

Keeping
pets in
strata
schemes.

Your
questions
answered.



A PROJECT OF THE
NSW YOUNG LAWYERS
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In many Australian homes, family pets are important members of the household. In fact, more than two-thirds of Australian households include pets and Australia has the highest incidence of pet ownership per household of any country in the world.



It is estimated that one in five people in New South Wales live in a strata scheme. A strata scheme can comprise one building of units or several separate buildings of units or a development comprising two or more townhouses. It is important to note that some buildings of units are company title schemes and this brochure does not apply to those types of schemes.

Keeping animals in residential areas, particularly in a strata scheme, can raise issues such as cleanliness, noise, and unsociable behaviour. This guide has been designed to help tenants, agents and owners understand the laws that apply in NSW for keeping pets in strata schemes.

You do not need Owners Corporation consent to keep a guide dog or hearing dog in a strata scheme.

GLOSSARY

The following is an explanation of some of the common terms used in the *Strata Schemes Management Act 1996* (the "Act"), which is the legislation governing strata schemes in NSW:

By-laws mean the rules governing the day-to-day "housekeeping" of the strata scheme in relation to the behaviour of residents of the scheme and the use of Common Property, for example, parking, garbage disposal and the keeping of pets. Every owner and occupier must comply with the By-laws.

A **Lot** means the individual residence, consisting of the air space within the four walls of what is commonly thought of as an apartment or unit and, if applicable, the car space, garage or storage area. The Lot includes all contents and internal fittings such as carpets, light fittings, blinds, curtains & built-in wardrobes.

Common Property is that part of the land and any building which is not included in any Lot. The external walls, the floors between Lots, the windows and any area which is used by all owners comprise the Common Property. It includes areas such as entrance foyers, stairwells, the roof, any gardens, the swimming pool (if the strata scheme has one), visitors' parking bays and driveways.

Owners Corporation is a legal entity established under the Act. It comprises all the owners of Lots in the strata scheme and is responsible for the management of the scheme. An Owners Corporation was referred to as a Body Corporate under previous strata titles legislation.



CAN I KEEP MY PET IN A STRATA SCHEME?

Whether you can keep your pet in the strata scheme depends on the terms of the By-laws which apply to the scheme.



Which By-laws apply?

An Owners Corporation may register its own By-laws, or it may adopt the Schedule 1 By-laws (for schemes registered prior to 1 July 1997) or the Model By-laws (for schemes registered on or after 1 July 1997). In relation to the keeping of pets in a scheme, the Schedule 1 By-laws are different to the Model By-laws.

The following notes refer to the Schedule 1 By-laws (for schemes registered prior to 1 July 1997) and the Model By-laws (for schemes registered after 1 July 1997).

Regardless of whether the scheme was registered before or after 1 July 1997, the Owners Corporation has the power to amend the By-laws for the strata scheme. It is therefore **very** important to obtain a copy of the By-laws for your strata scheme when considering whether you can keep your pet in the scheme. You should not rely upon the date of registration of the strata scheme when considering this issue.

The Schedule 1 By-laws for schemes registered **before 1 July 1997**, permit you to keep an animal, provided that you have obtained the prior written approval of the Owners Corporation. The approval of the Owners Corporation cannot be unreasonably withheld.

By-law 16 of the Model By-laws for schemes registered **on or after 1 July 1997** contains three possible options in relation to the keeping of animals:

Option A: You must obtain the prior written approval of the Owners Corporation, before keeping any animal, except fish in a secure aquarium, on a Lot or the Common Property. The approval of the Owners Corporation cannot be unreasonably withheld.



Option B: You must obtain the written approval of the Owners Corporation, to keep any animal (except a cat, a small dog or a small caged bird, or fish kept in a secure aquarium) on the Lot or the Common Property.

If you keep a cat, small dog or small caged bird on the Lot then you must:

- (a) notify the Owners Corporation that the animal is being kept on the Lot;
- (b) keep the animal within the Lot;
- (c) carry the animal when it is on the Common Property; and
- (d) take such action as may be necessary to clean all areas of the Lot or the Common Property that are soiled by the animal.

The approval of the Owners Corporation cannot be unreasonably withheld.

Option C: No animals are permitted, with the exception of a guide dog or hearing dog.

If no option is selected, then Option A applies by default.

Some Owners Corporations also make "house rules" to be followed by owners and occupiers. These are not enforceable unless they are registered as By-Laws for the scheme with Land & Property Information New South Wales which is part of the Department of Lands.

What if I plan to rent a Lot in a strata scheme?



Tenants renting in a strata scheme are covered by the provisions of both the *Residential Tenancies Act* and the *Strata Schemes Management Act*.

If you plan to rent in a strata scheme, your landlord or the landlord's real estate agent should provide you with a copy of the lease and the By-Laws pertaining to the strata scheme. That way, you can familiarise yourself with the rules that relate to keeping a pet in the scheme. It is a good idea to obtain a copy of the By-laws before you sign the lease.

