



## Condo Pet Eviction

By Denise Lash on November 14, 2010

A board member of a condominium corporation recently forwarded me an interesting article from the New York Post about Charlie, the adorable 3.5 pound Yorkie whose owner was taken to court by the condominium association of a 24 unit development in Queens, New York.

The board of directors of this association had tried to get the owner, Donna Forman, to remove her previous dog, a Shih Tzu, named Rugby, and commenced an action in February 2001. During the court process and before the decision was rendered, the dog died. Donna then went on to replace Rugby with Charlie and attempted to get the consent of the board. The board refused based on its no pets policy. The board then commenced further proceedings under a separate action to have Charlie removed.



The lower court found in favour of the association and ordered that Charlie be removed. Then most recently, that decision was overturned when the Appellate Division ruled that Charlie could stay.

This case turned on a mere technicality in the wording of the condominium documents. Although the association had a policy in place that no pets were permitted, the bylaws of the association stated that unit owners, their pets and guests shall not create a nuisance. The court found that by referencing that pets could not create a nuisance meant that pets were permitted and disregarded the no pets policy of the association.

This condominium association has now amended its rules to remove reference to "pets" in an attempt to retain its no pets policy.

Poorly drafted rules or inconsistent wording in a Declaration may result in a board unable to enforce its provisions in the condominium documentation. I have on occasion been contacted by boards to enforce pet provisions and once reviewed, have determined the provisions are unenforceable because of drafting errors or inconsistencies. Charlie's action resulted in the association having to absorb over \$100,000 in legal costs. This cost amounted to approximately \$4100 per owner.



## Condo Reporter

Heenan Blaikie

Donna Forman was lucky. If the wording in the condominium documentation had been clear and consistent, Charlie would be gone by now.

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