

Cats in Complexes

Recently advocate Elizabeth Nieuwoudt, a member of CatPals, took on a case regarding cats in a sectional title complex and won. Some very clear rules and principles crystallised in the process.

They are the following:

1. If a complex has a notice board at its gate proclaiming that animals are prohibited, or if its constitution or bylaws contains a rule prohibiting animals, no one with pets should move there or buy a unit there. You will not be able to change that rule. However, if there is a general rule permitting animals, permission to keep pets may not unreasonably be withheld from you.
2. Before renting or buying in a complex, ask to be shown its constitution and bylaws before making your decision. If they are reluctant, reconsider living there.
3. NB: If a complex permitted animals when you moved in, it cannot force you to get rid of your animals, even if the rules are changed by majority vote and animals are no longer permitted.
4. In the circumstances outlined in (3) above, you will not be able to bring in new animals, notwithstanding the fact that you had permission to keep animals when you first moved in.
5. Rules regarding the keeping of animals cannot be changed retrospectively, in other words, they cannot come into effect at some date in the past. Such rules can only be effective from the day on which they are made.
6. If, whilst you are living in a complex where your animals are permitted or were permitted when you moved in, you are challenged by the body corporate, its chairman, the caretaker or any other individual because your animals are "causing a problem", each case should be considered on merit. There is no blanket precedent ruling with regard to "nuisance" animals. Determine in advance what "nuisance" means in that particular complex before you commit yourself to moving there.
7. If you are dealing directly with the owner of a unit, make absolutely sure of your position. The owner cannot grant permission conflicting with the complex's rules. If you do obtain such permission, get it in writing.
8. A complex may not discriminate by granting permission to keep only cats, dogs, birds etc. This is regarded as discrimination against you as a person and your constitutional rights.
9. It is absolutely imperative that you know your rights. To this end, ensure that you study a copy of the constitution, the bylaws (normally the house rules), and any other rules, especially if they are relevant to meetings or the powers of the body corporate. You must know specifically who has the right to vote at an annual general meeting, what constitutes a quorum for such a meeting, and whether 2/3 of the voters are required to have a previous decision amended or overturned. This latter point is the normal procedure at most meetings.
10. The body corporate has no powers whatsoever, except those conferred upon it by majority vote

at a correctly constituted annual general meeting. "Correctly constituted" means sufficient notice had to have been given, a quorum had to have been present at all times, and a majority had to have voted in favour of or against a proposal. The minutes also need to reflect the exact wording of the matters that were voted on and the outcome of the vote.

11. Some estate agents are not truthful about matters such as pets, because they want the deal done. Verify your facts.

12. Keep emotion out of all negotiations. It has no persuasive power in a court of law.

13. There is no law compelling a complex to register in the deeds office whether or not it permits animals. It is however sound practice to do so, to enable a prospective buyer to examine the actual wording of the rule.

14. Lastly, but most importantly: Before you sign anything and move in, get the e-mail address of the chairman of the body corporate. Write to this person, confirming your verbal enquiry in regard to your "animal rights" and specifically what "nuisance" is understood to mean in that particular complex. Courts base their decisions on facts, law and evidence. Keep your letter to the chairman short, to the point and absolutely devoid of any emotion. If you do not get a reply, follow up within a reasonable time. If this person runs into you and replies to your query verbally, immediately follow up with an e-mail, confirming your understanding of what was said. (In the court case advocate Nieuwoudt recently won, her case was strengthened by such a complete written record of events. According to her, there may well have been a different outcome without it.)

This should clarify matters and I would once again like to thank Vic Brits (CatPals), Patti (Fora) and advocate Nieuwoudt.