

Faux “Paws” of Condominium Living: Pet Restrictions and Prohibitions in Condominiums

By Amy Crystal

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Condominium living is a unique form of community living that combines the concept of private property ownership with shared common facilities. Unit owners are subject to (and bound by) the provisions of the Condominium Act, 1998, as well as by the obligations and restrictions contained in the declaration, by-laws and rules of the condominium corporation. Although most residents accept the limitations that come with condominium living, there are always some residents who refuse to abide by the governing documents – especially when it comes to pets. Many condominium corporations in Ontario restrict the number or type of pets that are permitted within the units and common elements of the condominium, while others prohibit pets altogether. Provisions regarding pet ownership vary between condominiums, but can invariably be found in the declaration or rules of a particular condominium corporation.

MAKING PET PROVISIONS IN THE DECLARATION OR IN THE RULES

For condominium corporations that are interested in instituting a completely pet-free environment, amending the declaration is the preferable method because it would likely be valid and enforceable (subject to its compliance with human rights legislation). However, section 107 of the Condominium Act stipulates that making this change would require the written consent of at least eighty per cent of unit owners, which can be difficult to achieve. Condominium corporations that successfully amend their declarations to incorporate a pet prohibition typically also include a grandfathering provision, which means that any pets that have been living in the condominium before the new prohibition was enacted may continue to live there.

Many condominium corporations may prefer the ease of making or amending a rule. Pursuant to subsection 58(1) of the Condominium Act, a board of directors may make, amend or repeal rules governing the use of the units and the common elements of the condominium corporation to: (a) promote the safety, security or wel-

fare of the owners and of the property and the assets, if any, of the corporation; or (b) to prevent unreasonable interference with the use and enjoyment of the units, the common elements or the assets, if any, of the corporation. In accordance with subsection 58(2), all rules must be reasonable and cannot be inconsistent with the Declaration or with the Condominium Act. Examples of reasonable pet restrictions that can be incorporated in the rules of a condominium corporation include:

- certain weight or size restrictions
- maximum number of pets per unit
- prohibition on nuisance pets or exotic pets
- a requirement that all pets must be kept on a leash or carried while in the common elements of the condominium.

Each condominium corporation will have to determine what rules will be appropriate in the circumstances for its unit owners and residents. It is clear, however, that a blanket prohibition on pets contained in the rules of the condominium (as opposed to in the Declaration) would be considered too broad or intrusive, and would therefore be unenforceable.

INTERACTION BETWEEN THE CONDOMINIUM ACT AND THE RESIDENTIAL TENANCIES ACT

The *Residential Tenancies Act, 2006* prevents the prohibition of pets in a residential lease, but this legislation does not supersede the provisions of the *Condominium Act*. Tenants (and their guests) must comply with all pet-related prohibitions or restrictions contained in the Declaration or rules of the condominium. Simply put, a tenant cannot have greater rights or entitlements than a unit owner with respect to the ownership of pets.

If a unit owner or a tenant does not comply with any of the condominium corporation's governing documents, the condominium corporation (or another unit owner or occupier of a unit) may apply to the Superior Court of Justice, pursuant to section 134 of the *Condominium Act*, for an order enforcing compliance. Additionally, a

landlord may apply to the Landlord and Tenant Board to evict a tenant who has a pet in contravention of the Declaration or rules of the condominium.

THE ONTARIO HUMAN RIGHTS CODE

Any provision purporting to restrict or prohibit the keeping of pets (whether included in the Declaration or the rules of a condominium corporation) is subject to valid and legitimate human rights considerations. Subsection 2(1) of the Ontario *Human Rights Code* indicates that every person has a right to equal treatment with respect to the occupancy of accommodations, without discrimination because of disability. Condominium corporations have a positive duty to accommodate those residents who have a disability (recognized by the Code) to the point of undue hardship (which may include considerations such as significant health and safety risks to other unit owners or excessive costs).

When presented with a request to accommodate a resident by permitting the resident to keep a service or support/therapy animal, the condominium corporation will typically be entitled to request that the resident provide a letter from a medical professional stating that the animal is necessary to address the resident's disability-related needs. However, any requests for such information should be limited to what is absolutely necessary for the corporation to adequately assess the required accommodation. If the disability is obvious and apparent, the corporation should not ask for medical information. Condominium corporations should consult with their legal counsel early in the accommodation process to ensure that they are in compliance with the Code.



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