New York
APARTMENT LAW INSIDER

Craig M. Notte, Esq.
Partner, Borah, Goldstein, Altschuler,
Nahins & Goidel, P.C.

Can Condo Boards Enforce the NYC Pet Law?

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From time to time, condominium boards and their managing agents face the same issues as landlords of rental properties. Owners of condominium units or their tenants often introduce pets into their apartments without condominium board approval and in violation of house rules. In a rental or cooperative apartment building, a landlord can commence a summary proceeding to recover possession of a tenant's apartment for violation of a "no-pet" provision in the lease.

It is relatively common knowledge, however, that a condominium board cannot bring a summary proceeding to recover possession because it has no ownership interest in any portion of the building, and condominium unit owners do not occupy pursuant to leases. For condominium buildings with no-pet rules, condominium boards are relegated to a Supreme Court action for injunctive relief to enforce the rule and force the owner or his tenant to remove the pet.

Condominium unit owners aggrieved by a neighbor's pet are in a particularly difficult position because a board cannot evict a pet owner or his tenant. An aggrieved condominium unit owner is also not likely to remedy the problem by vacating the unit, as compared to a rental tenant.

Additionally, the courts within New York City have not ruled similarly when it comes to the Pet Law regarding condominium buildings. When a pet threatens condominium residents or otherwise negatively impacts quality of life, condominium boards and their managing agents face the issue of how to enforce their no-pet rules.

Why Is the Pet Law Unclear for Condominiums?

The New York City Pet Law (NYC Code § 27-2009.1) may be raised as a defense to a landlord's claim that a tenant is violating the no-pet provision in the lease. The statute says that a building owner waives the no-pet provision in the lease if it does not bring tenants to court within 90 days from the date the owner knew or should have known of the unauthorized pet. However, the Appellate Division courts within New York City do not agree on how the Pet Law applies in a condominium building, leaving boards uncertain about their rights.

The Pet Law currently applies to condominium buildings in Brooklyn, Queens, and Staten Island, meaning that boards in those counties lose their ability to enforce their no-pet rule after the 90-day window. In Manhattan and the Bronx, where the courts do not apply the Pet Law in condominium buildings, boards can enforce the rule at any time.

Since one cannot predict if and when the courts will reconcile their positions, condominium boards are best advised, notwithstanding their location, to enforce their no-pet rule and quickly pursue occupants in violation. Alternatively, boards that have missed the 90-day window (where the Pet Law applies) should look to their by-laws for the ability to enjoin nuisance conduct. Boards in any county may immediately commence a Supreme Court action by Summons and Complaint with Order to Show Cause for injunctive relief against an owner or tenant with a pet that harms or negatively impacts other residents.

The Split Between the Appellate Divisions

Some points relating to the Pet Law are clear: the courts agree that the Pet Law does not allow owners of rental buildings to evict tenants: (1) who harbor pets "openly and notoriously"; (2) where the owner knew or should have known of the pet, either directly or through its managing agent; and (3) where the owner did not commence a proceeding within three months of gaining knowledge. The courts also agree that the Pet Law applies in cooperative apartment buildings by virtue of their proprietary leases.

According to the Pet Law's legislative declaration, the law is intended to prevent owners from selectively enforcing no-pet rules against tenants whom owners want to evict for other, unpermitted reasons. The statute creates a question of its applicability in condominium buildings (thus resulting in the split among the courts) by referencing "owners" of "multiple dwellings" and "leases" prohibiting pets. While a condominium building with more than three units is a "multiple dwelling," a condominium building has no "owner" per se because each unit has an owner with a deed rather than a lease. Common areas in condominium buildings are owned by unit owners collectively, and condominium boards do not propagate rules in "leases."

