

the premises does not equal disallowing a dog.” The high court saw it differently.

The appellate court found the restriction in the declaration, which provided for “no pets whatsoever” (except for fish and birds) to be unambiguous. The reviewing court, without citing any rationale, went on to state: “The fact that cats are different from dogs makes no difference. What does matter is that a cat nor a dog is a fish or a bird, so both should be prohibited.” Thus, in the court’s eyes, the association was guilty of selective enforcement.

This case is at odds with the previous position of the state’s condo arbitration department. The department has recently announced that it will now review future selective enforcement defenses in pet cases in light of the appellate court’s mandate.

So if it looks like a dog, walks like a dog, barks like a dog, and bites like a dog, it just might be a cat.

Now on to reader mail.

QUESTION: Our condominium documents state that regular amendments to the condominium documents require a “sixty-six and two-thirds percent vote” for passage. Our question is whether this is two-thirds of those present at a meeting, or two-thirds of all the units. B.B. (via e-mail)

ANSWER: Depending upon the exact language used in the documents, the result could be quite different. The language you have cited implies that two-thirds of all voting interests (there is typically one voting interest per unit) would need to approve any amendment. I am aware of one local case, which went all the way to an appeals court, where similar language was found to require two-thirds of all voting interests for approval. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

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