

Tips & Traps Dealing With Pets

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One of the most difficult issues that homeowner associations and association management companies must deal with is the issue of pets. For many, their pet (be it a cat, a dog or something else) is like a family member. Rules and regulations relating to pets (such as limitations on the number and types of pets, weight restrictions, nuisance barking, and pet waste cleanup guidelines) can provoke a strong emotional reaction from pet owners. Fortunately for associations and their management, the law provides some clear guidance about the "do's" and "don'ts" for common pet-related issues. The purpose of this article is to summarize the pertinent legal standards related to pet-related rules and restrictions faced by homeowner associations.

Pet Prohibitions. In a remark that will go down in infamy for pet owners, the U.S. Supreme Court many years ago observed that government bodies may be entitled to ban pets altogether. While many local government bodies have imposed restrictions on pet ownership, including measures such as "dangerous dog" laws and the like, none have been so bold as to ban pets altogether, which could run up against the constitution. But homeowner associations, which are private entities, have the capability, the legal ability, and latitude to do so if they wish. A "no pets" policy would generally not be politically appealing, but it is probably lawful.

Grandparent Gaffes. While they can ban pets if they wish, homeowner associations have run into problems when they make gaffes regarding existing pet ownership. Measures that proscribe, or impose restrictions on pet ownership probably cannot be applied retroactively. Residents who lawfully have pets on the premises could assert breach of contract and other legal claims if the association changes a pre-existing right regarding pet ownership. The concept of "grandparenting" generally protects individuals against a retroactive change in their property rights, and it could be invoked to challenge any ban or restriction on pre-existing pets.

Disability Dilemmas. Another limitation on the authority of associations to proscribe pets concerns the disabled. Under a number of federal and state laws, including the Fair Housing Act and the Americans with Disabilities Act, along with their state and local counterparts, have been interpreted to bar homeowner associations from limiting pet ownership for people who need them for legitimate disabilities. Therefore, traditional service dogs, like Seeing Eye dogs, cannot be proscribed. In Minnesota, the courts have ruled that individuals with mental or emotional disabilities who need pets to shore up their psyches, are covered by the disability laws and, therefore, are entitled to maintain pets, even if an association has a "no pet" policy. In one notable case, a grieving widower was awarded more than \$160,000 by a jury against a homeowner association that barred him from owning a pet that was medically prescribed for him to quell his grief after his wife's death.

Size Matters. If they pay attention to these limitations, homeowner associations can proscribe, or restrict pet ownership. One of the most common ways to do so is by limiting the number or size. By size limitation, either on the animals themselves or the number that can be kept within a household. Courts around the country have reached different results on pet limitation laws enacted by government bodies, but in Minnesota, courts have upheld the unlimited authority of government entities to limit the number of dogs, cats, and other pets within a household. If they can do so, assuredly homeowner associations can do likewise. Alternatively, they can enact measures that restrict

the size or weight of animals, usually directed to dogs.

Other Issues. Some pet-related issues arise in the context of more general restrictions, such as excessive noise violations (from "nuisance barking," for example) or a homeowner's failure to clean up his or her pet's waste from common areas. While a homeowner's association has the discretion to enforce its covenants or rules related to noise violations or common area cleanup, care must be taken to enforce the covenants and rules against all homeowners and not to single out pet-owning homeowners for penalty, in order to avoid claims of selective enforcement or discrimination.

Even-handed Enforcement. While they have broad, but not unfettered, discretion in enacting and imposing pet-related restrictions, homeowner associations often run into trouble when they do not enforce their restrictions even-handedly. Claims of discrimination abound when homeowner associations are inconsistent in enforcing pet-related restrictions. On the other hand, associations do not need flexibility in addressing particular circumstances. Therefore, it is prudent to have waiver policies as part of any pet-related protocols, which gives association boards the needed latitude in addressing exceptional or unique situations without undermining the basic principle of even-handed enforcement.

Dealing with the multitude of people who populate communal living facilities poses ongoing problems for those who run or manage those places. Dealing with those problems can be compounded when dealing with pets. Homeowner associations need to be careful in enacting and enforcing pet-related restrictions in order to avoid being inundated by a blizzard of legal claims raining down on them like cats and dogs. ■

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