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NEW STRATA LAWS REGARDING PETS: THE TRAP FOR YOUNG PLAYERS

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NEW STRATA LAWS REGARDING PETS: THE TRAP FOR YOUNG PLAYERS

On 25 August 2021, new strata laws commenced which changed the rules regarding pet ownership in strata buildings. Those rules mark a shift in the NSW Government's policy concerning pets in strata buildings and encourage pets in strata. But the new rules create traps for young players that can have unintended consequences for those unfamiliar with them. In this article, we take a closer look at the new laws regulating pet ownership in strata buildings and the pitfalls associated with them.

An Overview

On 25 August 2021, section 137B of the *Strata Schemes Management Act 2015* commenced. Under this section, a by-law prohibiting pets, or a decision by an owners corporation under a by-law to prohibit the keeping of a pet, has no force or effect if it would unreasonably prohibit the keeping of a pet. The section says that it is taken to be reasonable to keep a pet unless keeping the pet unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or common property. This means that any owners corporation that bans a pet must be able to demonstrate that the pet unreasonably interferes with another occupant's use and enjoyment of his or her lot or the common property.

What is Unreasonable Interference?

Clause 36A of the *Strata Schemes Management Regulation 2016* sets out the circumstances in which keeping an animal unreasonably interferes with another occupant's use and enjoyment of his or her lot or the common property. Under that clause, an animal is deemed to unreasonably interfere with another occupant's use and enjoyment of his or her lot or the common property if the animal:

- (a) makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant;
- (b) the animal repeatedly runs at or chases another person or attacks or otherwise menaces another person;
- (c) the animal repeatedly causes damage to the building;
- (d) the animal endangers the health of another occupant through infection or infestation or causes a persistent offensive odour that penetrates another lot or common property;
- (e) for a cat or a dog – the pet owner fails to comply with an order under the *Companion Animals Act 1998* or the dog is declared to be a menacing or dangerous dog or is a restricted dog under that Act.

Demonstrating Unreasonable Interference

The circumstances in which an animal will be deemed to unreasonably interfere with another occupant's use and enjoyment of his or her lot or common property are primarily directed to an animal that is already living in a strata building. This will make it difficult for an owners corporation to reject an application that is made by a pet owner for permission to keep the pet under a by-law when the pet is not already living in the building. In those circumstances, how can the owners corporation demonstrate that the animal will unreasonably interfere with another occupant's use and enjoyment of his or her lot or common property, for example, because the animal makes too much noise, repeatedly runs at or chases people or causes damage to the building?

The Sting in the Tail

Section 137B says that an owners corporation is taken to have given permission for the keeping of an animal on a lot if it makes a decision under a by-law that would unreasonably prohibit the keeping of the animal on the lot. This means that if an owners corporation rejects a pet application, or requires a pet owner to remove a pet from the building, under a by-law, in contravention of section 137B, the decision will have the opposite effect. The decision will be taken to give permission for the pet owner to keep the animal in the building! Further, if an owners corporation receives a pet application and fails to make a decision regarding that application within a reasonable time, section 137B also says that the owners corporation will be taken to have given permission for the keeping of the pet. Consequently, these new laws create traps for young players. They mean that if an owners corporation makes a decision under a pets by-law that unreasonably prohibits the keeping of an animal, the decision will have the opposite effect, and actually be taken to confer permission on the pet owner to keep the animal in the building.

Why is this a Problem?

There are many owners corporations that have recently moved away from "no pets" by-laws and have introduced by-laws regulating pets. Those by-laws typically require an owner or occupier to seek the permission of the owners corporation to keep a pet before bringing a pet into the building. Whilst most of those by-laws make clear that the owners corporation cannot unreasonably withhold its approval of the keeping of a pet, many of those by-laws deem it to be reasonable for the owners corporation to reject a pet application if the application relates to:

- (a) keeping more than one pet;
- (b) keeping a certain type of animal such as a dog;
- (c) keeping a medium or large sized dog.

Any owners corporation that relies on provisions of that type in a pets by-law to reject a pet application will likely fall into a trap and unintentionally make a decision that has no force or effect and instead actually confers permission for the pet owner to keep the animal in the building under section 137B.

Conclusion

The new strata laws dealing with pets favour pet ownership in strata buildings. The new laws make it difficult for owners corporations to rely on or make decisions under by-laws that prohibit pets to retain “pet free” buildings. The new laws also are likely to have unintended consequences for owners corporations that unreasonably prohibit the keeping of pets. Those owners corporations will unwittingly be taken to have given permission for pets to be kept in their building. The take away from the new laws is that pet applications need to be carefully considered by owners corporations to ensure they are dealt with properly and reasonably and not in a way that has unintended consequences. The new laws also require owners corporations to carefully consider the terms of their pets by-laws, and to make appropriate amendments to them, in the light of the pitfalls we have highlighted.

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

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