



NSW YOUNG LAWYERS FACT SHEET

# COMPANION ANIMALS AND APARTMENTS

**This fact sheet has been prepared by the NSW Young Lawyers Animal Law Committee for general information only. It does not constitute legal advice. This information is up to date as at June 2020 and applies to NSW, Australia.**

## Glossary

*By-laws* – A set of rules in a Strata Scheme that must be followed by owners, occupiers, tenants, and in some cases, visitors. By-laws can be made about the use of common property and the behaviour of residents.

*Company title scheme* – A scheme where a company owns the title to the land with the owners of the lots or units having a right to reside in the apartment by virtue of their shareholding in the company. .

*NSW Civil and Administrative Tribunal* – The one-stop-shop for specialist tribunal services in NSW. They help to resolve disputes about tenancies, Strata Schemes, and a range of other issues.

*Owners Corporation* – The legal entity that includes all the Lot owners in a strata scheme. Lot owners become automatic members of the Owners Corporation upon registration of their ownership of the Lot.

*Residential tenancy agreement* – A lease agreement between a tenant and a property owner granting the tenant a right of occupation of residential premises.

*Strata Scheme* – A building or collection of buildings divided into separate apartments, townhouses or houses that are referred to as 'Lots'.

## Introduction

In many Australian homes, companion animals (pets) are important members of the household. If you live in a residential tenancy or a Strata Scheme, however, there may be requirements or restrictions relating to keeping animals. In a Strata Scheme, you should also check if the Strata Scheme is part of a Community Scheme. Community Schemes have separate by-laws that may also affect keeping animals.

If you live in a building of units that is under a company title scheme, the information below will not apply to your situation. Instead, you will need to check the constitution of the company or other "House Rules" made by the owners in the building to see what it says about pets. House Rules are rules made by the owners of the building concerning issues relevant to the building but are not by-laws and are not enforceable. If the company was registered before 1998, it may be necessary to check the memorandum and articles of association of the company.

## Strata schemes

### **I want to bring a pet into a strata title property that I own. What should I do?**

The by-laws of each Strata Scheme usually contain rules about the keeping of animals, but these can vary in effect. It is therefore very important to obtain a copy of the full by-laws, including any changes made to the by-laws specific to your Strata Scheme to determine whether you can keep certain pets. The by-laws can be obtained from the Property Strata Manager or

via a search of the common property title from NSW Land Registry Services. From 1 September 2017<sup>1</sup> a contract for the sale of a residential property in a Strata Scheme must include copies of all the by-laws in force for the Strata Scheme.

Often, prior written approval from the Owners Corporation is required before keeping any animal (other than a fish in a secure aquarium). Prior written approval from the Owners Corporation is advisable, even when by-laws do not mention the subject of keeping animals. A letter describing the animal/s (including breed, size, age and appearance) should be provided, together with (if relevant):

- 1) details of any obedience training the pet has undergone; and
- 2) confirmation that the pet is registered, micro-chipped, de-sexed, vaccinated, and treated for fleas and worms.

It may be worthwhile searching the strata records to determine whether there are any other lot owners or occupiers (past or present) who have kept pets in the property.

A notification of the decision made by the Owners Corporation should be received within a reasonable period of time. Once approval has been granted, a copy of the resolution passed in favour of keeping the pet should be obtained, together with a letter from the Owners Corporation confirming the approval.

The *Strata Schemes Management Regulation 2016* encourages the adoption of a by-law that permits the keeping of pets by providing the following options in its model by-laws:<sup>2</sup>

- 1) an owner or occupier must give the Owners Corporation notice of their intention to bring a pet into the schemed building or complex; or
- 2) an owner or occupier must seek the Owners Corporation consent to the bringing of a pet into the schemed building or complex, but that consent must not be unreasonably withheld.

However, schemes are not bound to adopt either of these by-laws and may retain or make a by-law that prohibits the keeping of pets.

If you believe that an Owners Corporation has unreasonably withheld its consent to the keeping of an animal in a Strata Scheme, and you have been unable to talk through the issue with members of the Owners Corporation on an informal basis, the *Strata Schemes Management Act 2015 (NSW)* sets out avenues of mediation, adjudication and appeal to the NSW Civil and Administrative Tribunal (“NCAT”).

## What if I am renting in a Strata Scheme?

If you plan to rent in a Strata Scheme, your landlord should provide you with a copy of the lease and the by-laws. Depending on these documents, your landlord may have to obtain consent from the Owners Corporation for you to keep a pet at the property. However, it is important to note that your landlord has the right to refuse the keeping of pets on their property, regardless of what the by-laws may state. Therefore, you will need to seek the consent of your landlord, the Owners Corporation and possibly the Community Scheme (if this applies). If granted, ensure your lease contains a written condition allowing pets.

