

File reference: 20191975, 20210554

Delegation of power to approve pets - 17 Cormorant Street Bakewell, Body Corporate  
UP2000/029- Unit Titles Act 1975 [Brady <brady@aaia.com.au>]

14 December 2021

### 1.1 Request

By email dated 7 December 2021 Peter Brady sought, on behalf of a body corporate, information about whether a body corporate could delegate the power to permit the keeping of pets.

### 1.2 Role of the scheme supervisor

The role of the Unit Title Schemes Supervisor is to provide information and assistance regarding the operation of the *Unit Titles Act 1975* and the *Unit Title Schemes Act 2009* and regulations made for the purposes of those Acts. The role does not include the provision of legal advice. Anyone requiring formal legal advice should obtain it from their own lawyer.

Additionally, the information is provided on the basis of the facts as set out by the person seeking the information. Aside from checking on the legal identity of the affected property the Unit Title Schemes Supervisor does not investigate the facts.

### 1.3 The unit development

The affected units are part of unit title plan 2000/029 comprised of 10 units.

Unit entitlements range from 98 to 103 (out of a total of 1000).

### 1.4 Applicable legislation

The applicable legislation is the *Unit Titles Act 1975* (the Act) and management Model 1 (the management module) as set out in the *Unit Titles (Management Modules) Regulations 2009* (the Regulations).

The articles in the Act apply to the plan. That is, the default articles had not been amended as at 13 December 2021.

### 1.5 Factual background

Peter Brady advises that:

- The current body corporate would like to delegate the power under article 4(f) regarding pet approvals. The Articles of Corporation 4(f) Requires that owners must get approval from a Majority Resolution of a general meeting of the Body Corporate.
- Advice has been provided that the body corporate can not give an owner blanket approval to have pets – that is, each new tenant must seek approval from the Body Corporate.
- Agents trying to rent a unit cannot wait till a general meeting is called to find out if their prospective tenant can move in with their pet.
- So people just move in with a pet creating a breach of articles.
- We would like to delegate the pet approval process to the committee.
- Some members of the corporation believe we can do this others believe we can

Peter Brady notes clause 54 of the Management Module. Clause 54 provides:

- The corporation may delegate any of its functions or powers under the management module to the committee; or to a member of the corporation; or to the manager of the corporation.
- However, the corporation must not delegate a power or function that may be exercised only with the authority of a special resolution, a resolution without dissent or a unanimous resolution or relating to a restricted matter.
- A delegation must be:
  - (a) authorised by an ordinary resolution of the corporation; and
  - (b) evidenced in writing in a document affixed with the common seal of the corporation in accordance with section 30A of the Act.

## 1.6 Issues

This is a legal issue regarding the application of clause 54.

## 1.7 Discussion of the issues

### A. Clause 54

Clause 54 provides, in effect that all powers under the management module can be delegated except those required for the purposes of special resolution, a resolution without dissent or a unanimous resolution; or relating to a restricted matter.

However, the delegation power only relates to powers under the management module. The pets permission process occurs under the articles in the Act. This means that the delegation powers in the management module are not relevant.

There is no provision in the Act that permits the delegation of the power in article 4(2)(f).

## 1.6 Way forward

### A. General permission

You state that advice has been received that the body corporate cannot give a general permission to all owners to have pets. I doubt that this is the correct reading of the provision. Consideration could be

given to creating a general permission (by way of majority vote) which sets out conditions under which tenants and owners can keep pets.

*B. Amend the articles*

The other approach would be to amend the articles as permitted by section 78 of the Act. See appendix to this document for a copy of section 78. You will see that there is a need for a “special resolution” and a need to register the amendment with the Registrar-General.

**1.8 Outcome**

Yet to occur.



## Appendix

### Delegation

#### **54 Delegation of corporation functions and powers**

- (1) The corporation may delegate any of its functions or powers under this management module to:
  - (a) the committee; or
  - (b) a member of the corporation; or
  - (c) the manager of the corporation.
- (2) However, the corporation must not delegate a power or function:
  - (a) that may be exercised only with the authority of a special resolution, a resolution without dissent or a unanimous resolution; or
  - (b) relating to a restricted matter.
- (3) A delegation must be:
  - (a) authorised by an ordinary resolution of the corporation; and
  - (b) evidenced in writing in a document affixed with the common seal of the corporation in accordance with section 30A of the Act.
- (4) A copy of the document evidencing the delegation must be given to the delegate.
- (5) The delegation may be revoked in the same way it is made.

#### **7 Methods of voting**

- (1) Subsections (2) to (7):
  - (a) apply for voting about a resolution of a corporation at a meeting of the corporation; and
  - (b) apply with changes specified in the management module:
    - (i) for voting about a resolution of the corporation otherwise than at a meeting; or
    - (ii) for voting about a resolution of the committee of the corporation; or
    - (iii) for a specified purpose of this Act.
- (2) Only 1 vote may be exercised for each unit.
- (3) Except as otherwise provided by the management module, voting may be made:
  - (a) personally or by proxy; and

- (b) by show of hands or in writing.
- (4) A motion is passed by a ***unanimous resolution*** if the number of the votes counted in favour of the motion is equal to the total number of the units.
- (5) A motion is passed by a ***resolution without dissent*** if no vote is counted against the motion.

