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Community Association Issues with Pets

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Pets give us unconditional love and fill us with happiness and amusement. However, pets can also be the source of covenants violations when their behavior is not monitored or curbed. The purpose of this memo is to discuss some of the common problems associated with pets in community associations and some suggestions on addressing those problems.

As a threshold matter, it is important to note that there may be provisions in your Association's governing documents which specifically address some of these issues, especially for condominium associations. For condominiums, these provisions tend to restrict the number of pets that may be kept in the community, and the type, size and weight of the pets that are allowable. For homeowner associations, the covenants provisions prohibiting noise, nuisances and waste in the common areas tend to be the source of enforcement of pet behavior and conduct. This memo seeks to provide general information and advice, and does not seek to replace provisions in your governing documents.

Noise

Dog barking is one the foremost complaints communities encounter. Excessive and disturbing barking should be treated just like any other noise complaint. There should be sufficient information provided to the Board to determine that a violation may exist and that hearing on the issue is appropriate. Obviously, third party confirmation of the noise, or witness of the noise by Directors would be of assistance in determining the initial validity of the complaint. A hearing should then be conducted to allow the parties to present information to the Board regarding the complaint and whether there is a violation of the Association's governing documents to justify enforcement action.

Waste in Common Area

Pet owners are required to pick up their animal's waste that is deposited in the common areas. Failure to do so can result in the spread of disease to other animals, odor and the impairment of use of the common areas by other members. However, it is often difficult to locate the offending owner who is failing to clean up behind his or her pet. Without reliable eyewitness

information, it would be impossible for the Board to pursue an owner for violating this regulation. As such, we would recommend that the Board remind owners about their obligation to pick up behind their pets and place trash receptacles in areas frequented by pets to assist the owners in fulfilling this responsibility. If you have a chronic offender and solid eyewitness confirmation, the Board may wish to consider scheduling a hearing on the matter, just like other violations.

Dangerous Dogs

If you have a dog residing in the neighborhood that injures other domesticated animals or residents in the community, the Board should seriously review the matter. Last year, the Virginia Legislature passed a law establishing a dangerous dog registry which allows law enforcement to keep track of dogs that have previously been determined to be dangerous dogs. Under the law, dogs that are deemed dangerous (a finding by the court after the dog injures another domesticated animal or a person) or vicious (a dog that kills a person, causes serious impairment to another or has been declared a dangerous dog and continues to exhibit dangerous tendencies) are added to a central state registry by the owner within 45 days of the date of the designation. Accordingly it is important that if the Board receives a complaint about a violent dog in the community, then animal control or the local police should be contacted immediately by the complainant so that possible legal action can be taken with respect to the dog.

Removal of Dog from Community

Most governing documents prohibit owners from creating a nuisance on the property. Clearly dangerous dogs constitute a nuisance and certainly, other dogs may constitute a nuisance in the community in other ways (i.e. barking all night, running loose on the property). The Board may compel the owner to abate the nuisance. If the owner fails to do so within a prescribed period of time, the Board may compel the owner to remove the animal completely from the property. Boards may also be able to pass a policy resolution that dogs on the dangerous dog registry are not permitted in the community. You should contact your attorney to discuss whether this is permissible under your Association's governing documents.

Service Dogs

As a final note, we recommend that the Board be sensitive to complaints about service animals. Fair Housing laws are always implicated when dealing with a service animal, and the Board's enforcement authority maybe limited for special needs animals. If an issue arises with one of these animals, we would strongly recommend that you consult with your attorney prior to taking any action.

If you have questions or would like additional information regarding the regulation of pets within community associations, please contact your attorney to discuss in further.