

Condo Q&A - Pet Rules and Enforcement

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Practice Area: Community Associations

Q: Our Board of Directors wants to make a rule outlawing pets. A Board rule is so much easier than a declaration or bylaw amendment. Is this legal?

Sincerely, On the Board, But Friend of Bow Wow.

A: Dear "Friend,"

We have reservations about a Board-passed rule outlawing pets. Though Wisconsin condominium law is not clear on this, we think court decisions and logic suggest that a new total pet restriction requires a bylaw or declaration amendment, not a simple rule. Here is why:

Outlawing pets is a substantial change in the lives of owners and how they use their homes. Substantial changes are generally permissible, but they should be endorsed by a super-majority of all the owners, not just by a majority of the Board. The Board has the power to run the association, but that power probably does not extend to significantly changing the life-style options of the owners.

On the other hand, a Board rule that addresses pet hygiene, noise, and leash requirements seems perfectly acceptable. The difference is that here, the Board accepts the provision of the declaration and bylaws allowing pets and simply "fine-tunes" them for the health and safety of all.

The line between an acceptable rule amendment and a required bylaw/declaration amendment is not always clear. But the more substantial the change, or the more impact the change will have on the lives of owners, the more likely it is that their consent is required by a super-majority vote.

Enforcement.

While we are on the subject of rules, here is a suggestion that may be of value to your Association.

Wisconsin condominium law charges the Board with the duty to enforce the governing documents for the benefit of all owners. Given that the Board has this duty, it must have the tools to discharge the duty.

One effective tool, before hiring the lawyer, is a simple and clearly stated rule assessing fines for violations of the documents. The governing documents for most condominiums allow the Board to implement a rule on fines and enforcement procedures.

Wisconsin condominium statutes recognize fines as a legitimate tool, and even declare that such fines are assessments. Meaning, if a fine is not paid, it becomes a lien on the condominium unit.

Sometimes fine provisions are poorly written and we are asked to re-write them. Here are problems we regularly encounter ... and fix.

- Multiple levels of fines, with escalating amounts. Accounting in such scenarios is difficult and there are better solutions.
- Lack of a simple and quick appeal procedure.
- Failure to shift the cost of attorney fees to the violating unit owner.

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