



## PETS AND STRATA DISPUTES

### The Rights of Companion Animals and the Strata Disputes Regarding their Ownership

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#### Strata Disputes Involving The Keeping of Animals

Undoubtedly, living within a strata scheme can give rise to stresses and difficulties rarely encountered by the resident of a detached dwelling. Disagreements and disputes sometimes arise and often these are associated with the keeping of an animal.

Provided the strata scheme has a registered by-law in force regarding the keeping of animals, which includes a clause to the effect that an owner's corporation must not unreasonably withhold approval of the keeping of an animal on a lot or the common property, the ultimate approval, or rejection, of a pet application does not rest with the owner's corporation or its managing agents.

#### Let's start with two all-important tips

a. The first step in seeking to keep an animal must be a detailed written submission to the owner's corporation. The composition of this submission may spell the difference between success and failure. Either first up or as part of any subsequent dispute resolution. For example, an application to keep a puppy is unlikely to find favour. The simple fact of the matter is that puppies, like small children, cry. It is perhaps best not to propose a dog which is less than 12 months of age. For some reason desexed females are often looked upon more kindly than male dogs.

Talk with the Animal Welfare Service about the breeds of dog most suitable for unit living. Obviously, it will favour a small breed. An owner's corporation seeks to be assured that a dog which is going to cry and bark is not being brought into the building. Give an assurance that the animal will not be allowed to foul common property and to this end will be carried through and upon common property. The owner's corporation may wish to know for what periods the animal, particularly a dog, will be left alone in the unit.

When the pet is a cat, state that it will not be allowed to sit at open windows or on balcony ledges as they have been known to fall from such places. Explain the sanitary way you will dispose of soiled litter. Tell them you will always take the cat in and out of the building in a carry case.

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Remember, you are out to make it as difficult as possible for an owner's corporation to deny your application. This document can be so important that it is conceivably worthwhile seeking experienced assistance in its preparation.

And;

b. Never attempt to 'sneak' an animal into a strata scheme. Never bring an animal upon the strata parcel without prior written approval. Both of these practices can do irreparable damage to the ultimate success of your application. Also, such action can provide an owner's corporation with an additional avenue for legal action.

## **Committed to a philosophy**

The Office of Fair Trading, which administers the Strata Schemes Management Act, 1996 is committed to the philosophy that tolerance, understanding of others and communication are essential to harmonious strata living. The Act sets out a process for resolving disputes. This includes mediation, conciliation and formal order by the Strata Schemes Adjudicator and the Consumer, Trades and Tenancy Tribunal.

Natural justice requires significant discussion of an application to keep an animal and resolution must be the subject of a properly convened meeting of the owner's corporation or its Executive Committee. A decision is not the prerogative of an individual committee member or a managing agent. If the owner's corporation refuses Suppose every attempt to resolve the dispute about keeping say a small dog or a cat failed and by resolution the application has been rejected. Where does the road lead from there?

You must try mediation through the Strata Schemes & Mediation Services Branch of the Office of Fair Trading.

Mediation is a structured negotiation process in which a neutral and independent mediator assists parties in dispute to achieve their own resolution. It gives all parties the opportunity to explain their situation. Mediation also does not need to involve other people concerned with the strata scheme who are not a party to the dispute. Also participants do not have to find themselves alone in a strange place as they may have support persons, experienced in mediation (and this need not be a solicitor), at their side. Any agreement reached through the mediation process is put in writing and signed by all parties. Currently a fee of \$56 must be paid by the applicant for mediation.

Where mediation fails the matter can be taken to an Adjudicator. Applications to an Adjudicator are dealt with in the office and the people in dispute do not have to appear before anyone. A well prepared application is central. The Adjudicator looks at the application and all submissions, as well as decisions made in similar cases. The decision as to whether the animal may be kept or not and the reasons for that decision, are made in writing.

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## Unhappy with an Adjudicator's decision?

An appeal can be made to the Consumer, Traders and Tenancy Tribunal within 21 Days of the order coming into effect. This needs to be put together with some care.

The application lodgement will cost \$56. The appeal will be one of a number of applications listed at the same time before the Tribunal.

Again, in the spirit of harmonious living, the Tribunal must first try to help parties reach a settlement. This is called conciliation. At some hearings the Tribunal provides conciliators who assist parties with their negotiations.

If an agreement is reached, a formal order is made. If an agreement is not reached, the application will be heard.

A Tribunal Member presides at the hearing. The Tribunal Member will direct the discussion. Both parties will be able to present evidence and ask questions of each other. Witnesses may be called to support or refute arguments. The Tribunal Member may require that the evidence be sworn or affirmed. After both parties have given their evidence the Tribunal Member will make a decision and give reasons. Sometimes the decision is reserved and the decision and reasons are sent out later. Once again, participants do not have to be alone in unfamiliar surroundings as they may have support persons, experienced in Tribunal procedures (again this need not be a solicitor), at their side.

## Hopeful of Success

My experience indicates that, when a by-law states that an owner's corporation 'must not unreasonably withhold approval of the keeping of an animal'; it is not acceptable for the corporation to then reject an application simply on the basis that it 'wishes to keep the strata scheme free of animals'. In such circumstances there is every reason to be optimistic that the ultimate outcome will be successful.

I have not commented on the pecuniary penalties that may be applied when an Order is breached but rather to review, in general outline, the dispute resolution procedures available.

Encouragingly, I believe there prevails, throughout the dispute resolution system, a requirement that best endeavours must be made to bring the parties to a settlement acceptable to them all. However, at the end of the day, if settlement is not possible, a final order will be made. Nevertheless, when this happens there is solid foundation to think that at least you, the loving pet owner, are in with a chance.

Questions are welcome.

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