

Managing property properly

Withdrawal of permission to keep pets in sectional title schemes

In this article we will deal with how trustees may withdraw their consent, and how the pet may be legally removed from the scheme.

Prescribed Conduct Rule (“PCR”) 1 deals with the keeping of pets, and states:

“1. Keeping of animals reptiles and birds

1. (1) The owner or occupier of a section must not, without the trustees’ written consent, which must not be unreasonably withheld, keep an animal, reptile or bird in a section or on the common property.

(2) An owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the trustees’ consent to keep that animal in a section and to accompany it on the common property.

(3) The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a section or on the common property.

(4) The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3).

In the same way that trustees need to take care when it comes to considering an application by an owner or occupier to keep pets, the trustees must take special care when they withdraw their consent in circumstances where the owner has breached the conditions.

Where an owner breaches any of the reasonable conditions imposed by the trustees in granting their consent, the trustees can withdraw their consent. The trustees can only withdraw their permission if it is reasonable to do so. It would be reasonable if:

- the conditions are not being met (for example an owner keeps four dogs instead of two);
- the pet is causing a nuisance to other owners or occupiers (for example where a dog is barking persistently); or
- the pet is considered dangerous to other owners or occupiers (for example where the dog bites another dog or child).

If the condition is breached the trustees can, after ensuring that they are aware of all the relevant circumstances and issues, and have given the owner or occupier a reasonable opportunity to put forward their case, withdraw their approval. Whether or not there was a breach must be decided based on natural justice. The owner must be given:

- notice of the breach;
- an opportunity to remedy the situation;
- a hearing where evidence is given;
- the trustees' decision must be decided by majority vote;
- the trustees' decision must be minuted;
- the owner must be given written notice of the withdrawal of consent; and
- the pet owner must be given a reasonable time to remove the pet.

In principle, where the trustees have reasonably, after following due process, withdrawn their consent to keep a pet the person concerned is then not entitled to continue keeping that pet in the scheme. However, the enforcement of this is not so simple for the trustees. The body corporate is not entitled to forcibly remove a pet from a person's possession.

The trustees have to obtain an adjudication order for the removal of the pet from the Community Schemes Ombud Service ("the CSOS"). In terms of section 38 of the CSOS Act it is possible that any person may make an application to the CSOS if such person is a party to or affected materially by a dispute. The Body Corporate can therefore make an application to the CSOS to declare a dispute against the owner who has kept their pet in the scheme despite the trustees having withdrawn their permission.

An application must be made in the prescribed manner and as may be required by practice directives; lodged with an ombud; and accompanied by the prescribed application fee.

The application must include statements setting out:

- the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39 of the CSOS Act;
- the name and address of each person the applicant considers to be affected materially by the application; and
- the grounds on which the relief is sought.

The appropriate prayer for relief is contained in section 39(2)(b) and/or (c) in the Community Schemes Ombud Service Act 9 of 2011, which states that:

"An application made in terms of section 38 must include one or more of the following orders: In respect of behavioural issues

(b) if satisfied that an animal kept in a private area or on common areas is causing a nuisance or a hazard or is unduly interfering with someone else's peaceful use and enjoyment of his or her private area or common area, an order requiring the owner or occupier in charge of the animal-

- (i) to take specified action to remedy the nuisance, hazard or interference; or
- (ii) to remove the animal;
- (c) an order declaring that an animal is being kept in a community scheme contrary to the scheme governance documentation, and requiring the owner or occupier in charge of the animal to remove it.”

The trustees can also get the assistance from the local SPCA. If, for example, there are too many dogs being kept in an inadequate space, the trustees can approach the local SPCA, who can be contacted to come to do an inspection at the scheme. If it is justified they will implement legal process to have the dogs removed.

It is unlikely that any action by the trustees to remove a “service animal”, such as a seeing-eye dog owned by a blind or partially sighted occupier, would be held to be reasonable in the absence of a clear nuisance caused by the animal.