



## Animals and Their Issues!

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### Additional Resources

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- **Pest issues**
  - Internal
  - External
- **Pet Regulations**
  - Chickens, dogs, cats,
  - Size, weight
  - Waste elimination
  - Dangerous
  - None allowed
- **FHA/ADA issues**
  - Service
  - ESA



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### Authority to Regulate When it Comes to Pests

- Declaration
- Where the pests are
- Conduct of residents
- Connection to pests



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### The Problem with Pests

- Internal: Bed Bugs, Mice, Rats, Ants, Cockroaches
- External: Raccoons, Bats, Rabbits, Squirrels, and Bees
- Regardless always have to look for why they are arriving now



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### Scope of Authority

- Use of common property
- Use of individual lots
- Use inside individual units



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### Nuisance May Be Only Covenant to Address Many Situations

Specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to: any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property in the community, or which creates any threat to health or safety of any other resident or pet



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### Other Options

**Cleaning**  
Look for a covenant that requires owners to maintain unit in a clean and sanitary manner

**Feeding Animals**  
Some newer declarations specifically prohibit feeding rabbits or squirrels because that also brings in larger animals

**Look to City Ordinances**  
Not properly disposing of trash attracts bears and other animals and many cities have ordinances to address this



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### What to do When the Owner Did Not Cause the Problem?

- Wasps
- Bees
- Bed bugs
- Bats in attic
- Rabbits burrowing under decks
- Skunks under decks
- Squirrels



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### Common Areas

- The Association has primary responsibilities for common areas.
- The Association has an obligation to maintain the common elements in such a condition as to prevent damage to Common Elements.



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### What Can the Association Do?

- Respond:
  - i. Prompt responses
  - ii. Keep detailed written records of complaints/responses
  - iii. Bring in a professional/licensed exterminator and follow recommendations



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### Animals

- There are many people who have pets and those pets are no different to them than children
- Counter that with people who do not like them
- They create noise
- They create waste
- They damage things



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### What About Chickens?

- First, does the Declaration prohibit?
- Review carefully, as many are unclear.
- If like many it says "ONLY PETS" be aware that there is a Colorado Supreme Court case that says chickens can be pets.
- Create rules to clarify chickens are not pets and not allowed.



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### What About Dog/Cat Restrictions?

- Size / Weight / Numbers
- No dangerous
- No barking/howling
- On leash
- Pet areas
- Clean up
- Damages
- None



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### Ground Rules

- Authority to adopt rules
  - ✓ CCIOA
  - ✓ Governing documents
- Limitations on rules
  - ✓ Can't conflict with declaration, articles, or bylaws
  - ✓ Cannot create new "use restrictions"
  - ✓ Must be "reasonable"
  - ✓ Can't conflict with State/Federal laws





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### Court Review of Rules

1. Was there authority?
2. Were there any contradictions to other laws or covenants?
3. Does the rule further the purpose of the Association?
4. Is the rule clear?
5. Is the rule reasonable?
6. Can the rule be fairly enforced?





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### Can You Prohibit Animals?

- Only by Amending the declaration
- Can you limit them by rule?
  - Yes, sometimes
- Can you place restrictions on where they can go?
  - Yes, unless there is an accommodation
- Can you require leashes by rule? Yes
- Can you require waste pickup by rule? Yes
- Can you limit where they poop or pee?
  - You can try
- Can you limit FHA/ADA animals?
  - Yes, sometimes





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### Dog Rules

It is highly recommended that owners keep their pets on leash when on common areas.



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...the [unclear]...



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### OLD LADY

If I Catch You In The Act  
Of Putting Your Dog  
Craw In Our Cars, I WILL  
Cut Off Your Head And  
Bash It In The Hood Of  
My Car



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### Dangerous Dogs

This Colorado statute defines a "dangerous dog" as one that has inflicted bodily or serious bodily injury upon or has caused the death of a person or domestic animal; or has demonstrated tendencies that would cause a reasonable person to believe that the dog may inflict injury upon or cause the death of any person or domestic animal; or has engaged in or been trained for animal fighting as described by statute.

§ 18-9-204.5. Unlawful ownership of dangerous dog—legislative declaration—definitions.



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### Dangerous Dogs

- If you have a dog bite a person or another animal the HOA needs to consider the dog dangerous
- Failure to remove a dog if you have a provision against dangerous dogs could create future liability to the HOA if it bites again
- Cannot *presume* a dog is dangerous due to breed. Have to have aggressive actions and/or a bite



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### HB1137 Problems

- Must give thirty days prior to fining
- Can send warning letters if in your new enforcement policies
- Depending on the situation you may never get to fines due to inability to prove continued past thirty days



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### FHA vs. ADA

- ADA only applies to places open to the public
- FHA applies to homes



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### Service Animal vs ESA

- Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Emotional Support Animal is any animal that assists an owner with disability. Need not be trained



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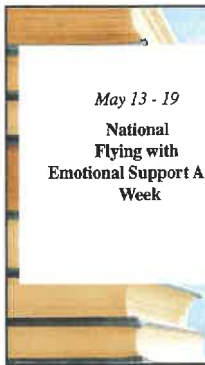
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May 13 - 19  
National  
Flying with  
Emotional Support Animal  
Week



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### REASONABLE ACCOMMODATION

- Person is disabled
- Must make reasonable accommodations to allow full use and enjoyment of premises
- Deemed reasonable if it does not result in an undue financial and administrative burden, fundamentally alter the nature of the housing in question



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### DISABILITY

- Physical or mental impairment which substantially limits one or more major life activities;
- a record of having such an impairment; or
- being regarded as having such impairment.



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### How to Determine Disability

IF YOU CANNOT VISUALLY SEE THEY ARE DISABLED, YOU MAY ASK FOR:

1. Sufficient and reliable information that will allow the Association to verify that the resident meets the Fair Housing Act's definition of being disabled;
2. A description of the accommodation that the resident is requesting; and
3. An explanation showing the relationship between the resident's disability and the need for the accommodation that is requested, if any.



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## Evaluating Requests for Accommodations

**What is Reliable Documentation?**

- Determination from a Gov't Agency
- Documented receipt of disability benefits
- Note from a healthcare professional

(If therapeutic benefits) Should explain that the animal provides support which ameliorates or assists in coping with symptoms of disability




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## No Imposition of Conditions Which Apply to Pets

- May not charge a fee, licensing charge, or deposit
- May not charge to register the animal
- May not charge to register in doggy DNA
- May not pass-on cost of attorney advice and fees (even if provided for in § 38-33.3-123)




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## Limits On Dogs?

- Limitations on breeds and sizes may not be enforced to disallow an otherwise required assistance animal.
- So cannot disallow a pit bull to be a service animal or ESA. If they are disabled then they can have the dog.
- If the dog bites you can demand removal
- A **\*specific assistance animal\*** may be disallowed if it:
  - Poses a direct threat to the safety of others
  - Would cause substantial physical damage to the property of others which cannot be reduced




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### What if Violations Happen?

- Violations by service animals and ESAs
  - **Barking/howling** fine them
  - **Off leash** so long as the disability does not preclude them from carrying the leash fine them.
  - **Not picking up waste.** If the disabled person is unable to pick up waste they must pay someone else to do so. Send a demand for that to happen and if it does not impose fine.
- Can you make them remove the service animal or ESA?
  - If there are repeated violations and the owner does nothing to correct them then you may demand they get a new animal or remove the animal entirely.
  - This only can happen after numerous violations and numerous requests for correction



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### Other Issues

### What about if the HOA allows for two dogs and they want a third dog?



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### Other Issues

### What about if the person wants multiple dogs?



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