

Originally published in

New York Law Journal

# Setting Standards and Training Requirements for Therapy Dogs and Emotional Support Animals

Cooperatives and Condominiums columnist Eva Talel writes: New York state, as well as at least 16 other states, recently enacted laws which criminalize the fraudulent designation of a therapy dog, in an effort to deter individuals from “mis-labeling” their pets in order to evade legal restrictions on where animals are permitted, including a building’s no-pet policy. This column features this important New York state legislation and the report issued a week ago by a New York State Therapy Dog Working Group of the State Department of Agriculture pursuant to this legislation, and provides guidance and recommendations to boards and managers in light of the same.



By Eva Talel | November 06, 2018

**T**he increasing number of apartment owners seeking to keep purported “emotional” or “therapy” dogs in no-pet buildings appears to be unstoppable, notwithstanding well-documented evidence that the presence of such dogs can cause severe adverse allergic reactions and psychological trauma to other apartment owners — who may well have purchased apartments in a no-pet building so as to protect themselves from such risks to their health and well-being. See Ronda Kaysen, [“Why Are Emotional Support Pets Allowed in My Pet-Free Building?”](#) The New York Times (July 21, 2018); [“The Unstoppable Rise of the Emotional Support Animal,”](#) Habitat Magazine (July 24, 2018).

New York state, as well as at least 16 other states, recently enacted laws which criminalize the fraudulent designation of a therapy dog, in an effort to deter individuals from “mis-labeling” their pets in order to evade legal restrictions on where animals are permitted including, a building’s no-pet policy. Tiffany Lee, “Criminalizing Fake Service Dogs: Helping or Hurting Legitimate Handlers,” 23 Animal Law 325 (2017).

This column features this important New York state legislation, and the report issued a week ago by a New York State Therapy Dog Working Group of the State Department of Agriculture pursuant to this legislation, and provides guidance and recommendations to boards and managers in light of the same.

## New York State Law

On Dec. 18, 2017, New York State Governor Andrew Cuomo signed into law a bill which, among other things, makes it unlawful for a person to knowingly apply any “false or improper identification tag” designating an emotional support or therapy dog. (N.Y. Agric. & Mkts. Law § 108 (26) (McKinney)) (the “Statute”). While the Statute defines a “therapy dog” as one “that is trained to aid the emotional and physical health of patients in hospitals ... and other settings and is actually used for such purposes,” (N.Y. Agric. & Mkts. Law § 118 (1) (c) (McKinney)), the Statute also recognizes that there are currently no procedures for determining whether a dog is entitled to such a designation.

Therefore, the Statute directed the New York State Commissioner of Agriculture and Markets to “examine the need for statewide standards for ‘therapy dogs,’” including “training, evaluation and certification procedures for the designation and identification” of a dog as a therapy dog, and the rights and responsibilities of the owners of therapy dogs and of similar dogs, such as emotional support animals. The Commissioner was to issue a report of his/her findings no later than October 2018 (the State Report).

## The State Report

On Oct. 31, 2018, the [State Report was issued](#). The Report concluded that currently, there are indeed no national or statewide standards regarding training, evaluation, certification and identification of therapy dogs, and that there is “confusion regarding the rights and responsibilities of [owners of] therapy dogs [and] emotional support dogs.” Further, there are no standards regarding the use of dog therapy for any given condition. The public is often confused by the terms service dog, therapy dog, and emotional support dog and what each of those dogs can do with that designation.

Importantly, the report notes that because there is no formal identification or certification of therapy dogs, “credentials” can be purchased from multiple organizations with no standards or proof. Currently, the ease with which either baseless or highly questionable documentation that a pet is a “therapy” or “emotional support” animal is notorious. This abuse is so common

that it has entered the realm of contemporary literature, humor and satire, calling-out pet owners as “the latest group to bend the law,” supported by hundreds of willing professionals. Patricia Marx, “[Pets Allowed](#),” *The New Yorker* (Oct. 20, 2014). However, for adversely impacted apartment owners and buildings, this is not a laughing matter. For example, through a website called ESA Registration of America, hundreds of willing professionals, for the relatively minimal fee of \$140 or less, will evaluate a pet owner over the phone and provide written documentation of such pet owner’s “mental health” or other “need” for their pet (Official Emotional Support Animal Registration, [ESARegistration.org](#); see also <https://thedogtor.net/>), thereby enabling pet owners to evade the legal restriction on where animals are permitted.

In summary, the Report recommends the development of standards, which would benefit the public, the dogs and people benefitting from the use of dogs, as well as the establishment of standards and guidelines for organizations to ensure that dogs and their handlers are appropriately trained, noting that a dog must have an appropriate temperament to serve as a therapy dog and possess basic obedience skills.

Once standards are officially adopted, a statewide registry should be established for organizations that meet the minimally acceptable best practices identified in the Report, and therapy dogs should be licensed and identified by tags or other accessory and should have appropriate liability insurance.

## Guidelines and Recommendations

As detailed in an earlier column (Richard Siegler and Eva Talel, “Pet Issues Revisited: Questions Raised on Support Pets,” *NYLJ*, Jan. 3, 2013, p. 3, col. 1), under applicable federal, state and local laws, a board may lawfully request that an apartment owner seeking to keep a pet in a no-pet building by reason of a purported disability provide supporting documentation from a qualified professional that the dog is necessary in order for the owner to use and enjoy the apartment. Boards and managers should continue to request such documentation and carefully examine the bona fides of the documentation provided. However, until the state establishes standards, certification and registration requirements, and the like, as recommend by the State Report, a building’s remedies for abuse of the right afforded apartment owners seeking to keep pets as therapy or support animals are limited.

We therefore strongly encourage buildings, working through their local and state government representatives, to urge the prompt enactment of the State Report’s recommendations. Enactment of such recommendations would be an important step in **balancing** the legitimate needs and expectations of all apartment owners.

---

*Eva Talel is a partner at Stroock & Stroock & Lavan LLP and an adjunct professor at New York Law School. Margaret Jones, a legal analyst at Stroock, assisted in the preparation of this column. Stroock is counsel to the Real Estate Board of New York.*

Reprinted with permission from the November 6, 2018 edition of the NEW YORK LAW JOURNAL  
© 2018 ALM Media Properties, LLC. All rights reserved. Further duplication without permission  
is prohibited. For information, contact 877-257-3382 or [reprints@alm.com](mailto:reprints@alm.com). The opinions  
expressed are those of the author and do not necessarily reflect the views of the firm, its  
clients, or ALM Media Properties, LLC, or any of its or their respective affiliates. This article is for  
general information purposes and is not intended to be and should not be taken as legal advice.