

Comparative Perspectives on the Keeping of Animals in Sectional (Strata) Title Schemes

CG van der Merwe

Online ISSN
1727-3781

P·E·R

Pioneer in peer-reviewed,
open access online law publications

Author

Cornelius G van der Merwe

Affiliation

University Stellenbosch
South Africa

Email

law226@abdn.ac.u

Date Submitted

17 January 2022

Date Revised

26 April 2022

Date Accepted

30 April.2022

Date Published

27 October 2022

Guest Editor Dr Karl Marxen

Journal Editor Prof C Rautenbach

How to cite this article

Van der Merwe CG "Data Commercialisation in the South African Health Care Context" *PER / PELJ* 2022(25) - DOI <http://dx.doi.org/10.17159/1727-3781/2022/v25i0a13909>

Copyright



DOI <http://dx.doi.org/10.17159/1727-3781/2022/v25i0a13909>

Abstract

The aim of this article is to provide comparative perspectives on the keeping of animals in sectional title schemes by analysing the conduct rule for the keeping of animals, reptiles, and birds in the provisions of the *Sectional Titles Schemes Management Act*. This investigation is prompted by the approval of new pet rules by the chief ombud and the provisions of the *Community Schemes Ombud Service Act* on adjudication orders available for nuisance caused by animals. The Act further allows the body corporate to record a new scheme governance rule or to declare a scheme rule invalid. The topics to be discussed are: the types of animal kept in sectional title schemes; the written approval of the trustees for the keeping of animals which may not be withheld unreasonably; whether the body corporate may adopt a scheme rule containing a blanket prohibition on the keeping of animals in a sectional title scheme; the reasonable conditions which may be attached to trustee approval; the withdrawal of approval if the conditions are breached; the requirements for a rule restricting the keeping of a kind of animals or animals with specific characteristics in a scheme; and the deemed approval for the keeping of guide, hearing, and assistance animals in a sectional title scheme.

Keywords

Animals; trustee approval; sectional title schemes; conduct rules; reasonableness criterion; comparative perspectives.

.....

1 Introduction

The issue of pets in sectional title schemes has always been controversial and fiercely contested. Some people view their pets as members of the family while others regard them as an unpleasant irritation. Rewards flowing from the keeping of pets can include an increase in property values and rents associated with pet-friendly sectional title schemes together with physical and psychological health benefits associated with pet ownership. People with pets are reported to deal better with stress and have lower blood pressure, lower cholesterol, increased physical activity, a strengthened immune system, and a lower incidence of depression and loneliness. Australian statistics show there are 29 million pets and that a higher percentage of Australian households (61 per cent) live in a house or an apartment with a cat and/or a dog than with a child. Negative aspects of pet keeping can include disharmony arising from disputes over pet ownership, increased noise, allergies, safety concerns, and increased cleaning and maintenance costs for common property areas.¹

The keeping of pets in South African sectional title schemes is also heavily debated. As early as 2011 it was reported that 85 per cent of pet owners regarded their pets as part of the family, 57 per cent agreed that pets are their best friends, and 81 per cent did not feel lonely when surrounded by pets. Apartment owners are increasingly owning pets which include dogs, cats, fish, rodents, birds, and reptiles, while owning larger dog breeds is on the decline. Pet owners are unwilling to purchase units in schemes where pets are not allowed with the result that property prices are higher in pet-

* Cornelius G van der Merwe. BA LLB (UOFS) BA (Hons) and BCL (Oxon) LLD (UNISA). Research Fellow, Department of Private Law, University of Stellenbosch, South Africa. Emeritus Professor of Civil Law, University of Aberdeen, Australia. Email: law226@abdn.ac.uk. ORCID iD: <https://orcid.org/0000-0001-9998-0819>

¹ Center for Disease Control and Prevention 2021 <https://www.cdc.gov/healthypets/health-benefits/>; Pet Industry Association 2021 <https://piaa.net.au/australian-pet-ownership-statistics/>; Bannermans Lawyers 2020 <https://bannermans.com.au/strata/articles/by-laws/-pet-owners-in-strata-celebrate-court-of-appeal-invalidates-no-pets-by-law-2>; JS Mueller & Co Lawyers 2021 <https://muellers.com.au/2017/wp-content/uploads/2020/10/Pet-Owners-Rejoice>; Atwood Marshall Lawyers 2020 <https://attwoodmarshall.com.au/by-laws-to-allow-pets/>; Pet Secure 2021 <https://www.petsecure.com.au/pet-care/a-guide-to-worldwide-pet-ownership>; NSW RSPCA Guide 2017 <https://www.rspcansw.org.au/wp-content/uploads/2017/09/rspca-act-dogs-in-apartments>.