In 1994, the Supreme Court, Queens County decided that the Pet Law applies to condominiums. In *Board of Managers of the Unit Owners of Patchogue Homes Corp. v. Lamontero*, a condominium board sued for a permanent injunction against a unit owner who was violating its no-pet rule. The Supreme Court held that the Pet Law applied to condominiums and that the board waived its no-pet rule by not commencing the action within 90 days. The Appellate Division, Second Department upheld the decision, ruling that the Pet Law should apply to condominiums, notwithstanding that the law, by its own terms, applies only to no-pet provisions in leases:

> The legal status of the occupant of a multiple dwelling unit (i.e., whether he pays rent, owns cooperative shares, or is the owner in fee simple of a condominium unit) is not relevant to the purposes of the statute, which include preventing abuses in the enforcement of covenants prohibiting the harboring of household pets and preventing the retaliatory eviction of pet owners for reasons unrelated to the creation of a nuisance.
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> We conclude that it would be pernicious to create an exception for condominiums from the generally beneficial requirements of article 27 of the Administrative Code. In addition to substantive harms, an exception for condominiums could lead to anomalies such as permitting the tenant of a condominium owner to invoke the protection of the "Pet Law," while the condominium owner himself could not.

The dissenting justice, believing that the majority had gone too far in extending the law to condominiums, argued for a literal construction of the statute:

> The Supreme Court's extension of the terms of § 27–2009.1(b) of the Administrative Code to the facts of the present case, however appealing it may be as a matter of human-canine sentimentality, is totally unjustified as a matter of law. It has been consistently held that, for the purposes of statutory construction, the owner of a condominium unit is not a tenant and the manager of a condominium building is not a landlord . . . By its terms, § 27–2009.1(b) of the Administrative Code protects only those pet owners who, unlike the defendants, may properly be categorized as tenants.
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> The distinction between multiple dwellings that consist of rental apartments, on the one hand, and multiple dwellings that consist of condominium units, on the other, is not an idle one. It is clear from the terms of the Administrative Code itself (see, Administrative Code § 27–2009.1[a]) that the lawmakers were not as concerned with the promotion or facilitation of pet ownership, in and of itself, as with the prevention of retaliatory evictions. The lawmakers' primary purpose was to prevent landlords, whose real motivation might be different, from using pet ownership as a pretext for evicting their tenants. There is no corresponding risk of pretextual eviction in the case of condominium

> ownership. Thus, the strained interpretation of § 27–2009.1(b) of the Administrative Code advocated by the Supreme Court and by my colleagues in the majority cannot be justified on the premise that a literal construction of the law would frustrate the legislative intent.

While the *Lamontero* majority attempted to harmonize condominium buildings with other multiple dwellings, it also makes condominium governance that much more difficult. Where a condominium building's by-laws permit owners to lease their units with board approval of the lease, a condominium board with a no-pet rule must be sure that the lease includes that restriction. If an owner's lease permits pets, while the condominium building's rules do not, a court may find that the board's approval of the lease constitutes a waiver of the rule for that particular lease and unit.

Then in 1996, the Appellate Division, First Department interpreted the Pet Law. In *Board of Managers of Parkchester North Condominium v. Quiles*, that court ruled that, given the Pet Law's references to leases and tenancy, the law does not apply to condominiums.

> [W]e agree that the Pet Law. . . which refers only to "covenants contained in multiple dwelling leases", is not applicable to condominiums, which are a form of fee ownership. We disagree with the Second Department that condominiums should be deemed covered by the Pet Law because not explicitly excluded. It was because of the singular reference to leases or rental agreements in the warranty of habitability that we likewise refused to apply it to condominiums.

Thus, under the current state of the law, the location of the condominium building in New York City, as nonsensical as it may seem, determines if a condominium board can enforce its no-pet rule.

That is not to say, however, that a condominium board in Manhattan or the Bronx has an easy win where the Pet Law does not apply, even though a unit owner or tenant cannot raise the 90-day window as a defense. Unit owners may defend against injunctive relief by alleging that the animal is not a pet but an assistance animal permitted under the Americans With Disabilities Act or the Fair Housing Act.

On the flip side, condominium boards in every New York City borough can bring a Supreme Court action for injunctive relief against unit owners notwithstanding the 90-day window when the pet is dangerous or aggravating to residents. Condominium boards avoid the 90-day window in such instance because the lawsuit against the pet owner is based on nuisance, not on violation of the board's no-pet rule.