## What are the responsibilities of pet owners in strata properties?

If an owner or occupier does not agree with the strata by-laws, they can propose an amendment to the by-laws. You should speak to your Property Strata Manager about this. If you propose an amendment and it is refused for a reason that you think is unreasonable, you could approach the NCAT to try and resolve the issue. You may want to obtain specific legal advice about this.

Assistance animals, however, are permitted to be kept at all times.<sup>3</sup> The Courts and tribunals have taken a broad approach to the interpretation of legislation governing the keeping of assistance animals.<sup>4</sup>

Owners must ensure pets do not become a nuisance to other residents in the Strata Scheme. Owners should ensure pets are:

- 1) adequately house trained;
- 2) socialised around people and other animals; and
- 3) restrained appropriately when on common property.

Some Strata Schemes may require pet owners to carry their pets while they are on common property.

If pets become a nuisance, any lot owner/occupier within the Strata Scheme or the Owners Corporation itself can apply for an order to have the pet removed. Issues which must be immediately addressed include:

- 1) excessive noise;
- 2) defecating on or damaging common property; and
- 3) other anti-social behaviours.

1 *Conveyancing (Sale of Land) Regulation 2017*, Schedule 1.

2 *Strata Schemes Management Regulation 2016*, Schedule 3.

3 *Anti-Discrimination Act 1977 (NSW)* ss 49B(3) and 49N, herein referred to as *ADA*.

4 *The Owners of Strata Plan 56117 v Drexler* [2013] NSWDC 67.

If it is considered that your pet is either causing a nuisance or causing injury to persons or damage to common property, then the Owners Corporation, the Strata Property Manager or your landlord (if applicable), may apply to a Tribunal for an order that you address the problem, or that your pet be removed from the strata scheme.

### What might happen if I keep a pet in a strata building without consent?

If the Owners Corporation thinks that you are keeping a pet in your lot without consent, it may serve a notice on you, requiring you to comply with the relevant by-law regarding the keeping of pets or apply for a formal order seeking the removal of the pet. If you fail to comply with the notice, the Owners Corporation can apply for an order from the NCAT for a fine of up to \$1,100.<sup>5</sup>

Harsher penalties (in some cases up to \$5,500) may apply in cases of contraventions of a Tribunal order, or repeated non-compliance with the by-laws.<sup>6</sup>

## Residential tenancies

### I signed a lease agreement allowing pets. My landlord has now changed their mind. What do I do?

The *Residential Tenancies Act 2010* (NSW) (“RTA”) sets out the legal rights and responsibilities of landlords and tenants, but is largely silent on keeping pets in rental properties. It is therefore important to check that pets are permitted before entering into a lease. Under a Standard Form Agreement,<sup>7</sup> a tenant must obtain the landlord’s consent before keeping a pet. However, the relevant clause may also provide a list of pets that the landlord pre-agrees the tenant can keep. Alternatively, the clause allowing pets may be struck out completely. It is therefore important to carefully review the terms of your own residential tenancy agreement. Landlords cannot, however, prevent tenants from keeping assistance animals such as guide dogs.<sup>8</sup>

If the keeping of pets is included in the residential tenancy agreement, the NCAT may order a remedy if the landlord attempts to breach the agreement, or claims that the tenant is in breach of the agreement.<sup>9</sup>

### What could a landlord do if a tenant’s pet becomes a nuisance?

Tenants must not damage or allow damage to be caused to the rental property.<sup>10</sup> They are also prohibited from causing a nuisance,<sup>11</sup> which is an unlawful interference with another person’s use or enjoyment of their property. For example, tenants must ensure that pets are not excessively noisy or smelly. In such instances, a tenant may be in breach of the residential tenancy agreement, and the landlord can issue a termination notice to end the agreement in 14 days.<sup>12</sup> The NCAT may refuse the termination order if satisfied that the tenant resolved the issues associated with the animal.<sup>13</sup> However, if steps have not been taken to rectify the issues, the NCAT can order the tenant to pay damages and/or compensation, take steps to remedy the breach, and/or order the tenant’s eviction.<sup>14</sup>

## Useful resources

- NSW Fair Trading – visit <https://www.fairtrading.nsw.gov.au/housing-and-property>
- NSW Civil & Administrative Tribunal – call 1300 006 228 – visit [https://www.ncat.nsw.gov.au/Pages/contact\\_ncat.aspx](https://www.ncat.nsw.gov.au/Pages/contact_ncat.aspx)
- Tenants’ Union of NSW – visit <https://www.tenants.org.au/>

5 *Strata Schemes Management Act 2015* (NSW) s 146.

6 *Strata Schemes Management Act 1996* (NSW) ss 202 and 204.

7 Prescribed by the *Residential Tenancies Regulation 2019* (NSW) Sch 1.

8 *ADA* ss 49B(3) and 49N.

9 *RTA* ss 187 and 190.

10 *RTA* s 51(1)(d).

11 *RTA* s 51(1)(b).

12 *RTA* s 87.

13 *RTA* s 87(6).

14 *RTA* s 187.