

# Bad Dogs, Bad Dogs, Whatcha Gonna Do?

*“You think dogs will not be in heaven?*

*I tell you, they will be there long before any of us.” - Robert Louis Stevenson*

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Unfortunately, that may not seem true for all dogs, or if it is, they don't act like angels before they get there. For many communities, bad dogs and dogs with bad owners are a problem that is not easy to deal with. In the past, associations went as far as banning dogs altogether, but the California legislature put an end to that by enacting Civil Code Section 1360.5, which gives all homeowners a right to at least one pet. As a result, the question remains: What can we do when problematic dogs are living in our community?

The first line of defense for associations is the governing documents. Many governing documents either regulate pet ownership (e.g. leash requirements, picking up waste, etc.) or they provide the board of directors with the authority to create reasonable rules and regulations for the community that include pet restrictions. If your governing documents allow it, rules can be created under the rule adoption process set forth in Civil Code Sections 1357.100-150 that limit the size, number, and breed of dogs allowed in your community. When enacting such rules, existing dogs in the community that would otherwise violate the rules will need to be “grandfathered” in (CC § 1360.5(c)), but a clear rule can prevent future problems.

If your community does not have any pet restrictions currently in place, or even if it does, there are additional ways you can deal with bad dogs and their owners. If a dog has attacked other owners or pets or is barking incessantly without provocation (i.e. without having a reason to bark), contact your local animal control agency. In addition to state laws such as Civil

Code Section 3342.5, which makes owners strictly liable for their dog's actions, most counties have specific ordinances that hold the owners criminally responsible for their aggressive or barking dogs, and, under extreme circumstances, can even require that the dog be euthanized if it is a danger to others. For example, Sacramento County Code Section 8.08.050 prohibits owners from permitting dogs to “be at large”... “[b]ite, scratch,



or claw any human being or other animal without provocation”... “[m]ake loud or disturbing noises without provocation”... “[a]ct or be kept in such a manner as to constitute an animal nuisance”... “[e]ndanger the life or health of others.”

If a visit from animal control does not end the problem or if animal control refuses to take action, consider calling the owner to a hearing and imposing discipline. If your governing documents specifically address pets and the owner has violated those provisions, follow your enforcement procedures and Civil Code Section 1363(h) and treat it like any other violation. If the violation arises out of an owner-complaint, the complaining owner generally does not need to be present at the hearing and his or her name can be kept confidential unless a lawsuit is filed. Anonymous complaints (e.g. no name at all on the complaint) should not be accepted because the board may need to communicate further with that owner or rely on that owner in a future lawsuit. If your governing documents do not specifically address pets, an aggressive or disruptive dog may constitute a nuisance, and the owner can be cited for violating your nuisance provision. Nuisances are difficult to prove, but getting the owner before the board and applying pressure can lead to compliance, such as by the owner

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agreeing to keep the dog indoors.

When utilizing any of these methods for dealing with bad dogs, it's important to remember that many people have strong bonds with their pets and become overly emotional and defensive when anyone tries to control their dog. When creating rules that restrict the size, number or breed of dogs allowed in the community, consider what type of restrictions will meet the needs of your development and your members. When the rules are being created, allow an opportunity for members to give the board their comments and recommendations, even more so than the board normally would when creating architectural restrictions or election rules.

When enforcing the rules, try to shift the focus away from the board being the "bad guy" and onto other sources for the dog owner to focus on. For example, many insurance policies actually limit the breeds of dogs a community or homeowner can have in order to remain insured. If you have such a policy, when an owner has a dog that does not comply with the community's breed restrictions, explain to the owner that the association's insurance carrier will not allow it and that the community could lose coverage if the dog remains. Giving the owner objective reasons for the restriction can often calm emotions and lead to a quick resolution. It's also important to remember that breed restrictions need to be enforced uniformly against the good and the bad, which may mean requiring an owner with a well-behaved prohibited breed to relocate his or her dog.

Another issue that may arise relates to the American's with Disability Act (42 U.S.C. 12101 et seq., "ADA"). Owners with disabilities have a right to "reasonable accommodations" to meet their special needs. For associations, this generally translates into an exception from a rule or restriction. An owner may have a guide or service dog that does not comply with size or breed requirements, but under the ADA the association will need to allow the owner to keep the dog. In addition to providing physi-

cal assistance, there may be other reasons why a disabled owner needs a dog depending on their particular special needs. If the disability is not readily apparent or known, the association may request that the owner or resident provide verification from a health care professional reflecting the need for requested accommodation.

Bad dogs and bad owners are everywhere, but there are steps your community can take to keep your neighborhoods safe and quiet. Prevention is the first line of attack, so review your governing documents and consider adopting a set of pet restrictions if your documents do not specifically address pets. Whenever possible, utilize the services of animal control and place the burden on the professionals to correct the problem. Finally, consider calling the owner to a hearing for violating a specific pet restriction or for permitting a nuisance to exist in the community. Take precaution when dealing with the situation and recognize that owners may have strong feelings about their pets. 

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