

## *Managing property properly*

### Permission to Keep Pets

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Three of the most contentious issues that arise in sectional title schemes are parking, people and **pets!** **Trustees** need to take care when it comes to considering an application by an owner or occupier to keep pets. **Prescribed conduct rule 1 (PCR) in Annexure 9 of the sectional Titles Regulations** deals with the keeping of pets and states:

#### “Animals, reptiles and birds”

- (1) An owner or occupier of a section shall not, without the consent in writing of the trustees, which approval may not unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property.
- (2) When granting such approval, the trustees may prescribe any reasonable condition.
- (3) The trustees may **withdraw** such approval in the event of any breach of any condition prescribed in terms of **sub-rule (2)**

The **purpose of such a rule is** to avoid nuisance caused to other residents. This consideration, in granting or refusing consent, will be central to inquiry: will it **unreasonably interfere** with other’s rights to use and enjoy their units, and **what conditions would appropriate** in these circumstances to ensure that the risk of nuisance is reduced to a reasonable level?

Therefore owners or occupiers can only keep pets in a section or on any part of the common property with the **written consent of the trustees**. The trustees cannot unreasonably withhold that permission. An **absolute prohibition** to keep a pet could be considered unreasonable. The trustees should carefully consider any application for permission, and should discuss and consider the issue at a trustees meeting. Trustees are obliged to **individually consider each request** for permission to keep a pet. They must base their decision on the facts and circumstances of the particular case. The resolution to either grant or refuse consent should be recorded in the minutes of their meeting, giving reasons that illustrates that they have applied their minds to the particular application. If consent is unreasonably withheld the owner can go to court.

In Body Corporate of **the Laguna Ridge Scheme No 152/1987 vs Dorse 1999 (2) SA 512 (D)** it was held that the trustees are obliged to individually consider each request for permission to keep a pet and to base their decision on the facts and circumstances of the particular case. They are not entitled to refuse and application on the basis that they are afraid of creating a precedent. **The trustees were, in this case, found have been grossly unreasonable** and held to have failed to apply their minds when they refused a lady permission to keep a small dog.

The question of the reasonable mess of the actions of the trustees, in the withholding of permission and setting conditions, will turn on the nature of the pet concerned and the circumstances of scheme, In dealing with any application for permission to keep a pet the **trustees should consider what type of pet it is and whether there are already other similar pets at the scheme**. It is unlikely that any action by the trustees to remove a “companion animal” or “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. The fact that people sometimes form extremely strong emotional ties with their pet could also be an important consideration when the trustees decide whether or not to give permission.

The trustees must give any permission to an owner or occupier **in writing** and it must be signed by two trustees in compliance with **PMR 27**. The text should include a **description of each pet set out any conditions imposed**. The consent should be conditional that the pet owner agrees in writing to

conditions. The pet should not be allowed in scheme until body corporate in possession of a written confirmation of that agreement signed by the owner.

The trustees should **prescribe reasonable conditions** on the permission to keep a pet **PCR 1(2)**. The trustees should look to see if the **local by-laws contain any restrictions as to the number of dogs allowed per square meter**. This could offer **guidance** when deciding whether it is reasonable or not to grant permission. There should be restrictions on the number and size of pets allowed, taking into consideration the particular circumstance of the owner's garden. A reasonable condition could include a restriction on the owner to not let his or her dogs escape onto the common property. It could be stated that the dogs are only allowed on the common property if they are supervised and on leashes. The application for permission should be for a specific pet. A **pet register** (which identifies the pet and the applicable conditions set) should be kept so as to avoid situations were it is disputed that permission was granted or not.



The **trustees can withdraw permission** if it is reasonable to do so. It would be reasonable if the conditions are not being met; the pet is causing a nuisance to other owners or occupiers (e.g. barking persistently); or the pet is considered **dangerous** to other owners or occupiers. 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; and the trustees' decision must be minuted**. The pet owner must be given 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 could be tricky for the trustees. The body corporate is not entitled to forcibly remove a pet from a person's possession. This can only be achieved by an order of court. If, for example, there are too many dogs being kept in an inadequate space the trustees can **get the assistance from the local SPCA** who can be contacted to come to the scheme to do an inspection in loco. **If it is justified they will implement legal process to have the dogs removed.**

In those schemes where the rule is amended to prohibit pets, a **“grandfathering clause”** may be inserted to cater for existing pets, providing that existing pet may be kept but that when they die, they may not be replaced.