

Pets: How does the Association remove an offensive or neglected pet from a home?

One option to remove an offensive or neglected pet from an owner's home is to contact the local animal control agency to have them remove the pet. If the situation warrants, animal control has the authority to remove a pet,¹ but animal control may not be willing to remove a pet that is merely annoying its neighbors.

A second option is for the Association to ask the owner to voluntarily remove the offensive or neglected pet.

A third option is for the Association to require removal of the offensive or neglected pet. However, before any action is taken by the Association, the owner must be given notice and an opportunity to be heard.

The New Act, Old Act and HOA Act do not specifically address removal of pets. The Acts allow Associations to make rules in their Governing Documents.^{2 3 4} Associations may make rules that specifically address removal of offensive or neglected pets from owners' homes. These rules should appear in the Association's Governing Documents to be valid (and enforceable). The Acts also grant Associations power to take any action reasonably necessary for the governance of the Association.^{5 6 7}

If an Association's Governing Documents allow removal of an offensive or neglected pet, then the action should be valid. Usually Associations' Governing Documents are silent as to whether the Association can enter an owner's home to remove an offensive or neglected pet. There is no Washington case law that addresses this issue. A Washington court may decide removal of

an offensive or neglected pet from an owner's home is a reasonable action, but the determination will be fact specific.

Even if removing an offensive or neglected pet from an owner's home is an action that the Association can validly take, the Association cannot remove the pet without first providing the owner with notice and an opportunity to be heard. At this point the Association can ask the owner to remove the pet, but that is different from forcibly removing the pet.

Requiring an owner to voluntarily remove a pet is a deprivation of the owner's property rights because pets are property. Whenever an owner is deprived of a property right, the Association must satisfy due process.⁸ The Association must provide the owner with the option to pursue some kind of hearing to contest the Association's decision before the action can be (validly) taken. The owner must be informed of the evidence against him and be given an opportunity to present evidence and testimony in his defense (i.e., evidence showing the pet is not offensive or neglected).

Associations that wish to remove a pet that has been deemed offensive or neglected should first attempt to ask the owner to voluntarily remove the pet. It can then require that the pet be removed. If the owner refuses, the Association should levy fines (after notice and an opportunity to be heard) for failure to remove the pet. If the owner refuses to remove the pet, and fines do not elicit the desired result (removal of the pet), the Association can take the owner to court. Entering the owner's home to remove a pet is not recommended.

¹ The pet will likely have to be dangerous or neglected, as defined by local ordinances and animal control regulations. In some situations animal control may only have authority to remove a neglected pet.

² RCW 64.34.304(1) (Unit owners' Association — Powers) provides:

Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the Association may:

- (a) Adopt and amend bylaws, rules, and regulations;

³ RCW 64.38.020 (Association powers) provides:

Unless otherwise provided in the governing documents, an Association may:

- (1) Adopt and amend bylaws, rules, and regulations;

⁴ RCW 64.34.304(1)(a) applies to Old Act condo Associations. See RCW 64.34.010(1) (Applicability).

⁵ RCW 64.34.304(1) (Unit owners' Association — Powers) provides:

Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the Association may:

- (t) Exercise any other powers necessary and proper for the governance and operation of the Association.

⁶ RCW 64.38.020 (Association powers) provides:

Unless otherwise provided in the governing documents, an Association may:

- (14) Exercise any other powers necessary and proper for the governance and operation of the Association.

⁷ RCW 64.34.304(1)(t) applies to Old Act condo Associations. See RCW 64.34.010(1).

⁸ See chapter entitled: "Fines and Enforcement: What procedures must the Association follow when issuing sanctions to enforce covenants?"