

Subject: [RE]Fw: BY-LAWS and INSURANCE

From: "Margot Chappell" <parkdreams@lycos.com>

Date: Tue, 22 Sep 2009 16:59:24 -0400 (EDT)

To: <jroth4@comcast.net>, <LBERUL@yahoo.com>, <judiseg@hotmail.com>, <LULUP722@aol.com>

Please note my new e-mail address: parkdreams@lycos.com.

That the 9400 By-Laws may allow small dogs does not automatically mean that non-small (medium and large) dogs are prohibited under all circumstances.

Whether the By-Laws always prohibit medium or large dogs at 9400 depends on the precise language of the By-Laws' general prohibition, not the small dog exception. If there are circumstances in which medium or large dogs are not prohibited by the By-Laws, then the small dog exception is irrelevant as to those circumstances. I was only able to get the By-Laws from Nancy this weekend. An examination of the full section of the By-Laws by my attorney demonstrates that the occasional, short-term visit of medium and large dogs to 9400 is not prohibited.

Section 6.5(e) of the By-Laws states in its entirety: "The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited within any condominium unit or upon any common elements, except that this shall not prohibit the keeping of small dogs, cats and/or caged birds as domestic pets provided that they are not kept, bred or maintained for commercial purposes."

When this By-Law was written by the Developer in the mid-70s, it was known that many condo units would be bought as second homes by owners who would not be full-time residents of their 9400 condo unit. This is still the case. In other words, there are at least two types of owners: full-time residents and short-time (weekend or slightly longer) owner-occupants. Instead of stating that animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited . . . , the Developer only prohibited the "maintenance, keeping, boarding and/or raising of animals . . ." This is something less than an absolute and complete prohibition of medium and large dogs at any time. If the Developer had wanted to prohibit the presence of medium and large dogs of all owners -- both full-time residents and short-time owner-occupants -- he could have simply stated that "all animals, livestock, or poultry of any kind are prohibited" like some other condo By-Laws do.

"Maintenance, keeping, boarding and/or raising" all convey a time element. As one court put it: "Keeping a dog . . . implies more than [having] the dog for a limited . . . time." Webster's New Collegiate Dictionary defines "raising" as "to breed and bring (an animal) to maturity." "Maintenance" involves "continuation, preservation or upkeep." While the By-Law prohibition on the maintenance, keeping, boarding and/or raising of animals, including medium and large dogs, may apply to full-time residents, it does not apply to the second-home owners who only occupy their unit for a short-time.

When does a medium or large dog's short-time presence in the unit or common areas become the maintenance, keeping, boarding and/or raising prohibited by the By-Laws? I believe the answer to that can be found in the Ocean City Animal Code which exempts all dogs from its licensing requirements that do not remain in Ocean City for more than 30 consecutive days and whose owner is not a resident or qualified voter in Ocean City.

"Sec. 6-35. License required; licensing procedure.

(a) License required. All persons owning or harboring a dog over six months of age, within the corporate limits of Ocean City, shall obtain a license for said dog as provided in subsection (b), unless either of the following exemptions apply:

(1) A dog wearing evidence of a valid license issued by another governmental subdivision, provided that:

- a. The dog remains in this jurisdiction for less than 30 consecutive days.
- b. The dog's owner is not a resident or qualified voter in Ocean City."

Certainly for at least the last 12 years, if not longer, the Board has acted consistent with this interpretation of section 6.5(e) of the By-Laws -- that it does not prohibit the presence of medium and large dogs when they are at 9400 for only a short period of time.

I believe that our recommendation to the Board on the small dog issue should be that small dogs are always permitted and all other dogs are only permitted for 30 consecutive days or less, provided all pets are in compliance with the house rules on pets. As to a definition of small dog, the Ocean City Dog Playground at 94th Street defines small dogs as 28 lbs. or less.

See http://oceancitymd.gov/Recreation_and_Parks/dogplayground.html

Having clarified the By-Laws' position on dogs at 9400, I think we should discuss the strengthening and enforcement of 9400's house rules on pets, or what I like to call, the registering and tagging of all pets. As to John's concern about a "financial crisis resulting from a dog bite," the best way to protect against that remote possibility is to require the owners of all registered and tagged dogs to carry a dog rider on their homeowners or condo insurance policy.

I look forward to another committee member choosing the next issue to discuss.

Margot Chappell

-----[Received Mail Content]-----

Subject : Fw: BY-LAWS and INSURANCE
Date : Sat, 19 Sep 2009 16:15:41 +0000
>From : mlc@nrtw.org
To : "ParkDreams International Ltd" <parkdreams@lycos.com>

-----Original Message-----

From: John D Roth
To: Milton L. Chappell
To: LAWRENCE BERUL
To: LULUP722@aol.com
To: John D Roth
To: Judi Segermark
Subject: BY-LAWS and INSURANCE
Sent: Sep 18, 2009 8:15 PM

But small dogs are specifically permitted by the 9400 By-Laws as are, by implication, I suppose, balconies, automobiles, parking spaces, the swimming pool, etc. This is an important distinction!

If the condominium liability policy sufficiently protects us from a financial crisis resulting from a dog bite, I'll withdraw my financial argument. I'm hoping that the members of the BOD are following all committee correspondence and will have that answer available at tomorrow's (Sept 19) BOD meeting. I'll be attending that meeting and will formally submit the insurance question if necessary.

Additionally, I've been waiting for someone to advance the idea of "grandfathering" all large dogs owned by current owners in the building, defining the term "small dog," and strictly enforcing the small dog limitation immediately. That proposal finally came to us from Committee Member Berul in the last day or two. That's probably the only plan that will pass BOD scrutiny. It puts off the solution, but eliminates the problem over time. I firmly believe there IS a problem. Large dogs make many people uncomfortable. The provisions of the by-laws are in place to keep people comfortable with their neighbors.

For Margot - I've been at 9400 just a couple more years than you have. I would recognize your husband for sure from his participation in discussions at annual meetings. I think I would also recognize you. I would have recognized Midnight. I haven't noticed your two new dogs. I, too, tend to stay in the background unless confronted with an important issue. We all leave footprints here!

JR

Sent from Milton's Verizon Wireless BlackBerry