

Mansfield Tanick & Cohen P.A.

ATTORNEYS AT LAW

Articles

Tips & Traps Dealing with Pets in Homeowners Associations

By Marshall H. Tanick & Jeffrey C. O'Brien, Attorneys at Law

One of the most difficult issues which homeowners associations and association management companies must deal with is the issue of pets. For many, their pet (be it a cat, a dog or something else) is like a family member, and rules and regulations relating to pets (such as limitations on the number and types of pets, weight restrictions, nuisance barking and pet waste cleanup guidelines) can provoke a strong emotional reaction from homeowners who own them. Fortunately for associations and their management, the law provides some clear guidance as to "dos" and "don'ts" relating to common pet-related issues. The purpose of this article is to summarize the pertinent legal standards related to pet-related rules and restrictions faced by homeowner's associations.

- **Pet Prohibitions.** In a remark that will go down in infamy for pet owners, many years ago the U.S. Supreme Court observed that government bodies may be entitled to ban pets altogether. While many local units of government bodies have imposed restrictions on pet ownership, including measures such as "dangerous dog" laws and the like, none has been so bold as to ban pets altogether, which could run up against the constitution. But homeowner's associations, private entities, have the capability, legal ability and latitude to do so if they wish. A "no pets" policy would generally not be politically appealing, but it is probably lawful.
- **Grandparent Gaffes.** While they can, if they wish, ban pets, homeowner associations have run into problems when they make gaffes regarding existing pet ownership. Measures that proscribe, or impose restrictions, on pet ownership, probably cannot be applied retroactively. Residents who lawfully have pets on the premises could assert breach of contract and other legal claims if the association changes pre-existing right regarding pet ownership. The concept of "grandparenting" generally protects individuals against a retroactive change in their property rights, and it could be invoked to challenge any ban, or restriction on pre-existing pets.
- **Disability Dilemmas.** Another limitation on the authority of associations to proscribe pets concerns the disabled. Under a number of Federal and state laws, including the Fair Housing Act and the Americans with Disabilities Act, along with their state and local counterparts, have been interpreted to bar homeowner associations from limiting pet ownership for people who need them for legitimate disabilities. Therefore, traditional service dogs, like Seeing Eye dogs, cannot be proscribed. In Minnesota, the courts have ruled that individuals with mental or emotional disabilities who need pets to shore up their psyches, are covered by the disability laws and, therefore, are entitled to maintain pets, even if an association has a "no pet" policy. In one notable case, a grieving widower was awarded more than \$160,000 by a jury against a homeowner's association that barred him from owning a pet that was medically prescribed for him to quell his grief after his wife's death.
- **Size Matters.** If they pay attention to these limitations, homeowner associations can proscribe, or restrict pet ownership. One of the most common ways to do so is by limiting the number or size. By size limitation, either on the animals themselves or the number that can be kept within a household. Courts around the country have reached different results on pet limitation laws enacted by government bodies, but in Minnesota, courts have upheld the unlimited authority of government entities to limit the number of dogs, cats, and other pets within a household. If they can do so, assuredly homeowner associations can do likewise. Alternatively, they can enact measures that restrict the size or weight of animals, usually directed to dogs.
- **Other Issues.** Some pet-related issues arise in the context of more general restrictions, such as excessive noise violations (from "nuisance barking", for example) or a homeowner's failure to clean up his or her pet's waste from common areas. While a homeowner's association has the discretion to enforce its covenants or rules related to noise violations or common

area cleanup, care must be taken to enforce the covenants and rules against all homeowners and not to single out pet-owning homeowners for penalty, in order to avoid claims of selective enforcement and/or discrimination.

- **Even-handed Enforcement.** While they have broad, but not unfettered, discretion in enacting and imposing pet-related restrictions, homeowner associations often run into trouble when they do not enforce their restrictions even-handedly. Claims of discrimination abound when homeowner associations are inconsistent in enforcing pet-related restrictions. On the other hand, associations do not need flexibility in addressing particular circumstances. Therefore, it is prudent to have waiver policies as part of any pet-related protocols, which gives association boards the needed latitude in addressing exceptional or unique situations without undermining the basic principle of even-handed enforcement.

Dealing with the multitude of people who populate communal living facilities poses ongoing problems for those who run or manage those places. Dealing with those problems can be compounded when dealing with pets. Homeowner associations need to be careful in enacting and enforcing pet-related restrictions in order to avoid being inundated by a blizzard of legal claims raining down on them like cats and dogs.

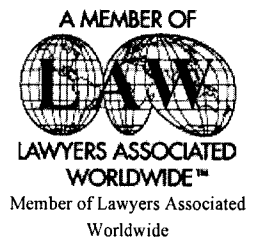
Marshall H. Tanick and Jeffrey C. O'Brien are attorneys with the law firm of MANSFIELD, TANICK & COHEN, P.A. in Minneapolis-St. Paul, Minnesota. Mr. Tanick has extensive experience in representing clients on a wide array of pet-related legal issues. Mr. O'Brien practices in the areas of business and real estate law and represents condominium developers and associations. They can each be reached at (612) 339-4295.

This article originally appeared in the Fall 2007 edition of CIC Midwest News, the newsletter of CIC Midwest. It is reproduced in eWatch with permission.

Mansfield, Tanick & Cohen, P.A.
Attorneys at Law

1700 U.S. Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402

Phone: 612.339.4295
Fax: 612.339.3161



**Serving our clients' needs with over 100
law firms in over 50 countries**

Mansfield, Tanick & Cohen, P.A. is a diversified Twin Cities law firm serving clients in Minnesota, the Upper Midwest and nationwide. With offices in downtown Minneapolis, St. Paul, and St. Louis Park, our statewide coverage includes Edina, Bloomington, Eden Prairie, Minnetonka, Eagan, Woodbury, Maplewood, Maple Grove, Brooklyn Park, Anoka, White Bear Lake, Stillwater, St. Cloud, Rochester, Mankato, Duluth, and Hennepin County, Ramsey County, Dakota, Scott, Washington, Anoka, Wright, and Carver counties.

© 2009 by Mansfield, Tanick and Cohen, P.A. All rights reserved. [Disclaimer](#) | [Site Map](#)