

UPDATE ON PETS IN NSW STRATA BUILDINGS

Fundamentals

- An owners corporation in NSW cannot stop an occupier from having a pet in their unit, as long as it does not disturb other residents;
- However, tenants need permission from their landlord to own a pet. A landlord can refuse to allow a tenant to have a pet. Also, a landlord does not need to give a reason why. However, landlords cannot ask tenants to pay a pet deposit and they can't charge a higher amount of rental bond for a tenant to keep a pet;
- Depending on the scheme by-laws, an occupier may need to tell the owners corporation before a pet is brought into the complex, as owners corporations can create their own rules for pets. It is important to firstly check the scheme's by-laws. However, by-laws banning all pets are not valid and banning animals based on size, type, or quantity, will not be valid in most circumstances; and
- Assistance animals cannot be banned from living in a strata scheme.

Owners Corporation and Pets

An owners corporation in NSW cannot stop a unit occupier from having a pet in their unit, as long as it does not disturb other residents.

In 2020, the Court of Appeal in *Cooper -v- The Owners Corporation – SP 58068* held that a by-law that provided an outright ban on pet ownership was “oppressive” pursuant to section 139(1) of the *Strata Schemes Management Act 2015*, because it interferes with the property rights of a lot owner by controlling or prohibiting a particular use, in circumstances where that use does not materially and adversely affect the enjoyment of another lot.

However, most owners corporations will firstly require the occupier to write to the secretary or strata manager if they have a pet, or want to get one.

It is important to firstly check the scheme's by-laws to see what the process is and what information is needed for approval. It is not unusual for an owners corporation to ask for:

- the pet's name, type, breed, weight and age;
- a photo of the pet;
- the pet's vaccination records and a microchip number (if the pet needs these in NSW).

Rules for keeping pets in strata

An owners corporation can set rules about how occupiers keep their pets while living in strata.

As previously advised, firstly check the scheme's by-laws to see what these rules are.

The by-laws often cover:

- keeping the animal within your property;

- watching the animal when on common property;
- cleaning up after the animal on common property.

Can an owners corporation evict occupiers or their pets?

The owners corporation cannot evict an occupier, but may try to remove the person's pet.

The owners corporation can only remove a pet if it causes 'unreasonable interference' to others, or the pet's behaviour has broken a by-law.

The owners corporation must follow the proper process and give the person a chance to fix the situation, before they attempt to evict a pet.

If an occupier has broken a by-law, the owners corporation must firstly issue a 'notice to comply' – asking the person to stop their pet's behaviour.

If the behaviour continues, the occupier or the owners corporation can contact NSW Fair Trading to seek a (free) mediation.

If the issue is not resolved at mediation, anyone involved in the dispute can then apply to the NCAT to remove the animal.

Can a landlord evict a tenant or the tenant's pet?

In short, yes.

If a landlord has refused permission to have a pet in their unit, or the tenant hasn't asked the landlord for permission to keep the pet, then the tenant may be breaking their rental agreement.

In that case, the landlord may ask the tenant to remove the pet or move out of the property.

Making a complaint about another resident's pet

Obviously, you need to talk to the pet owner first about their pet's offending behaviour. They may not know about it.

Some strata schemes also have an internal dispute process that can be used. Check with your strata committee or strata manager to see if there is one.

If the pet's behaviour has broken a by-law, the owners corporation can issue a notice for the occupier to stop the behaviour. If it is still not resolved, anybody involved in the dispute can apply to the NCAT for an order to remove the animal.

Getting a nuisance order via the local Council

If the owners corporation or strata committee cannot solve the issue, an application can be made to the local council to seek an order against nuisance dogs and cats.

To apply for an order, you need to contact the local council.

Proof of the behaviour, to support the nuisance order, will most likely be required by the council.

If the council chooses to issue the order, the pet owner must comply with the rule in the order.

If they do not, they can be fined by the council.

Assistance Animals

Assistance animals cannot be banned from living in a strata scheme.

An owners corporation can ask an occupier to provide evidence of their assistance animal's status, including:

- accreditation from an assistance animal training body;
- an assistance animal permit issued by Service NSW;
- a signed statement that the animal has been trained to assist a person with a disability and meets acceptable hygiene and behaviour standards.

Owners corporations however should not ask for private medical records as evidence.

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