Once you have reviewed the By-Laws, you should ask the real estate agent to speak to the landlord of the property on your behalf with regard to keeping your pet.

Depending on the By-laws for the scheme, your landlord

may have to obtain the consent of the Owners Corporation, even if your landlord agrees that you may keep your pet in the rented premises.

You will need to seek your landlord's consent first and ensure that your lease allows you to keep your pet as a written condition. You should not sign the lease until you have been informed by your landlord or the landlord's agent that consent has been granted by both the landlord and the Owners Corporation.

If it is not possible to obtain the written consent of the Owners Corporation prior to signing the lease and taking possession of the strata scheme premises, you should ensure that your lease is made conditional upon the Owners Corporation consent being granted and that you will be permitted to terminate the lease and vacate the premises within a reasonable amount of time, without penalty, if the consent of the Owners Corporation is refused.

In seeking the consent of the landlord, you may also like to:

- invite your landlord to meet your pet;
- offer to pay for any unexpected damage caused by your pet; (note: landlords are not allowed to ask for an additional "pet bond" from a tenant in NSW);
- invite your landlord to inspect the property with the real estate agent every 6 months to ensure your landlord is satisfied the property is being well cared for.

It is important to note that it remains the landlord's right to refuse the keeping of an animal on their property, despite what the By-Laws may state.

What if I plan to buy a strata lot?

If you intend to buy into a strata scheme, and wish to keep a pet, you should check with the Owners Corporation as to the terms of the By-Laws in regards to the keeping of pets in the scheme. You should check any information you receive from the Owners Corporation with your solicitor. If keeping your pet is an important consideration for you, it is very important to make these enquiries *before you enter into a contract for sale*.

OBTAINING OWNERS CORPORATION CONSENT

Whether you are intending to rent or purchase in a strata scheme, you may need to obtain prior written consent from the Owners Corporation in order to keep your pet in the scheme, depending upon the By-laws which apply.

Consent may be sought by writing a letter to the Secretary of the Owners Corporation.

When preparing the letter, the following hints can be useful:

- describe your pet, including his or her size, age, and appearance;
- give details of your pet's disposition – if your pet is docile or friendly, remember to say so;
- if your pet has undergone obedience or other behavioural training, provide details;
- show that you are a responsible pet owner by having proof of registration/micro chipping, desexing and all necessary vaccinations; and
- if you have kept your pet in a strata scheme or other residence previously, include references from your former landlords or neighbours that specifically mention the behaviour of your pet.

(These hints may also be useful in obtaining consent from a proposed landlord).

You can also search the strata records for the property and see if there are other owners or occupiers of the building (current or past) who have kept pets in the scheme. This can provide a persuasive precedent for your request to keep your pet in the scheme.

You should be notified of the decision made by the Owners Corporation within a reasonable period of time.

Once the consent of the Owners Corporation has been obtained, you should request a copy of the resolution and a letter from the Owners Corporation.



WHAT IF CONSENT IS REFUSED?

If you have told the Owners Corporation everything they need to know, and there should be no possible objection to your keeping a pet, then generally the By-Laws of a strata scheme will have the effect that the Owners Corporation must not unreasonably withhold its consent (except for Option C of the Model By-Laws).

You should use common sense in deciding whether consent has been unreasonably withheld by the Owners Corporation. For example, it would be reasonable for consent to be withheld by the Owners Corporation if you asked to keep a large dog or several animals in a small apartment.

If you believe that an Owners Corporation has unreasonably withheld its consent to the keeping of your pet, and you have been unable to talk through the issue with members of the Owners Corporation on an informal basis, you may wish to use one of the dispute resolution mechanisms provided for in the Strata Schemes legislation, which are set out below.

Mediation.

Adjudication.

Appeal to Consumer, Trader and Tenancy Tribunal.



Mediation

If you become involved in a dispute with the Owners Corporation, you must first attempt to resolve it by mediation. A mediation is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute, to achieve their own resolution. All parties must agree to the mediation taking place. They may have legal representation or they can appear in person.

The outcome of the mediation is binding on both parties. The Renting and Strata Services Branch of the Office of Fair Trading provides mediation for a fee which is set by regulation under the Act, although other private mediators are also allowed.

Adjudication



If mediation fails, either party can seek orders from an Adjudicator.

The parties do not appear in person before an Adjudicator. The Adjudicator considers written submissions made by the parties, and makes a decision based on these submissions. All parties will receive a written copy of the decision.

The Adjudicator may, by order, allow you to keep your pet on a Lot or Common Property subject to certain conditions. Before an Adjudicator makes such an order, the Adjudicator must be satisfied that:

- the Owners Corporation has unreasonably withheld its consent to the keeping of the animal; and
- the application to keep the animal is made with the consent of the owner of the Lot (if the applicant is not the owner)

The Adjudicator's order is binding on the owner and any occupier of the Lot.

An Adjudicator may make orders to give effect to any agreement or arrangement arising out of a mediation session.

