

## **BODY CORPORATE LEGAL NEWSLETTER - UPDATE** **IS A COMMITTEE PERMITTED TO ENFORCE A “NO PETS” POLICY?**

A recent decision of the Commissioner has a radical effect on decisions and forms of By-laws dealing with pets, and in fact, other restrictions. We therefore comment on its application.

The “Body Corporate” is the collective group of lot owners in a community titles scheme (“Scheme”). A Scheme comprises of owners’ lots and common property. The Committee is appointed by the Body Corporate to perform certain tasks and to act in the best interests of the Body Corporate.

The Body Corporate and Community Management Act (“Act”) provides that the Body Corporate can make by-laws (or rules), which are binding on all lot owners and occupiers. Such by-laws may provide for the regulation of the use and enjoyment of the common property and lots in the Scheme. There are a number of limitations placed on the scope of the by-laws.

It is usual for Bodies Corporate to be subject to a by-law prohibiting the keeping of a pet in their lot or the common property without Committee approval. In some Schemes, it is also not unusual for there to be complete ban on all domestic animals.

All Bodies Corporate and Committee’s must keep in mind the following rules when deciding to adopt a by-law or grant or refuse permission to a lot occupier to keep a pet in their lot or bring the same onto the common property:

- a by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the Scheme and the use of the common property for the Scheme;
- the Body Corporate (and its Committee) must act reasonably in deciding whether to give or refuse approval, and must act reasonably in enforcing its by-laws.

By creating a requirement against “unreasonableness” the law now brings into play an objective requirement which is open to interpretation...ie what is reasonable.

A recent example of a Body Corporate and a Committee acting “unreasonably” can be seen in the statement of adjudicator’s reasons for decision ref 0161-2010 Isle of Palms Resort [2010] QBCCMCmr 200 (30 April 2010). In this application, a lot owner applied to the Adjudicator to seek an order that the current by-law restricting pets on the Scheme was void, and seek that his Maltese Terrier be allowed to be kept at the Scheme.

The Body Corporate, in general meeting, voted to change the relevant by-law, from:

“ An occupier of a lot must not, without the body corporate’s written approval:

- bring or keep an animal on the lot or common property; or
- permit an invitee to bring or keep an animal on the lot or common property”

to:

“The owner or occupier of a lot is not permitted to keep an animal within the lot or on common property or to permit an invitee to bring or keep an animal on a lot or common property.”

The Adjudicator considered the new by-law to be unreasonable and oppressive, on the basis that it unduly restricted use of a lot by preventing an owner from even keeping a goldfish in their home. The Adjudicator also considered that given the nature of the Scheme in question (being a Scheme covering a large area of land consisting of low-rise villas rather than hi-rise apartments), it was “reasonable” in the circumstances to permit a pet to be kept on the Scheme.

The Committee had previously refused the lot owner to keep the Maltese Terrier at the Scheme, on the basis that the Committee was enforcing a strict “no pets” policy as covered in the new bylaw. The Adjudicator considered that the Committee should have assessed each individual application for permission to keep a pet on its merits, rather than enforcing its strict policy. The Committee’s previous actions were therefore considered unreasonable.

An order was made permitting the Maltese Terrier to remain at the Scheme, on the following conditions:

- the dog must be kept on a lead when on the common property and must not be taken into recreational areas;
- the owner must clean up the dog’s waste and repair any damage caused by the dog;
- the dog must not cause a nuisance to other occupiers at the Scheme or unreasonably interfere with the enjoyment of any other lot by the respective occupier;
- upon the death of the dog, no replacement is permitted without the express written consent of the Committee first being obtained.

The decision outlines that all Bodies Corporate must take a reasonable and non oppressive, common sense approach to the drafting of their by-laws, taking into account the particular characteristics of the Scheme and the likelihood of animals affecting the use and enjoyment of lots and the common property by other occupiers.

Naturally, Committee’s will over time adopt a “selection criteria” whether it is contained in the by-law or otherwise. When considering a request to grant consent, Committee’s should act objectively and reasonably and base each case on its merits, rather than taking a literal approach to the interpretation of such criteria. Areas of concern to all Bodies Corporate will be the potential for nuisance, any damage that may occur to the common property, the areas of the Scheme which the pet is permitted to access, supervision of the pet and general cleanliness, behaviour and hygiene.

Short Punch and Greatorix Lawyers are experienced in the drafting of by-laws, and in commencing and defending Body Corporate claims through the Body Corporate Commissioner’s Office, the Queensland Civil and Administrative Tribunal and the Courts.

Should you require any advice regarding the updating of current by-laws, or the bringing or defending of any claim, please do not hesitate to contact either John Punch or Matthew Brook by phone - (5570 9325) or email- [mib@spglawyers.com.au](mailto:mib@spglawyers.com.au).