friendly developments. Statistics show that in 2014 South Africans owned 9,1 million dogs and 2,4 million cats.²

The keeping of pets in sectional title schemes is primarily regulated by a single conduct rule, entitled *The Keeping of Animals, Reptiles, and Birds in a Sectional Title Scheme*.³ This rule is supplemented by section 10 of the *Sectional Titles Schemes Management Act 8 of 2011* (STSMA) which provides that the rules (including the rules on pets) must be reasonable and be applied equally to all unit owners, and that the chief ombud must not approve any amendment to any rule unless he or she is satisfied that the new rule is reasonable and appropriate to the scheme.⁴ In addition, the *Community Schemes Ombud Service Act 9 of 2011* (CSOSA) dealing with adjudication orders in respect of behavioural issues provides that if the regional adjudicator is satisfied that an animal kept in a section or on common property is causing a nuisance or a hazard, or is unduly interfering with someone else's peaceful use and enjoyment of his or her section or the common property, he or she may grant an order requiring the owner or occupier in charge of the animal: (i) to take specified action to remedy the nuisance, hazard, or interference; or (ii) to remove the animal.⁵ Again, the adjudicator may make an order declaring that an animal is being kept in a sectional title scheme contrary to the scheme rules and require the owner or occupier in charge of the animal to remove it.⁶ Furthermore, in dealing with adjudication orders in respect of scheme rules the CSOSA provides for an order declaring that, having regard to the interests of all owners and occupiers in the sectional title scheme, a scheme rule is unreasonable and requiring the body corporate to approve and record a new scheme governance provision (i) to remove the provision; (ii) if appropriate, to restore an earlier provision; (iii) to amend the provision; or (iv) to substitute a new provision.⁷

² Kretschmer 2015 <https://paddocksblog.com/2015/04/28/pets-and-property-prices-in-sectional-title-schemes/>; Ferdman and Ingraham 2014 <https://www.iol.co.za/lifestyle/family/pets/south-africa-is-dog-country/>.

³ Rule 1 of Annexure 2 to the *Sectional Titles Schemes Management Regulations, 2016* (the STSM Regulations).

⁴ Sections 10(3) and (5)(a) of the *Sectional Titles Schemes Management Act 8 of 2011* (STSMA).

⁵ Section 39(2)(b) of the *Community Schemes Ombud Service Act 9 of 2011* (CSOSA). Paddocks 2019 Jan *Paddocks Press Newsletter* 1, advises that the trustees can also approach the local SPCA to do an inspection if, for example, too many dogs are being kept in an inadequate space.

⁶ Section 39(2)(c) of the CSOSA.

⁷ Section 39(3) of the CSOSA.

The aim of this article is to offer a comparative review of the keeping of animals in sectional title schemes. The comparable material is drawn, in the main, from Australian and United States strata and condominium legislation and case law which is evaluated against the background of the South African legislative provisions, case law, and adjudication orders under the CSOSA governing the keeping of pets in sectional title schemes. Legislation from Australia and the United States was chosen because the first *Sectional Titles Act* 66 of 1971 was modelled on the *New South Wales Conveyancing (Strata Titles) Act* 17 of 1961 and because the *United States Uniform Common Interest Ownership Act* is considered the most sophisticated condominium legislation in the world.

The following topics are addressed:

- (1) The requirement of written consent from the trustees which must not be withheld unreasonably.
- (2) The validity of a rule imposing an absolute ban on the keeping of animals.
- (3) Conditions or rules restricting the keeping of animals.
- (4) Deemed consent for the keeping of assistance animals for disabled persons in sectional title schemes.

This article is written in honour of my colleague and friend, Charl Hugo, whom I admire as a kind and honest individual with a positive attitude to life and an enthusiastic teacher of students.

