest development, e.g., a condominium association, prohibit a unit owner from having a pet in the unit?

A: For those associations whose governing documents were entered into after January 1, 2001, the association may not prohibit a unit owner from keeping at least one pet within the development, subject to the association's reasonable rules and regulations [Cal.Civ.Code § 1365.5(a)] A "pet" is limited to any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner. For pre-January 1, 2001, governed associations, the Cal Supreme Ct has ruled that a no-pet restriction added by a year 2000 amendment to a condominium association's CC&Rs was reasonable and enforceable against a current owner who had earlier purchased her unit [*Villa de Las Palmas HOA v. Terifal* (2004) 33 Cal.4th 67]. Notwithstanding this pre-January 1, 2001, rule, every individual with a *disability* has the right to be accompanied in his or her residence by a guide, signal, or service dog, especially trained for such purpose [Cal.Civ.Code § 54.1(a)(6)(A)] without being required to pay an extra charge or security deposit therefore, although the individual shall be liable for any damages done to the premises by the dog. Furthermore, per the 2004 Cal Supreme Ct. decision in *Auburn Woods I HOA v. Fair Employment & Housing Commission*, 121 Cal.App.4th 1278, if the individual is *physically or mentally disabled*, he or she may keep a non-service dog if its presence is *medically therapeutic* to the individual.

Q: What about a landlord's right to prohibit a tenant from having pets?

A. Presumably, a guide dog is allowed, or if the tenant is physically or mentally disabled, even a non-service dog is allowed if therapeutic to the tenant. Otherwise, the landlord may in its lease or rental agreement prohibit pets.

Conclusion: As to a condominium unit owner, if the governing CC&Rs were enacted pre-January 1, 2001, they may prohibit pets. Otherwise, they may not unreasonably do so. As to tenants, unless they need a guide dog, or are physically or mentally disabled and having a dog per se is therapeutic to them, the landlord's lease or rental agreement may prohibit them from having a pet. 3-19-13.

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