Appeal to Consumer, Trader and Tenancy Tribunal

If you think that the Adjudicator's decision is unreasonable, you may appeal to the Consumer, Trader and Tenancy Tribunal. The appeal should be made within 21 days of the date of the Adjudicator's order. The Consumer, Trader and Tenancy Tribunal may confirm, vary or revoke the Adjudicator's order or may substitute its own order. When lodging an appeal, you may also request that the order appealed against be stayed. This means that the order will not come into effect until the appeal has been determined.

The Consumer, Trader and Tenancy Tribunal may dismiss the appeal if it believes the matter has been appropriately dealt with by the Adjudicator.

Application forms for mediation, an order from an Adjudicator, or a hearing before the Consumer, Trader and Tenancy Tribunal can be obtained from the Renting and Strata Services Branch or a Fair Trading Centre.

An order from the Consumer, Trader and Tenancy Tribunal may also be appealed to the Supreme Court of NSW, but only in relation to a question of law; or a question of law and fact, or on the ground that the order is not supported by the evidence.

Costs

The Consumer, Trader and Tenancy Tribunal can make an order as to costs. The imposition of a penalty and costs order operate as a judgment under the *Local Courts (Civil Claims) Act 1970*. This means that if you do not pay by the required time, the Court may enable judgment to be enforced by ordering that money owing to you (e.g. wages) be applied to the fine, or it may order that your property be seized. After 21 days of the due date, interest on the fine is payable.

WHAT WILL 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. If you fail to comply with the notice, the Owners Corporation can apply for an order from the Consumer, Trader and Tenancy Tribunal for a fine of up to \$550 to be paid by the owner or occupier of the Lot.

If you do not comply with an order made by an Adjudicator or the Consumer, Trader and Tenancy Tribunal, a penalty of up to \$5,500 may be imposed. The matter may be referred to the Consumer, Trader and Tenancy Tribunal to impose the penalty and award costs to the applicant.

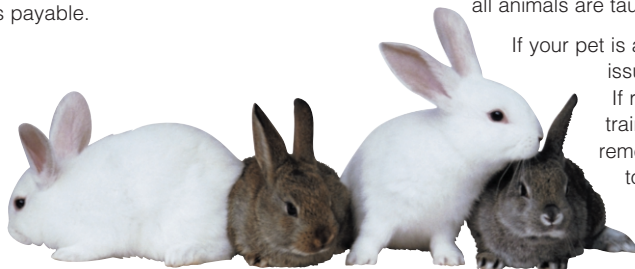
You should remember that Owners Corporation (or its managing agent) can not evict a tenant. Only a landlord or the landlord's agent can end a tenancy, and only with an order from the Residential Tenancies Tribunal.

If consent is granted, what are my responsibilities when keeping a pet in a strata building?

You must ensure that the presence of your pet does not become a nuisance for other residents in the strata scheme. Even though you may have the consent of the landlord and the Owners Corporation, any owner or occupier within the scheme can apply for an order to remove a pet on the grounds that it is causing a nuisance. To minimise the chances of this occurring, you should ensure your pet is house trained, that a dog is kept on a leash when necessary and that all animals are taught appropriate behaviour.

If your pet is a dog, excessive barking is an issue that must be addressed.

If regularly walking or behavioural training of your dog does not remedy this situation, you may need to reconsider the suitability of living in a strata scheme altogether.



If it is considered that your pet is either causing a nuisance or at worst, causing injury to persons or damage to Common Property, then the Owners Corporation, the Strata Managing Agent or your Landlord (if you do not own your Lot), may apply to a Strata Schemes Adjudicator for an order that you address the problem or that your pet be removed from the strata scheme. Of course such a situation may also give persons other rights against you and your pet, under NSW Companion Animals laws. If you are not aware of your obligations under those laws, you should contact your local vet or your local Council for further information.

FURTHER INFORMATION

- Application forms to resolve disputes and publications containing information may be obtained from the **NSW Office of Fair Trading**; website www.fairtrading.nsw.gov.au or the Renting and Strata Services Branch of the NSW Office of Fair Trading on 9338 7900 or 1800 451 431 (outside Sydney).
- **Community Justice Centres** can assist parties in reaching an agreement to resolve a dispute. The NSW Government section of the telephone book contains details of these centres.
- **The NSW Department of Housing Home Purchase Advisory Service** provides information on buying a strata unit – telephone 1800 806 653.
- **The Tenants Union of NSW** is a specialist Community Legal Centre that aims to represent the interests of all tenants in NSW. Its website is located at <http://www.tenants.org.au/> – telephone (02) 9251 6590
- **The Community Relations Commission For a multicultural NSW**, provides translation and interpreting services – telephone 1300 651 500.

New South Wales Young Lawyers (<http://www.younglawyers.com.au>) is a professional organisation and division of the Law Society of New South Wales. It represents lawyers who are under 36 years of age or who have been admitted to practice for less than five years, and law students. All lawyers in New South Wales fitting this description are automatically members of New South Wales Young Lawyers.

This guide is available at <http://arc.younglawyers.com.au>



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