

Keeping pets in apartments in the ACT

This fact sheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law. If you require legal advice relating to your particular circumstances you should contact the ADO or your solicitor.

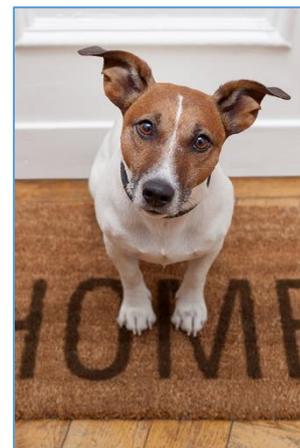
Frustrated at not being able to rent an apartment¹ with your pet?

Wondering if the rules banning animals in your apartment block are legal?

This fact sheet looks at ACT laws regulating the keeping of animals in apartment blocks that are managed by owners corporations.

There are rules that must be followed before you are allowed to keep an animal in an apartment managed by an owners corporation. These rules are found in:

- the *Unit Titles (Management) Act 2011* (ACT)
- the rules of the 'owners corporation' of the apartment block, and
- the residential tenancy agreement between landlords and tenants.



What is an 'owners corporation'?

An 'owners corporation' is the entity that is responsible for managing an apartment block. It is made up of the owners of the apartments.² An owners corporation is responsible for enforcing its own rules, and controlling, managing and administering the common property of the apartment block.³ Every apartment owner and occupier is bound by the rules of the owners corporation.⁴ There are, however, limitations on the extent of these rules.

Obtaining consent to keep an animal in an apartment you own

If you own an apartment and you or your tenant wants to keep an animal in it, you will need to obtain the consent of the owners corporation of the apartment block.⁵

In deciding whether to consent to an application to keep an animal, an owners corporation must:

- consider each application on its merits
- take into account relevant considerations, and
- not take into account irrelevant considerations.⁶

However, there is nothing to stop an owners corporation developing a policy to help guide it when making a decision about whether to let an owner or tenant keep a pet in an apartment. The policy must, however, be consistent with the relevant legislation and not inflexibly applied. This means an owners corporation cannot *unreasonably* withhold its consent to allow an owner or occupier to keep an animal.

¹ A reference to 'apartment' and 'apartment block' in this factsheet includes townhouses and units.

² *Unit Titles (Management Act) 2011* (ACT) ss 7, 9 and 10.

³ *Ibid* s 16(1).

⁴ *Ibid* ss 107(1) and (2).

⁵ *Ibid* s 32(1).

⁶ For example, see *Neville v Owners Units Plan 3107 (Unit Titles)* [2014] ACAT 36.

What are my rights as a tenant if I live in a property governed by an owners corporation?

As a tenant, you are bound by the rules of the residential tenancy agreement (lease) between you and your landlord. The standard residential tenancy terms don't state whether animals can be kept in an apartment. This means that as a tenant you are only prevented from keeping an animal if your residential tenancy agreement expressly prohibits it.

Tenants are not bound by any part of an owners corporation rule that is inconsistent with the standard residential tenancy terms.⁷

What do I do if I want to keep a pet in a property governed by an owners corporation?

You should check the rules of your lease and the rules of the owners corporation, paying particular attention to whether either deals with keeping animals. If neither set of rules deals with keeping animals, you should seek your landlord's consent and ask for an additional term to be included in your lease, expressly allowing you to keep an animal. Then you should ask your landlord to seek the owners corporation's written consent for you to keep an animal.

If you have not yet begun the lease term, you should not sign the lease until you have been granted written consent to keep an animal by both the landlord (in the form of an additional lease term) and the owners corporation. If you are unable to obtain written consent from the owners corporation before signing the lease, you should make sure your lease is made conditional upon the owners corporation's consent being granted and, if the owners corporation denies its consent, you being permitted to terminate the lease without penalty.

What can you do if the owners corporation does not allow you to keep an animal?

First, you should ask the owners corporation to give you written reasons for its refusal to grant consent. Second, if you believe its reasons are unreasonable, you may apply to the ACT Civil and Administrative Tribunal for an order allowing you to keep an animal.⁸ As *Nevile v Owners Units Plan 3107 (Unit Titles)* [2014] ACAT 36 makes clear, in considering whether to agree to an application to allow an animal to be kept in a unit, the owners corporation must assess the application on its merits. That is, it can't apply a blanket policy to every application. It must also place sufficient weight on all relevant evidence you provide and not consider irrelevant matters.

Can members of an owners corporation enter your premises and remove your animal?

An owners corporation does not have the right to enter a unit without the owner or occupier's consent, unless there is an emergency.⁹ A committee member may arguably be entitled to enter premises without consent if, for example, an animal is endangering a person's life. In our view, an owners corporation:



- cannot make rules that allow it to enter apartments in circumstances that are not set out in the *Unit Titles (Management Act) 2011* (ACT); and
- is not permitted to remove an animal from the apartment, even if the owners corporation has lawfully entered the apartment due to an emergency.

⁷ *Unit Titles (Management Act) 2011* (ACT) s 107(4). The standard residential tenancy terms are found in section 8 of the *Residential Tenancies Act 1997* (ACT).

⁸ *Unit Titles (Management Act) 2011* (ACT) s 126.

⁹ *Ibid* s 28(1) and (2).