
Pet Policy FAQs for Owners Corporations of Unit Plans

Too frequently, RSPCA ACT is the last option for a pet owner when they move house. They simply can't take their pet with them because of rules imposed by either the landlord or a corporate body. In 2016/17, 12.7% of all surrendered animals were because the owners said they were moving.

Canberra is going through major changes in terms of the density of housing, as well as the number of people living in units within our community. While we recognise the need for pet owners and non-pet owners to be able to live peacefully together within tighter spaces, we are increasingly concerned by the number of body corporate/owners corporation policies that have been brought to our attention recently that do not comply with relevant legislation in our opinion.

The following are frequently asked questions and answers that an owners corporation should consider when establishing and reviewing their pet policies.

FREQUENTLY ASKED QUESTIONS:

1) Can an ACT owners corporation develop rules that prevent pets?

No, it cannot be a rule. The unit owner can only keep or allow an animal with the owners corporation's consent, but that consent must not be unreasonably withheld, see section 32(3) of the *Unit Titles (Management Act) 2011 (ACT)*.

2) Can an ACT owners corporation deny a pet based on its breed?

No. The ACT Administrative and Civil Tribunal (ACAT) considered whether a committee of an owners corporation unreasonably withheld consent for a unit owner to keep a specific breed of dog. The ruling stated that the committee must assess each application on merit and cannot apply a blanket policy to every application. Furthermore, it cannot solely rely on its established pet policies to prevent unit owners or tenants from keeping pets within its units plan. See *Nevile v Owners Units Plan 3107 (Unit Titles) [2014] ACAT 36*.

3) Can an ACT owners corporation deny more than one pet?

No, not as a rule. Every animal must be decided on its merits. Many animals are social creatures, and having more than one pet can often reduce the chance of nuisance while their owners are away from the home.

4) How can the owners corporation be sure that a new owner/tenant will be responsible for their pet?

It's common for new owners and tenants to submit a pet application. We recommend that the information conforms with the requirements of the *Domestic Animals Act 2000*. This legislation requires that:

- Dogs must be desexed by 6 months and cats by 3 months unless the owner has a license;
- Dogs and cats must be microchipped;
- Dogs must be registered with the ACT Government; and

- No owner may have more than 3 dogs and 3 cats without a license.

This information can be verified through official documents and veterinarian records. If the owner of the pet has abided with the requirements of the *Domestic Animals Act 2000*, they are more likely to be a responsible pet owner in other regards too. If they haven't, they are breaking the law. You can insist that they do these things prior to considering their application further.

5) What kind of policies should a body corporate consider for pets?

An owners corporation can develop a pet policy. In addition to the pet application recommended above, we suggest policies that are in line with the *Domestic Animals Act 2000*. These include:

- A dog must be restrained by a leash unless in an official off-lead exercise area or in their private residence;
- The carer of a dog must carry suitable equipment and hygienically dispose of any faeces dropped by the dog in a public place;
- The dog may not harass people or other animals. A dog is taken to harass a person if, because of its behaviour, the person reasonably fears that the dog is about to attack the person without provocation. A dog is taken to harass an animal if the dog hunts or torments the animal.
- Cats in declared cat containment areas must be confined to the premises of a keeper or carer. RSPCA ACT recommends that all cats are contained indoors or within appropriate outdoor enclosures.
- The carer of a pet must not allow animal nuisance. Section 109 of the *Domestic Animals Act 2000* says animal nuisance exists if the keeping or behaviour of an animal causes a condition, state or activity that constitutes—
 - (a) damage to property owned by a person other than the keeper; or
 - (b) excessive disturbance to a person other than the keeper because of noise; or
 - (c) danger to the health of an animal or a person other than the keeper.

6) What can an owners corporation do if one of the above policies is violated?

The ACT Government Domestic Animal Services has oversight of the *Domestic Animals Act 2000*, and are authorised to investigate and potentially fine the owner or seize an animal that has violated one of the above legislation requirements. Nuisance complaints should be sent in writing to the Registrar through Access Canberra.

The owners corporation may also, if authorised by an ordinary resolution of the executive committee, give the person a notice (a rule infringement notice) requiring the person to remedy the contravention. If the pet owner does not comply, the only other action the owners corporation can take is to apply to the ACAT for an order related to that infringement. See Section 109(2) of the *Unit Titles (Management) Act 2011*.

7) Can an owners corporation enter a unit to remove an animal?

No. According to section 114A of the *Domestic Animals Act 2000*, only an authorised person may enter premises where the animal nuisance exists. ACT Domestic Animal Services rangers are authorised under this Act, and the police may assist.

In the case of an animal welfare concern, only an Inspector or authorised officer under the *Animal Welfare Act 1992* has the authority to enter a premise and exercise powers including the seizure of an animal. Police, RSPCA Inspectors and some Domestic Animal Service rangers are authorised officers under this Act.

Section 28(1) of the *Unit Titles (Management Act) 2011 (ACT)* provides that an owners corporation does not have the right to enter a unit without the consent of an owner or occupier except in case of an emergency, or to inspect or maintain common property with 7 days notice.

However, even in the case of an emergency, the legislation does not permit a body corporate to remove property (e.g. an animal), and can be liable to criminal prosecution for doing so.

8) What can a pet owner do if the owners corporation unreasonably withholds consent to keep a pet?

Make an application to the ACAT for an order.

Section 126 of the *Unit Titles (Management Act) 2011 (ACT)* allows that an owner or occupier of a unit may apply to the ACAT to resolve a dispute with the owners corporation about keeping an animal, or allowing an animal to be kept. Section 32(4) provides that 'animal' includes an amphibian, bird, fish, mammal (other than a human) and reptile.

While it's important for rules be in place for pets to successfully live in units, pet owners also have rights provided by the legislation and must be considered by owners corporations. It's through this mutual respect that pets can be great for both the owners and the community.

Author: Tammy Ven Dange is the CEO of RSPCA ACT. More information about why landlords should consider pet owners as tenants can be found at www.rspca-act.org.au.