2 Written consent of trustees (not unreasonably withheld) required for the keeping of animals

2.1 South Africa

Conduct rule 1(1) provides that the owner or occupier must not, without the trustees' written consent, which must not be unreasonably withheld, keep an animal, reptile, or bird in a section or on the common property. In some European condominium statutes, the right to keep an animal in a condominium scheme is considered part of the ordinary or customary

enjoyment of residential premises.⁸ As we shall see, the South African legislation does not guarantee this as a fundamental right.

In *Body Corporate of the Laguna Ridge Scheme No 152/1987 v Dorse*,⁹ the scheme's rules provided:¹⁰

[N]o animals, reptiles or birds in cages (which cause no nuisance to residents), shall be kept in the sections or on the common property unless expressly permitted in writing by the trustees and then only in accordance with any conditions stipulated by the trustees.

The trustees refused an old lady permission to keep her miniature Yorkshire terrier in the scheme as they felt that Laguna Ridge – which consists of eighteen storeys with 65 units – was unsuitable for pets. Their general policy was, therefore, to refuse applications and this became a precedent for their subsequent decisions.¹¹ When the trustees sought an order from the court to have the dog removed, the lady brought a counterapplication requesting permission to keep the pet.¹²

The court found that, for fear of creating a precedent, the trustees had simply applied a general policy not to grant permission unless special circumstances existed.¹³ The court found this approach unacceptable and instead required the trustees to consider each case on its merits based on the facts relevant to the case.¹⁴ The pertinent facts were that the dog did not bark, was carried whenever it left the section, and did not in any way constitute a nuisance to the respondent's neighbours.¹⁵ Consequently, the court held that the trustees' decision was reviewable under the common law and could be set aside because it was ultimately so grossly unreasonable as to warrant the inference that the trustees had failed properly to apply their minds to the matter.¹⁶

On the authority of Baxter's *Administrative Law*,¹⁷ the court concluded that once it has been accepted that keeping the dog in the lady's apartment

⁸ See Van der Merwe *European Condominium Law* 234.

⁹ *Body Corporate of the Laguna Ridge Scheme No 152/1987 v Dorse* 1999 2 SA 512 (D) (*Laguna Ridge* case).

¹⁰ *Laguna Ridge* case 515D.

¹¹ At *Laguna Ridge* case 516G it is stated that the trustees regarded the block of flats unsuited for the keeping of pets particularly having regard to issues of noise and hygiene.

¹² *Laguna Ridge* case 515A-B and 515E-G.

¹³ *Laguna Ridge* case 510B and 520B-F.

¹⁴ *Laguna Ridge* case 521E and 522E.

¹⁵ *Laguna Ridge* case 520H.

¹⁶ *Laguna Ridge* case 522F-H. See in general Civin and Pereira 2015 *De Rebus* 34.

¹⁷ Baxter and Hoexter *Administrative Law* 682.

would not constitute a nuisance, particularly if the conditions suggested by the respondent were adhered to, the result is a forgone conclusion. To refer the matter back to the trustees and prolong her anxiety as to whether she could keep the dog would cause her unjustifiable prejudice. Consequently, considering all the relevant facts in the matter, the court was in as good a position to make the decision as the trustees would have been had they properly considered the relevant factors.¹⁸ The court therefore ordered: (1) that the decision of the trustees to refuse the respondent's application to keep the dog in her apartment be set aside; and (2) that the respondent be given leave to keep her dog in her apartment under specified conditions.¹⁹ The default rule is therefore that owners are entitled to keep pets in the scheme unless the trustees refuse (on reasonable grounds) to grant written approval for the pets to be kept.²⁰

In *Cluny Body Corporate v Dewald Barkhuizen*,²¹ the adjudicator had to decide whether the trustees had exercised their discretion reasonably in ordering the respondent to get rid of one of the three dogs where the scheme rule²² stipulates that only two dogs are allowed. The adjudicator found that the trustees were obliged to apply their minds to the matter and that each matter must be considered on its own merits and facts.²³ At their meetings the trustees had to give reasonable consideration to any request for permission to keep the pet by taking into account the nature of the animal, the type of scheme, the likelihood of other residents being inconvenienced, and whether there are already other similar animals in the scheme.²⁴

In *Govender v Naidoo*,²⁵ the applicants appealed against the trustees' refusal to allow them to keep an African Grey parrot and a small Jack Russel dog as pets in their section in phase 2 of the scheme. The court found that the reasons for the trustees' refusal were that the other sectional owners in phase 2 were against the keeping of pets, that the sections in phase 2 were

¹⁸ *Laguna Ridge* case 523B-G. Also see Schindler Attorneys 2014 www.schindlers.co.za/wp-content/uploads/wp-post-to/.