- (6) A motion is passed by a **majority resolution** if the number of the votes counted in favour of the motion exceeds 50% of the total number of the units.
- (7) A motion is passed by an **ordinary resolution** if:
  - (a) the following conditions are satisfied:
    - (i) this paragraph applies under the management module;
    - (ii) the unit entitlements of the units for the votes counted in favour of the motion exceed the unit entitlements of the units for the votes counted against it; or
  - (b) otherwise – the votes counted in favour of the motion are more than the votes counted against the motion.
- (8) A motion is passed by a **special resolution** if:
  - (a) at least two-thirds of the votes cast are counted in favour of the motion; and
  - (b) the unit entitlements of the units for the votes counted against the motion do not exceed 25% of the unit entitlements of all the units.

## 78 Alteration of articles

- (1) A corporation may, by special resolution, alter its articles by amending, rescinding or adding to its articles or by making articles in the place of articles rescinded.
  - (2) Subject to subsection (3) an alteration of the articles of a corporation under subsection (1):
    - (a) has no force or effect unless a copy of the special resolution making the alteration, certified under the seal of the corporation as a true copy, is lodged with and registered by the Registrar-General; and
    - (b) has force and effect on and from the date of its registration or such later date as is fixed by the special resolution.
  - (3) To the extent that an alteration of the articles of a corporation made under subsection (1) or (2) results in a provision of the articles:
    - (a) being inconsistent with this Act other than a provision in Schedule 1;
    - (b) imposing a duty or conferring a power on the corporation which is not incidental or ancillary to the performance of the duties or functions, or the exercise of the powers, imposed or conferred on it by this Act; or
    - (c) prohibiting or restricting the devolution, transfer, lease or mortgage of, or any other dealing with:
      - (i) an interest in a unit; or
      - (ii) the equitable estate of the proprietor of a unit in the common property,
- the alteration has no force or effect.

1. In these articles, unless the contrary intention appears:

**Act** means the *Unit Titles Act 1975*.

**authorised agent** means a person authorised by the corporation.

2. (1) Subject to this article, an authorised agent may, at all reasonable times:

- (a) inspect a unit for the purpose of ascertaining whether or not the Act and these articles are being observed;
- (b) carry out in, on or to a unit any maintenance, repairs or work that the corporation is, by the Act or these articles, required to carry out in, on or to the unit;
- (c) carry out in, on or to a unit the functions imposed, exercise the powers conferred and perform the duties imposed, by the Act and these articles on the corporation in so far as they relate to the unit, and may, for any of those purposes, enter and remain in or on the unit for such period as is reasonably necessary for the purposes of doing any act referred to in this article.

(2) An authorised agent shall not do any act referred to in this article unless:

- (a) the corporation or the authorised agent has given to the proprietor of the unit or to the occupier or user of the unit reasonable notice of his intention to enter in or on the unit or to do the act; or
- (b) by reason of an emergency, it is essential that the act be done without notice having been so given.

(3) Each member of the corporation shall:

- (a) pay all rates, taxes, charges, outgoings and assessments payable in respect of his unit;
- (b) repair and maintain his unit and keep his unit in a state of good repair;
- (c) if he agrees to transfer his unit to another person, forthwith give notice of the fact to the corporation;
- (d) comply with any requirement made by or under any law in force in the Territory to carry out repairs or to do any work or thing in relation to his unit;
- (e) if his unit is to be unoccupied for a continuous period exceeding 30 days, give notice of the fact to the corporation;
- (f) if a change occurs in the occupancy of his unit, notify the corporation of that fact and of the name of the person who will occupy the unit.

(4) A member of the corporation shall not:

- (a) subject to sections 42B and 44, use the common property or permit it to be used so as

unreasonably to interfere with the use and enjoyment of the common property by another member of the corporation, by the occupier or user of another unit or by an invitee or licensee of such a member or person;

- (b) use his unit or permit it to be used in such a manner as to cause a nuisance, hazard or substantial annoyance to another member of the corporation or an occupier or user of another unit or to an invitee or licensee of such a member or person;
  - (c) make within his unit or on the common property such a noise as might reasonably, in the circumstances, cause substantial annoyance to another member of the corporation or to the occupier or user of another unit;
  - (d) use his unit, or permit it to be used, in a manner that results in there being a contravention of a law in force in the Territory;
  - (e) except in accordance with the permission given by a majority resolution of the corporation and in accordance with the provisions of any law in force in the Territory applicable in the circumstances, erect or alter any structure in or on his unit; and
  - (f) except in accordance with the permission given by a majority resolution of the corporation, keep any animals or birds in or on his unit or the common property.
- (5) A person who becomes the proprietor of a unit shall, within 7 days after lodging with the Registrar-General for registration the instrument under which he has become the proprietor of the unit, give to the corporation notice that he has become the proprietor of the unit.

2A. A permission mentioned in clause (2)(4)(f) may be withdrawn at any times by a majority resolution of the corporation and notice given to the member of the corporation concerned.

### 3. DAMAGE TO LAWNS, &c., ON COMMON PROPERTY

The proprietor or occupier of a unit shall not:

- (a) damage any lawn, garden, tree, shrub, plant or flower being part of or on common property; or
- (b) use for his own purposes as a garden a portion of the common property.

### 4. DAMAGE TO COMMON PROPERTY

The proprietor or occupier of a unit shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, a structure that forms part of the common property without the permission given by a majority resolution of the corporation, but this by-law does not prevent a proprietor or person authorised by him from installing:

- (a) a locking or other safety device for protection of his unit against intruders; or
- (b) a screen or other device to prevent entry of animals or insects into his unit.