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OUR CONDO EXPERTISE

A DIRECTOR'S GUIDE TO PETS IN CONDOS

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A DIRECTOR'S GUIDE TO PETS IN CONDOS

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

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

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

ARE PETS PERMITTED OR RESTRICTED?

Corporations should have rules that specifically deal with pets. Before a Corporation considers amending or introducing new rules, the first step is to review the declaration. This is an essential step to see whether it contains any pet provisions.

Rules must not conflict with the declaration.


A complete prohibition on pets contained in the declaration is valid and enforceable. Declarations may also have restrictions on pets, for example, limiting the number of pets permitted in a unit.

Any pet restriction in a declaration is presumed to be valid, whether or not it is reasonable. A prohibition of 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, the assets of the Corporation or other units.

Below are some examples of reasonable pet restrictions that can be incorporated in the rules:

- weight or size restrictions
- pets deemed by the board or the manager to be a nuisance, a potential danger to the occupants or breeds prohibited by municipal or provincial laws

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- prohibition on leaving pets unattended on patios, balconies or exclusive use common elements
 - maximum number of pets allowed per unit
 - 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 pet prohibitions or restrictions in the declaration and any restrictions 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 all pet-related provisions in the declaration or 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.

Subsection 117(2) of the Condominium Act, 1998 provides that no person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation or continuation of, (a) unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation; or (b) any other prescribed nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation.

Examples of what may constitute nuisance includes:

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



Subsection 117(1) of the Condominium Act, provides that no person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual. This would prohibit dangerous pets.

Examples of dangerous pets include:

- 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 condo 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.

Enforcement measures include:

- Putting the owner(s) (and tenant(s), if the unit is tenanted) on notice of the infractions via letters from the Corporation
- Sending legal letter(s) to owners (and tenant(s), if the unit is tenanted)
- Meeting with the owner, if such meeting is appropriate, to discuss the infractions

The Condominium Authority Tribunal

If the above-noted enforcement steps are ineffective, the Corporation should consider bringing an application before the Condominium Authority Tribunal (“CAT”). Pursuant to the Ontario Regulation 179/17 made under the Condominium Act, 1998 disputes pertaining to pets or other animals (as it relates to nuisances) must proceed before CAT.

CAT has the exclusive jurisdiction to deal with pet or other animal disputes (as they relate to nuisances). CAT can order a variety of remedies, including requiring the pet-owner to comply with the Corporation’s governing documents or the removal of the pet or other animal from the Corporation’s property.

Common Responses by Non-Compliant Pet Owners to Enforcement Proceedings

Enforcement may be challenging. 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 allegations
- Accusations that the board and management are engaging in an unfounded personal vendetta
- Soliciting neighbours for letters of support or signatures on a petition
- Proposing amendment to declaration or rules
- Hiding the pet during inspections and taking the stairs instead of the elevator
- Advising that their real estate agent said it was fine
- Alleging that the pet is a service animal or emotional support animal



Condominium corporations should always consider taking reasonable enforcement steps, rather than engaging in heavy-handed enforcement – especially given the sometimes sensitive nature and personal bonds between pet-owners and their pets. Providing pet-owners reasonable opportunities for compliance typically yields in more favourable outcomes if enforcement does lead to a CAT application (of in the rare instance that the matter involves dangerous activities, a Court application).

EXCEPTIONS TO ENFORCEMENT

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

Grandparenting

Grandparenting allows an owner to maintain a pet that may otherwise be in contravention of the declaration or rules. There are two main situations where grandparenting 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;
- where the Corporation wishes to enforce the pet provisions in its declaration and/or rules that were not previously being enforced.

In these situations, a failure to grandparent existing pets may result in owners bringing an oppression application against the Corporation, alleging that the Corporation has acted unfairly or prejudicially. While each case has to be determined on its own facts, in such circumstances the Corporation should consult its legal counsel to determine whether refusing to grandparent a pet may expose the Corporation to potential liability.



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

A grandparenting agreement should include the following provisions:

- That the agreement is personal to the owner/resident at the time of the grandparenting, rather than to the unit itself. Therefore, a subsequent owner or resident would not receive the benefit of the grandparenting agreement;
- When the grandparented pet dies, it cannot be replaced with a pet not in compliance. For example, 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 after the existing dog passes. The owner would then be bound by the new rules; and
- Explicit language as to what the repercussions are if the owner breaches the agreement.

Human Rights

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 resident with a disability that requires a service animal or emotional support/therapy animal will be able to keep such animal even if their animal would otherwise be prohibited by the declaration or rules.

When presented with a request to accommodate a resident with a service animal and/or a support/therapy animal, the board should:

- request a letter from the resident's acting physician in Ontario and/or another an acceptable medical professional that, at a minimum, supports the position that: (i) without disclosing any disability or diagnosis, the resident suffers from a disability protected under the Human Rights Code; and (ii) the pet is necessary to treat the individual's disability.
- The letter does not and should not reveal any personal medical information about the individual, including the nature of the disability – unless the requester discloses it or permits their medical professional to disclose it. In other words, the Corporation cannot request or demand that the individual disclose their disability or disabilities. 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. However, such discussions require the approval of the requesting individual prior to the Corporation reaching out directly to the medical professional.



If the disability is obvious and apparent, then the Corporation may not need to ask for medical information. However, where the disability may not be permanent or visibly apparent, the board may be able to request additional letters on an ongoing basis to confirm that the pet continues to be necessary. The Corporation may be required to pay for the letter to meet its obligation to accommodate.

If accommodation is provided, the accommodated individual may be asked to enter into an accommodation agreement with respect to their emotional support/therapy or service animal that would otherwise be in contravention of the Corporation's governing documents.

The right to accommodation is not absolute. Corporations are only required to accommodate individuals up to the point of undue hardship. If an emotional support/therapy or service animal is continually causing a nuisance or is deemed dangerous, the Corporation may take enforcement steps against the accommodated individual.

Some examples that may constitute undue hardship:

- Excessive Noise or Disturbances;
- Structural Limitations;
- Health and Safety Risks; and
- Continuing to permit a pet to urinate/defecate on the common elements.



AMENDING THE DECLARATION AND RULES

To amend a pet prohibition or restriction in the declaration, the written consent of the owners of 80% of the units must be obtained. Before taking any steps to do so, the board should consider sending a survey to the unit owners to determine if there is an appetite for change.

The board can make new rules relating to pets by sending rules out in a package to owners with a proposed date for the rules to become effective (at least 30 days from the notice). If owners do not requisition a meeting, the rules become effective on the date proposed in the package. If owners requisition a meeting, the rules are only effective the earlier of: (i) the time at which a quorum is not present at the first attempt to hold the meeting; or (ii) the time at which quorum is present at the first attempt to hold the meeting and the owners do not vote against the rules at the meeting.

Owners may also wish to repeal or amend a rule, by requisitioning a meeting for this purpose at any time, in accordance with the requirements of the Condominium Act, 1998. Once the requisitioned meeting is held, the rules can be changed only if the proposed change is approved by a majority of votes cast either in person or by proxy.

STATUS CERTIFICATES

New condo purchasers are bound by all pet restrictions or prohibitions even if they were not aware of the provisions 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 thoroughly review the condo documents before purchasing their unit, the status certificate will typically be reviewed by their lawyer.

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

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