



It's Better to ask Permission than Forgiveness

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It's an increasingly common, but increasingly disappointing, phenomenon – owners bringing their pets into a Community Titles Scheme before obtaining a Pet Approval. The "conventional wisdom" seems to be that because a Body Corporate can't refuse a Pet Approval these days (after all by-laws banning pets are void aren't they?) why not simply bring your pet home and then apply for approval? This approach follows the old mantra of "sometimes it is better to ask forgiveness than permission".

A Noosa Lot Owner who did this recently has learned, the hard way, that it is better to ask (and receive) permission first. On 22 July 2020 in the Noosa Magistrates Court a Lot Owner who brought their pet dog home before receiving Body Corporate approval was successfully prosecuted for a breach of a future contravention notice (of by-laws), fined \$300 and ordered to pay the Body Corporate's legal costs of \$830.80.

The Lot Owner in question had brought their pet dog into their Lot many months before. The dog was frequently seen on the unit balcony. The dog had even escaped on to the common property and wandered around the scheme on at least one occasion. The Body Corporate had put in place a strong pet by-law which included decision-making criteria and minimum conditions. The decision-making criteria included that if the pet had already been brought on to scheme land the application for Pet Approval need not be approved (or progressed) until the pet was first removed.

The underlying rationale was that if a Lot Owner could not demonstrate compliance with the by-laws before they received an approval, how likely were they to be to comply with the terms of a Pet Approval if given?

The Lot Owner was issued with by-law contravention notices (Future Contravention Notices) and breached them. Particularly, the dog was not removed from scheme land and it escaped again.

Stratum Legal Pty Ltd, as the Body Corporate's Solicitors, brought a complaint and summons under the Justices Act, which was then served on the Lot Owner. The Lot Owner was summonsed to appear before the Magistrate to answer the complaint.

In advance of the hearing of the complaint, the dog was removed from the unit. As a result, the Body Corporate sought only a nominal fine (\$300) but on the basis that half of the fine was to be paid to the Body Corporate plus the Body Corporate's legal costs. The Magistrate made the Orders requested and luckily for the Lot Owner, did not record a conviction.

Breaching by-laws is a serious matter. The by-law contravention notice process is simple and straightforward. The step often not taken by Bodies Corporate is to prosecute a recalcitrant Occupier who continues to breach the by-law after having received a contravention notice.

The unenforced law is the one which goes unobserved. It is one of the Body Corporate's general functions to enforce the by-laws for a scheme in the way provided under Body Corporate and Community Management Act 1997.

While the by-law enforcement process may appear daunting, with the assistance of Stratum Legal you can navigate the process successfully. We helped this Body Corporate from Noosa do exactly that.

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