¹⁹ *Laguna Ridge* case 524A-E. Also see Pienaar and Horn *Sectional Titles 252*; Civin and Pereira 2015 *De Rebus* 34; Booysen and Van der Merwe 2015 *Stell LR* 178-179.

²⁰ Also see Paddock 2021 Jun *Paddocks Press Newsletter*.

²¹ *Cluny Body Corporate v Dewald Barkhuizen* CSOS 553/WC/17 (*Cluny Body Corporate* case).

²² *Cluny Body Corporate* case para 14.

²³ *Cluny Body Corporate* case para 22.

²⁴ *Cluny Body Corporate* case para 23. Durham 2014 Jan *Paddocks Press Newsletter* 4; Durham 2014 Jul *Paddocks Press Newsletter* 5.

²⁵ *Govender v Naidoo* [2019] JOL 42882 (KZD).

not suitable for the keeping of pets, and that the body corporate was planning to introduce a new rule precluding the keeping of pets in phase 2. The court found that, guided by these reasons, the trustees undoubtedly relied upon the established precedent of not allowing pets in phase 2. It held that as in *Laguna Ridge*, the fear of creating a precedent was tantamount to a failure to consider and decide the application on its own merits; it was simply a refusal to depart from the general policy of not granting permission for the keeping of pets.²⁶ As the court had not seen the parrot and dog to assess what possible nuisance they could pose and was not familiar with the lay-out of the sections, the exclusive-use areas, and the common areas, the court referred the matter back to the trustees to reconsider their decision taking all the relevant factors into account.²⁷

From these cases it is clear that the default position is that every pet owner is entitled to approach the trustees for approval to keep his or her animal, reptile, or bird in the scheme, and that trustees may not unreasonably refuse permission without taking all the circumstances of the case into consideration.

2.2 *New South Wales*

Schedule 3 to the *Strata Schemes Management Regulation* of 2016²⁸ regulates the keeping of pets in strata schemes in New South Wales by providing owners and occupiers two options. Option A allows an owner or occupier to keep an animal on the lot (section) if he or she gives the owners corporation (body corporate) notice that the animal is being kept not later than 14 days after the animal commences to be kept on the lot.²⁹ Option B permits an animal to be kept with the written approval of the owners' corporation. The owners corporation must not unreasonably withhold its approval and must give written reasons for any refusal to grant permission.³⁰ In terms of both options the owner or occupier must keep the animal within the lot, supervise it when it is on the common property, and take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.³¹

²⁶ *Govender v Naidoo* [2019] JOL 42882 (KZD) paras 22-23.

²⁷ *Govender v Naidoo* [2019] JOL 42882 (KZD) para 26.

²⁸ Schedule 3 cl 5 of the *Strata Schemes Management Regulation* 501 of 2016.

²⁹ Clause 5 Option A(1) and (2) of the *Strata Schemes Management Regulation* 501 of 2016.

³⁰ Clause 5 Option B(1) and (2) of the *Strata Schemes Management Regulation* 501 of 2016.

³¹ Clause 5 Option A(3) and Option B(3) of the *Strata Schemes Management Regulation* 501 of 2016.

Option B approximates to the South African position, where the trustees are compelled to act reasonably in considering each application on its merits on a case-by-case basis.³² On 12 October 2020 in the landmark case of *Cooper v The Owners – Strata Plan No 58068*,³³ the New South Wales Court of Appeal overturned the previous Option C, which allowed owners to ban pets from strata schemes. This forced strata schemes which had adopted Option C to switch to either Option A or B, or any other pet-friendly version subject to appropriate restrictions and conditions for approval.³⁴ Therefore, strata schemes would be better served by having a by-law that allows pets subject to certain conditions and criteria.³⁵

This is also the default position on pets under by-law 11 in Schedule 4 to the *Queensland Body Corporate and Community Management Act* of 1997, which provides that strata residents must have prior strata building approval to bring or keep an animal in the building, and that a refusal can be challenged on its merits at the Queensland Civil and Administrative Tribunal.

