Condominiums and Pets

Who among us can resist an adorable puppy? Evidently, lots of condominium associations. Even if your practice does not include condominiums, homeowners' associations or real estate in general, you probably have clients who live in such common interest communities or you may live in one yourself. Therefore, you may wish to be aware of certain key facts in this area. If you are an attorney who does real estate closings, be sure to obtain and review the Offering Plan and all filed amendments, even on a resale. Also, ask for any published rules and regulations . This is because there are numerous rules contained in the Offering Plan, and other documents that may not be recorded in the Monroe County Clerk's Office, that may saddle your clients with unacceptable limitations on their lifestyle.

In my practice, I see numerous examples of Boards in both condominium and homeowners' associations that overreach their rule making authority in their attempts to solve real life problems in their communities. This year, at least two cases have gone to the Appellate Division, Second Department, concerning condominium associations and dogs. Apparently, one cannot come between homeowners and their pets!

In the case of *Board of Managers of Village View Condominium v. Donata Forman* (decided November 3, 2010) a question was raised as to the validity of "House Rule Number 1". The particular condominium's By-Laws had no restrictions on pet ownership. A homeowner whose previous dog had died bought a new small dog weighing less than four pounds. The dog was not a nuisance. Apparently, the Board felt the dog violated House Rule Number 1, which stated "positively no pets are allowed in the building for any reason". The homeowner refused to remove the dog. The Board

sued the homeowner to enjoin her from keeping her little dog. The Board argued that it had the power to amend the By-Laws and make regulations restricting the use of the Units and therefore its rule making was valid. The Second Department decided that House Rule Number 1 exceeded the Board's authority. The Court concluded that the Board is not authorized to amend the By-Laws at will, and in fact the By-Laws stated that they could only be amended by approval of 80% of the Unit owners.

A similar case earlier this year, *Yusin v. Saddle Lakes Homeowners Association*, (73 A.D.3d 1168, 902 N.Y.S.2d 139) similarly found against the Association. In this case, the By-Laws originally indicated that homeowners were permitted to walk with their dogs over the condominium's common areas. The Board of Managers then passed a rule requiring homeowners to curb their pets and prohibiting the homeowners from walking their pets on the condominium's common areas. The homeowner sought to enjoin the Board from enforcing this rule. Again, the condominium's By-Laws required approval from two-thirds of the homeowners in order to amend the By-Laws and therefore the rule adopted by the Board alone was invalid.

There is a fine line as to what a Board of Managers of a condominium may do under its rule making authority, given it by the By-Laws. But certainly it cannot contradict the essence of the By-Laws as originally written without homeowner approval.

In representing associations, I have found that pets are one of the most contentious issues along with parking issues, leasing issues and issues raised in trying to deal with one or more "difficult" homeowners. Because the Offering Plan, Declaration and By-Laws of a condominium or a homeowners association may contain rules to adversely affect your client's lifestyle (or your own), they are important reading.