



YOUR BELOVED PET ... CONSIDERED BY OTHERS AS PESTS

Article by Elmo Stuart, EY Stuart Inc.

THE FACTS

1. Some owners within a Scheme are keeping dogs and cats.
2. The Trustees have notified some of these pet owners that their pets are causing a nuisance and demanded, in writing, that these pets must be removed from the property within 14 (fourteen) days.
3. The aggrieved pet owners indicated that:
 - 3.1 they have been keeping their pets for many years and will not adhere to the demand;
 - 3.2 they dispute the allegations concerning nuisance caused by their pets;
 - 3.3 they are targeted and that not all pet owners have received letters of demand.

THE QUESTIONS

1. *What are the rights of the Trustees to enforce rules and demand removal?*
2. *What are the rights of the pet owners?*

BASIC PRINCIPLES TO CONSIDER

1. What does the Scheme Rules stipulate? Does the Prescribed Rules apply, which rules stipulate that pets may be kept subject to Trustee approval and reasonable conditions imposed, or is there a total prohibition against keeping of pets?
2. Rules must be enforced equally upon members of a Body Corporate.
3. The Trustees cannot act contrary to the rules.
4. Each matter must be considered on its own merit and any alleged nuisance must be proved.

CONCLUSION

1. Assuming that the Prescribed Conduct Rules apply, which allow for the keeping of pets subject to Trustee approval:
 - 1.1 The Trustees can demand the removal of pets where the rule has not been complied with, i.e. application for the keeping of the pet and approval. The Trustees can demand removal of the pet and enforce the rule;

If approval was granted and the pet causes a nuisance, then the Trustees can demand that the nuisance must cease, failing which they can demand the removal of the pet and enforce the rule.
2. Assuming that there is a total prohibition against the keeping of pets in terms of the rules:
 - 2.1 The Trustees have an obligation to enforce the rules and demand the removal of the pets;
 - 2.2 The rules must be enforced equally upon all members.
3. Pet owners can only enforce their rights to keep pets in accordance with the prevailing rules and where they are allowed to keep pets, they must keep pets subject to any conditions imposed and their pets may not cause a nuisance to other members or residents of the Body Corporate.
4. The Trustees must enforce rules and can only act in terms of the rules. If the rules allow for the keeping of pets and if the need is expressed by members to prohibit the keeping of pets, then the Conduct Rules will have to be amended.
5. Any amendment will have to take into consideration the existing rights of members who keep pets, which rights will have to be preserved within the amended rules until the pet (or pets) in question, dies.
6. To enforce the rules, the Trustees can apply for an appropriate order to the High Court or apply to CSOS for appropriate relief.

--- The End of the Article ---

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Publisher : NAMA | Contact person : Lizbé Venter | lizbe@nama.org.za | www.nama.org.za

