

Managing property properly



KEEPING PETS IN COMPLEXES

It is never surprising to me that the keeping of animals, reptiles and birds is the first rule in the model “Conduct Rules of a Sectional Title Scheme”. In the new legislation, the “Sectional Title Schemes Management Act 8 of 2011”, which became effective in October 2016, this rule has retained its number one spot. In my experience, this is justified by the number of pet-related disputes in the industry, and the amount of time, energy and legal fees that pet owners and bodies corporate are prepared to spend in fighting cases involving either retaining or removing a pet. In my personal capacity, I would undoubtedly fall into the former category. Anyone attempting to remove my two miniature schnauzers from me would be met with the strongest opposition, both physically and legally. However, I do not reside in a sectional title scheme. The moment that you do, there will be certain rules to be read together with the Act mentioned above which you, as an owner in such a scheme, will have to abide by.

If your sectional title scheme falls under the new “Annexure 2 Model Conduct Rules”, then owners or occupiers must have trustees’ written consent to keep a pet. The trustees are not allowed to unreasonably withhold consent. What does that mean? It means that they must put their minds to the various circumstances surrounding the request; they need to consider the best interests of the scheme, and the prejudice, if any, that owners would suffer, compared to the interests of the prospective pet owner.

Should a beloved, quiet bulldog be removed from his 11-year-old companion, for example, if the parents of the child provide a psychiatrist’s report stating that the dog helps the child deal with his anxiety? Or, consider the case of an elderly Great Dane, whose owners assure the trustees that their pet hardly ever moves during the day, and has forgotten how to bark. These are the type of issues with which the trustees must grapple. Should they decide to allow a pet into the scheme, the model rules also tell us that they will be allowed to provide for any reasonable condition regarding the keeping of the pet. The trustees can withdraw their consent should any conditions which they imposed be breached.

The new “Rule 1(2)” says that trustees’ consent is considered a given should any owner require a guide dog, hearing dog or assistance dog. Obviously, the owner of such dog must provide the

trustees with evidence of a disability. Interestingly, there has been an increase in diabetic alert dogs, which are dogs that are trained to alert their diabetic owners in advance of low or high blood sugar events before they become dangerous.

Once you have permission for a pet in your townhouse, you must understand your reciprocal obligation. Apart from the various conditions which the trustees will apply - for example, always walking dogs on leashes and having a poop scoop at the ready - the Act stipulates that pets should not cause any inconvenience to other owners. Section 13(d) and (e) set out the “Duties of Owners”, stating that: “An owner must use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment thereof by other owners or other persons lawfully on the premises, and must not use his or her section or exclusive use area, or permit it to be used in a manner or for a purpose which may cause a nuisance to any occupier of a section.”

If owners want a pet free complex, it is perfectly possible to draft a “no pets” clause in your rules, if the body corporate (meaning all the owners), can achieve a special resolution. This means that you must have a quorum, and then 75 percent of those present must vote for the rule amendment, both in number and value. What must the quorum be? In terms of the new Act, where there are four units or more in a scheme, the quorum is constituted by the attendance of members entitled to vote holding one third of the total votes in value, i.e. participation quota.

If an owner is breaching the rules and the Act by either keeping a pet without permission or having a nuisance of a pet, the body corporate can obtain a Court interdict to compel removal, or enter a private arbitration where both parties agree to this forum, or the dispute can be referred to the Community Schemes Ombud Service.

Clearly the pets policy is the most emotive issue in sectional title, and one requiring consistent application and implementation.

Source: M Constat BBM Law Director

Footnote from Compeg:

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