The NSW *Strata Schemes Management Act* was amended in February 2021³⁶ by the insertion of sections 276A and 137B. Section 276A commissioned the Minister of Fair Trading to review the keeping of animals and to table a report in each house of parliament within six months after the commencement of the Amendment.³⁷ Matters addressed in the review include the circumstances in which it is reasonable to prohibit the keeping of animals, the impact of kept animals on the health and wellbeing of residents, the welfare of the animals, the resolution of disputes relating to kept animals, and the effects of a change to the by-laws for a scheme that prohibits the keeping of an animal which was lawfully kept on a lot before the change.³⁸ In August 2021, the NSW Department of Fair Trading published a report titled *Review of the Keeping of Animals in Strata*

³² LookUpStrata 2017 <https://www.lookupstrata.com.au/nsw-pet-rules-for-strata/>.

³³ *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250 (*Cooper* case).

³⁴ Cordata Partners 2020 https://www.investmentpropertylawyer.com.au/no_pets_strata_by-law.htm; Atwood Marshall Lawyers 2020 <https://attwoodmarshall.com.au/by-laws-to-allow-pets/>.

³⁵ POB Lawyers 2020 <https://www.pobilawyers.com.au/2020/10/14/cooper-v-the-owners-strata-plan-no-58068-2020-nswca-250-nsw-court-of-appeal-determines-blanket-no-pets-by-law-as-oppressive/>.

³⁶ *Strata Schemes Management Amendment Act* 1 of 2021.

³⁷ Sections 276A(2) and (3) of the *Strata Schemes Management Act* 50 of 2015 (SSMA).

³⁸ Sections 276A(1)(a)-(g) of the SSMA.

Schemes in NSW based on the Pets in Strata Survey to also gauge strata residents' opinion on pet issues.³⁹

Importantly, section 137B created a new pets regime in NSW strata buildings by providing that existing and new by-laws or decisions by an owners corporation (body corporate) have no force or effect to the extent that they unreasonably prohibit the keeping of an animal on a lot (section).⁴⁰ An owners corporation is deemed to have given permission for the keeping of an animal on a lot if the decision unreasonably prohibits the keeping of an animal, or if the owners corporation fails to make the required decision in a reasonable time.⁴¹ Importantly, it is deemed to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of his or her lot or the common property.⁴² The regulations specify what qualifies as unreasonable interference.⁴³

The *Strata Schemes Management Regulations* 501 of 2016 state that the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property when the animal:⁴⁴

- (1) makes a persistent noise to the degree that the noise unreasonably interferes with the peace, comfort, or convenience of another occupant; or
- (2) repeatedly runs at or chases another occupant, a visitor, or an animal kept by another occupant; or
- (3) attacks or otherwise menaces another occupant, a visitor, or an animal kept by another occupant; or
- (4) repeatedly causes damage to the common property or another lot; or
- (5) endangers the health of another occupant through infection or infestation; or

³⁹ Andreone 2021 <https://gostrata.substack.com/p/its-an-nsw-pets-fest?token>.

⁴⁰ Sections 137B(1)(a) and (b) of the SSMA.

⁴¹ Sections 137B(5)(a) and (b) of the SSMA.

⁴² Section 137B(2) of the SSMA.

⁴³ Section 137B(3) of the SSMA.

⁴⁴ Regulation 36A of the *Strata Schemes Management Regulation* 501 of 2016.

- (6) causes a persistent offensive odour that penetrates another lot or the common property;
- (7) for a cat, the owner of the animal fails to comply with a section 31 order of the *Companion Animals Act 1998*;⁴⁵ or
- (8) for a dog, the owner of the animal fails to comply with a section 32A order of the *Companion Animals Act 1998*,⁴⁶ or the dog is declared to be a menacing dog or a dangerous dog under section 33 and 33A of the *Companion Animals Act 1998*,⁴⁷ or the animal is a restricted dog within the meaning of section 55(1) of the *Companion Animals Act 1998*.⁴⁸

These circumstances relate to ongoing rather than one-off behaviour and appear to be exclusive, without allowing any further bases on which the prohibition would be declared unreasonable. Consequently, the new strata pet laws make it more difficult for strata buildings to prohibit pets and refuse applications for pet approval by forcing decisions invalidating and reversing non-compliant decisions and limiting the reasons for the refusal of pet applications. In the past pet owners had to jump through hoops to keep their pets in apartment buildings; now strata councils (trustees) must justify their attempts to ban pets within these new legally defined parameters.⁴⁹

