

BANNERMANS LAWYERS

EBOOK

TOP TEN FAQ'S ON PETS BY-LAWS



ABOUT THE AUTHOR



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David Bannerman is the principal of Bannermans Lawyers, Sydney's leading Strata Law firm, providing specialised legal services for the Strata industry, the Development industry, the Construction industry and the insurance industry.

He is an Accredited Property Law Specialist with the Law Society of New South Wales and has over 15 years extensive experience in all aspects of property law and building litigation.

David has a keen interest in education and training. He demonstrates his commitment by regularly presenting education seminars to lawyers, experts, certifiers and strata managers. Additionally, David is a Director of Strata Community Australia (NSW) and Chairman of the Ethics Committee.

His experience of the industry and in the courts enables him to identify issues and provide solutions at the highest level.



FAQ 1:

Is a by-law that prohibits all pets of 'no force or effect'?

An owners corporation can have a by-law that prohibits all pets in limited circumstances.

FAQ 2:

If a by-law is deemed to be 'no force or effect' by the Tribunal, what happens then?

It depends what the Tribunal orders. It could well be that your existing pets by-law is declared invalid and consequently your strata scheme will not have a by-law governing the keeping of animals.





FAQ 3:



Can you have a by-law that prohibits the keeping of animals in some circumstances?

Yes, in circumstances where the animal would unreasonably interfere with another occupant's use and enjoyment of their lot or the common property. The circumstances where an animal unreasonably interferes with another occupant's use and enjoyment of their lot or the common property are listed in the clause 36A of the Strata Schemes Management Regulation 2016 (NSW). Such circumstances are:

- the animal makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant.
- the animal repeatedly runs at or chases another occupant, a visitor of another occupant or an animal kept by another occupant.
- the animal attacks or otherwise menaces another occupant, a visitor of another occupant or an animal kept by another occupant.
- the animal repeatedly causes damage to the common property or another lot.
- the animal endangers the health of another occupant through infection or infestation.
- the animal causes a persistent offensive odour that penetrates another lot or the common property.
- for a cat kept on a lot—the owner of the animal fails to comply with an order that is in force under the Companion Animals Act 1998, section 31.
- for a dog kept on a lot—
 1. the owner of the animal fails to comply with an order that is in force under the Companion Animals Act 1998, section 32A, or
 2. the animal is declared to be a menacing dog or a dangerous dog under the Companion Animals Act 1998, section 34, or
 3. the animal is a restricted dog within the meaning of the Companion Animals Act 1998, section 55(1).





FAQ 4:



What if somebody is allergic to pets in the building? Is that a valid reason to have a by-law banning all pets?

Allergies are not referred to in the circumstances listed in clause 36A despite being considered by Fair Trading NSW.

FAQ 5:

If an occupant claims they have an 'assistance animal', can an owners corporation ask to see evidence that the animal actually is a certified 'assistance animal'?

Yes. This is a reasonable provision to include in a by-law that occupants who have an 'assistance animal' provide evidence that the animal is duly certified as an 'assistance animal'.





FAQ 6:



I'm in the process of purchasing an apartment. Can I get assurance pet approval will be granted before I buy the property?

Whilst some strata committees are willing to consider applications for pets prior to purchase, in reality, most pet applications are not considered until after settlement. As a result, the best thing you can do is your due diligence.

First, when obtaining the contract for sale, have your solicitor review the by-laws to see if there is a valid pets by-law and if so, what requirements and restrictions does it contain for the keeping of pets.

Secondly, make enquiries with the strata manager (and if possible with a member of the committee) to see if the owners corporation has allowed pets into the strata scheme and if your pet application is likely to be approved.





FAQ 7:

I rent an apartment in strata scheme. My landlord has said that I can have a dog. Do I need to ask the owners corporation?

If you are renting, under your residential tenancy agreement you will likely need consent from your landlord to keep a dog.

In addition, depending on the by-laws for the strata scheme, you will likely require consent from the owners corporation to keep a dog. You should liaise with your strata manager and/or the strata committee to obtain a copy of the registered by-laws and to find out how you can apply for consent.



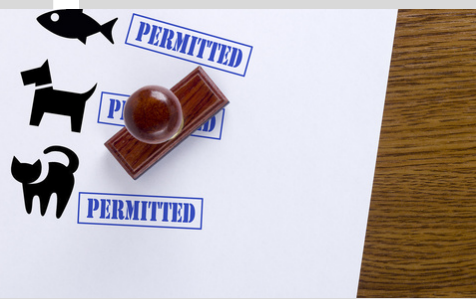


FAQ 8:

Can we make it a condition that occupants that wish to keep pets need to make an application?

Yes. To ensure that there is compliance with certain conditions of a by-law or to ensure that pets will not cause unreasonable interference to the occupants' use and enjoyment of their lots, a by-law can make it a condition that before a pet can be kept on a lot an application needs to be made and approved. The application must not ask questions which are not relevant to the protection of the occupants' use and enjoyment of their lot from unreasonable interference caused by the keeping of an animal.

An owners corporation should be aware that Section 137B(5) of the SSMA states that an application will be considered to be approved if the owners corporation made a decision against the keeping of an animal but its decision to prohibit an animal was unreasonable. Furthermore, the same sub-section states that an owners corporation is said to have approved an animal if it was required to make a decision and did not do so within a reasonable time.





FAQ 9:

What should an owners corporation do if it thinks its pets by-law is invalid due to the new laws?

We suggest that you review your pets by-law to see if it unreasonably prohibits the keeping of pets. A by-law is very likely to be an invalid by-law if it places conditions that are not related to protecting the occupants' use and enjoyment of their lots against unreasonably interference from the keeping of an animal.

In the case that your pets by-law is invalid, your owner corporation will need to make a new pets by-law if it wishes to have a by-law that regulates the keeping of animals.





FAQ 10:

What should we do if we think that our pets by-law is invalid and we need a new pets by-law?

Give our office a call on 02 9929 0226 and we can provide you with advice or draft a new by-law for you.

FAQ 11:

Is the law the same in Strata and Community Schemes in so far as rules around by-laws and permitting and keeping pets?

Yes, the legislation is the same.

Please refer to our previous article [New Laws for Community and Strata Schemes for 2023!](#) There were some provisions that were to commence on proclamation from the Strata Legislation Amendment Act 2023, including the insertion of section 129A of the Community Land Management Act 2021.

This was proclaimed to commence on 1 November 2024.





Time to Review your By-Laws?

**Click the button below to get our contact details
and speak to one of our experts today!**



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