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# A DIRECTOR'S GUIDE TO PETS IN CONDOMINIUMS

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# **A DIRECTOR'S GUIDE TO PETS IN CONDOMINIUMS**

It is estimated that over 50% of Canadian households own a pet.

In the early days of condominium development, pets were thought to be incompatible with condominium living (particularly in high-rise buildings) and many condominium declarations prohibited pets. Fifty years later condominium developers are promoting dog grooming rooms and dog runs as amenities being offered to residents.

With the increase in pet ownership among condominium residents, comes an increase in pet-related condo issues. This pamphlet provides practical advice that directors need to know about the responsibilities and rights of both the condominium corporation and the residents/owners as it relates to pets.

# ARE PETS PERMITTED OR RESTRICTED? - LOOK AT THE CONDO DOCUMENTS

A complete prohibition on pets that is contained in the *declaration* is valid and enforceable. Any other pet restriction in a declaration is presumed to be valid, whether or not it is reasonable.

To change, add or delete a pet prohibition or restriction in the condominium declaration, the declaration must be amended, which would require the written consent of the owners of 80% of the units. Before taking any steps to modify the pet provisions in the declaration, the Board should send a survey to all the unit owners to determine if there is an appetite for change.

A prohibition on pets in the *rules* is not valid. However, the rules can contain restrictions relating to pets as long as the restrictions are reasonable and created for the safety, security and welfare of the owners and the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units. Below are some examples of reasonable pet restrictions that can be incorporated in the rules:

- weight or size restriction
- maximum number of pets allowed per unit
- prohibition on nuisance pets
- a requirement that all pets must be on a leash or carried while on the common elements
- prohibition on exotic pets

Pet restrictions do not belong in by-laws.

Tenants in condo units must comply with a pet prohibition in the declaration or restriction in the rules, even though a landlord in Ontario is not permitted to include a provision in the lease that prohibits pets. Similarly, guests and invitees must comply with a pet prohibition in the declaration and pet restriction in the rules.

# NUISANCE PETS AND DANGEROUS PETS

Most rules and many declarations state that any pet deemed by the Board to be either a nuisance or a danger must be removed within two weeks. This would override any other provision that would otherwise permit pets.

Examples of nuisance animals:

- excessive barking, whining, etc.
- where the owner does not clean up after his pet
- roaming unleashed on the common elements
- urinating/defecating on balconies

Section 117 of the *Condominium Act, 1998* provides that no person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or activity is likely to damage the property or cause injury to an individual. This would prohibit dangerous pets.

Examples of dangerous pets:

- dogs that have a history of biting
- overly aggressive dogs
- any pet prohibited by government legislation (ex. pit bulls are banned in Ontario)

Where the Board does not take action to have a dangerous animal removed and that animal injures a person or damages property, the Corporation could be liable for damages.

# ENFORCEMENT

## Duty to Enforce

The Board has a statutory duty to reasonably enforce the declaration, by-laws and rules. The Board does not have any discretion to not enforce compliance; the duty to enforce applies whether or not there are any complaints. Owners are not only bound by the condominium documents, they are entitled to insist that other owners and residents are similarly bound.

Directors should strive for prompt, consistent and systematic enforcement. The Board should not turn a blind eye when it becomes aware of any non-compliance or engage in selective enforcement against only some owners/residents.

## Common Responses by Non-Compliant Pet Owners to Enforcement Proceedings

Enforcement may be difficult. As pet owners are very loyal to their pets, most non-compliant pet owners will not willingly give up their pets. Common responses are:

- Complete denial of all allegations
- Accuse the Board and Management of engaging in an unfounded personal vendetta against them
- Obtain letters of support from neighbours saying no problem with the pet
- Collect signatures on a petition
- Suggest amendment to declaration or rules
- Hide the pet when an inspection is made
- Residents' real estate agent said it was fine

# EXCEPTIONS TO ENFORCEMENT

There are two situations where strict enforcement of the provisions in the condo documents may not be appropriate: where existing pets are grandfathered to prevent the Corporation from acting in an oppressive manner and to comply with the Human Rights Code by accommodating a support/therapy animal for a disabled resident.

## Grandfathering

Grandfathering allows an owner to maintain a pet that may otherwise be in contravention of the declaration or rules. There are two main situations where grandfathering can arise:

- where new rules are implemented restricting the number of pets (or size or weight) residing in the condo or when the declaration has been amended to now prohibit pets altogether; and
- where the Corporation now wishes to enforce the declaration or rules that were not previously being enforced.

In these situations, a failure to grandfather existing pets could result in owners bringing an oppression claim against the Corporation.

To be grandfathered, owners of non-compliant pets are typically required to register with Management and enter into a grandfathering agreement within a specified time period.

A grandfathering agreement should include the following provisions:

- That the agreement is personal to the owner/resident at the time of the grandfathering, not to the unit itself. Therefore, a subsequent owner or resident would not receive the benefit of the grandfathering agreement;
- When the grandfathered pet dies, it cannot be replaced with a pet not in compliance. In other words, if the owner currently has a dog that is 45 pounds, and the Corporation has passed a rule prohibiting dogs in excess of 25 pounds, the owner would not be able to get a new dog larger than 25 pounds.

## Human Rights

Condominium corporations are obliged to comply with the Ontario Human Rights Code. Section 2(1) of the Human Rights Code provides that every person has a right to equal treatment with respect to occupancy of accommodations without discrimination because of disability. This means that a disabled resident that requires a support/therapy animal will be able to keep such animal even if such animal would otherwise be prohibited by the condo documents.

When presented with a request to accommodate a support/therapy animal, the Board should request a letter from a medical professional supporting the position that the pet is necessary to treat the individual's disability. Note that for privacy reasons, the letter does not need to reveal any personal medical information about the individual, including the nature of the disability. In some circumstances, it may be appropriate to further discuss the individual's medical needs with the medical professional to attempt to ascertain whether and to what extent the Corporation is obligated to accommodate the individual.

If the disability is obvious and apparent, then the Corporation should not ask for medical information. However, where the disability may not be permanent, the Board can ask for such letter annually to confirm that the pet continues to be necessary.

## STATUS CERTIFICATES

Any pet restriction or prohibition is enforceable against new condo purchasers even if they were not aware of any pet restriction or prohibition when they purchased their unit. As a proactive measure, any pet restriction or prohibition can be disclosed in the status certificate. While there is no legal obligation for the Corporation to disclose this information, it may avoid future compliance issues by purchasers claiming that they were not aware of the pet restrictions or prohibition. While many purchasers will not review the condo documents before they purchase their unit, the status certificate will be typically reviewed by their lawyer.

## **LASH CONDO LAW**

### **Practical Advice, Creative Solutions, Cost Effective**

We are committed to helping our clients make informed decisions and create strategies to successfully resolve condominium issues.

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