



Condominium Law Q&A

June 25, 2007

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Question – I live in a planned development governed by a homeowner association. The bylaws say that pets are allowed, but that the animal cannot be more than 20 lbs. at maturity. The rule has never been enforced. Many of the owners filled out an application when they were going to buy which stated the type and size of their pet (which was over 20 lbs), and they were approved. Others got dogs bigger than 20 lbs after they moved in and received permission from the president of the board for the dog. Many of the dogs have been living here for 5+ years with no problem. Now, the board (which does not include the president who gave permission) is sending out a letter saying all dogs over 20 lbs must be gone in 30 days. The question is, can they get rid of the dogs who have been living here for more than 5 years (this was the time when the president who was giving the permission left the board). M.G.C., W.P.B.

Answer – While the courts have upheld “no pet” restrictions, including those which restrict pets by size and weight, a defense to the enforcement of covenants, conditions and restrictions and/or rules and regulations is selective enforcement, and/or “laches” and “estoppel.” The latter two relate to timeliness of enforcement or waiver by action. The statute of limitations for covenant enforcement is 5 years. However, if it can be shown that the presence of the pet was known to the board, which approved same, subsequent boards will be hard pressed to enforce the restriction. Waived covenants, conditions and restrictions can be reinstated through re-publication of the covenant, so long as it will only

be applied prospectively. For example, the board can state in writing, “effective January 1, 2008, no new dogs will be allowed.” “Those in residence can stay, but cannot be replaced when they die.” Of course, there is an exception for trained service animals required by handicapped unit owners. Such pets must be allowed under the “accommodation” provision of the Fair Housing Act.

Question – I live in a co-operative apartment complex; a proprietary lease sets forth our ownership rights. Our lease and by-laws stipulate that no pets are allowed. This lease also contains a special paragraph that states the following: “I am in possession of the rules and by-laws and have read and understand it.” At our last annual meeting, however, one of our most recent owners requested a change in our by-laws in regards to pet ownership in our building. She implied that, if the rules were not changed, she would produce a doctor’s certificate that requires her to have a dog for medical reasons. The reason she gives is that her husband of 18 years passed away, causing her mental anguish. Why should a single owner be entitled to force her problems on the other owners? Is a doctor’s certificate all that is needed to override our lease and by-laws? H.H., Fort Lauderdale.

Answer – Several years ago, I authored an article titled, “Prescription Pets; The New Miracle Drug.” In it, I advised that, in the aftermath of an amendment to the Federal Fair Housing Act in 1988, requiring community associations to make accommodations in rules, policies, practices or

services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas, I had seen a proliferation of doctors' letters prescribing pets as being a necessity for treating every conceivable ailment, from depression to arthritis. While it is a no brainer that accommodations are required when a trained service animal is involved, the law is less clear when the symptoms are more abstract. Now,

add to the mix a situation I recently advised my readers about involving two competing interests, a unit owner suffering from depression, where a doctor has prescribed a pet, and a unit owner who purposely chose to live in a pet free building due to allergies. Nearly 10 years after the law was first enacted, the cases are still all over the board on the question of when must a pet be accommodated.

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