

Interesting Questions on the Davis-Stirling Act – Pets

By: Kelly G. Richardson

Do you have a pet or not? The California Legislature has determined what a “pet” is, at least for common interest development (CID) homeowners. Under Civil Code section 1360.5 an association may not completely ban “pets,” and must allow one “pet.” Subsection (b) defines “pet” as: “any domesticated bird, cat, dog, aquatic animal kept within an aquarium, or other animal as agreed to between the association and the homeowner.” The statute has led to some very interesting CID positions and questions since it became effective in 2001.

The law applies to governing documents entered into, amended, or otherwise modified on or after January 1, 2001. Under Civil Code Section 1351(j) the term “governing documents” includes CC&R’s, bylaws, rules and articles of incorporation. In order to try to cling to a longstanding “no pets” policy, some associations have refused to make any changes to their governing documents. This is now problematic, since the law since 2006 requires associations to adopt election rules (so, holdout HOA’s, which would you prefer . . . no doggies or legal elections?). Therefore, this strategy, if it ever was a good idea, is clearly not one today.

Another area of dispute relates to whether an association can prohibit certain dogs. Some lawyers argue that an association can ban, for example, Rottweilers, or a certain weight of dog under the statute’s allowance of “reasonable rules and regulations” concerning pets. However, the statute says a “pet” is “any . . . dog . . .” If the word “any” means what it says, then a Saint Bernard is as protected as a Chihuahua. As an owner of small dogs I know my pooches can be as much a nuisance as large ones, so discriminating against larger breeds is also unnecessary. Besides, which director will be willing to weigh your neighbor’s Fido when he gets a little pudgy (the dog, not the director)?

What pets are protected in CID’s? Note not which pets are included, but the various normal (and quiet) household pets which are excluded: Rabbits, hamsters, rats, mice, reptiles, gerbils, and guinea pigs are all not “pets” under the Davis-Stirling Act. They must be negotiated on a case-by-case basis with the Board, so as to fall under the “other animal as agreed to” category. If you are one of those aggressive directors or managers wishing to strictly enforce your pet restriction under the law, begin your unit-to-unit search immediately. If one of those dastardly hamsters or even a subversive rabbit is discovered, get your lawyers busy. Also look closely on the living room shelves — is there a “pet rock” there? Rocks are clearly not considered “pets” under the law, and therefore are not protected. [Note to homeowners on this point: prior to your home being searched for illegal pets, make sure to characterize your pet rock as a decoration and not a pet. The lawsuit you save may be your own.] As for me, I am continuing my efforts to build the California Hamster Liberation Front, to gain them legislative recognition.

The law says that an association must not prevent owners from keeping one pet. So, the strict pet enforcement board will surely want to watch out for homeowners who dare to have two goldfish in the bowl, let alone the maniacs who enjoy guppies or other breeding varieties. Another habit of the pet restriction rebel might be to have a cat as well as a canary (yes, Granny can have Tweetie Bird or Sylvester, but not both). Under the law, only one pet is protected.

The association is a mini-government, needing legal standards, but also is a neighborhood community. In the current legislative trend of increasingly regulating California CID’s, well-intentioned efforts can lead to interesting unanticipated consequences. However, the wild stories regarding outrageous CID disputes usually

come from boards, homeowners, managers and lawyers who forget the most important of all rules – Reasonableness. In the absence of reasonable, practical thinking, the crazy

questions discussed above actually could become relevant!

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