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OUR CONDO EXPERTISE

A DIRECTOR'S GUIDE TO PETS IN CONDOS

A GUIDE FOR BOARD MEMBERS
AND MANAGERS

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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 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
- 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.

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.

Common Responses by Non-Compliant Pet Owners to Enforcement Proceedings

Enforcement may be challenging. As pet owners are very loyal to their pets, most noncompliant 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



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 exempted 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 resident with a disability.

Exempted or Legacy Pets

Permitting legacy pets allows an owner to maintain a pet that may otherwise be in contravention of the declaration or rules. There are two main situations where exempted or legacy pets 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 now wishes to enforce the declaration or rules that were not previously being enforced.

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

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

An exemption agreement should include the following provisions:

- That the agreement is personal to the owner/resident at the time of the grandfathering, rather than to the unit itself. Therefore, a subsequent owner or resident would not receive the benefit of the exemption 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

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 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 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. The letter does not need to reveal the specific diagnosis. 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 and need for accommodation is obvious and apparent, then the Corporation should not ask for medical information. However, where the disability may not be permanent, the board may be able to request additional letters on an ongoing basis to confirm that the service/therapy animal continues to be necessary. The Corporation may be required to pay for the letter to meet its obligation to accommodate.

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 (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 the time at which a quorum is not present at the first attempt to hold the meeting and 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. 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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