3 Is an absolute ban on the keeping of animals in the rules of a scheme allowed?

In my opinion the following reasons could be advanced for holding a rule that prohibits the keeping of pets in South African sectional title schemes unreasonable and therefore invalid.⁵⁰ These reasons are extracted from the New South Wales landmark case of *Cooper v The Owners – Strata Plan No 58068*⁵¹ in which, on 12 October 2020, the New South Wales Court of Appeal overturned the earlier decision of the NSW Civil and Administrative

⁴⁵ In terms of s 31 of the *Companion Animals Act 87 of 1998* persistent noises or damage to property outside the lot is classified as "cat nuisance".

⁴⁶ See ss 32A and 32B of the *Companion Animals Act 87 of 1998*.

⁴⁷ See s 33 of the *Companion Animals Act 87 of 1998* for dangerous dogs and s 33A for menacing dogs.

⁴⁸ In terms of s 55(1) of the *Companion Animals Act 87 of 1998* the following dogs are restricted dogs: pit bull terrier, Japanese tosa, dogo Argentino, Presa Canario, filo Brasileiro, any dog breed, kind or description prohibited under *Customs Act 6 of 1901*. Also see reg 32-36 of the *Companion Animals Regulations 441 of 2018* and Sch 1.

⁴⁹ Andreone 2021 <https://gostrata.substack.com/p/its-an-nsw-pets-fest?token/>.

⁵⁰ See Van der Merwe 2021 *TSAR* 468-473.

⁵¹ *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250.

Tribunal (NCAT) Appeal Panel and held that a by-law banning pet ownership outright was "harsh, unconscionable and oppressive"⁵² and therefore invalid.

First, in terms of the South African *Sectional Titles Act* 95 of 1986 (STA) a sectional owner acquires separate ownership in his or her section.⁵³ This entitles him or her to use and enjoy the ordinary incidents of property ownership save to the extent to which he or she is lawfully constrained from doing so. Balancing the interests of all owners and occupiers in the scheme,⁵⁴ the keeping of pets should be considered an incidence of property ownership in view of the advantages attached to having pets. Consequently, the chief ombud or the court should reject a rule providing for a blanket prohibition on the keeping of pets as unreasonable. This applies only to a blanket prohibition and does not exclude a rule allowing pets subject to appropriate restrictions.⁵⁵

Second, the chief ombud or the court should apply contemporary standards, and thus an evaluative judgement, in determining whether a blanket prohibition on the keeping of pets is invalid or unreasonable. A rule restricting an incident of property ownership (the keeping of pets) would be considered unreasonable at least where the restriction could not, on any rational view, enhance or be required to preserve the other residents' enjoyment of their sections and the common property.⁵⁶ A blanket prohibition prevents sectional owners from using their lots in a way which could not, on any rational view, adversely affect other residents' enjoyment of their sections or the common property as illustrated by the adoption of a rule prohibiting the keeping of goldfish in a fish tank or a small bird in a cage. It is immaterial whether such a "no-pets" rule has been adopted or maintained by a large majority or even unanimously. The very purpose of the "reasonable" requirement is to ensure that minority rights regarding the use of residential property should not be overridden by a contrary majority view.⁵⁷ The matter must be considered objectively and determined by the application of contemporary standards relating to the value of keeping pets in a sectional title scheme.

⁵² Section 139(1) of the SSMA.

⁵³ Section 2(b) of the *Sectional Titles Act* 95 of 1986 (STA).

⁵⁴ CSOSA s 39(2)(d).

⁵⁵ See para 5 below.

⁵⁶ See *Cooper* case paras 17-19 (Basten JA) and 78 (Macfarlan JA).

⁵⁷ *Cooper* case para 6.

Third, the fact that sectional owners acquire their interest in a strata scheme in the knowledge of existing by-laws and the limitations they impose, does not mean that someone buying into the scheme may not challenge a particular by-law on the ground that it is unreasonable and not equally applicable to all owners and occupiers under the STSMA.⁵⁸ Scheme rules adopted unanimously or by majority may be declared invalid if they infringe a statutorily prescribed standard, irrespective of the knowledge on purchase or whether any lot owner might fail to comply with the by-law or seek to have it declared invalid.⁵⁹

Certain South African practitioners disagree and maintain that if the conduct rules have been amended to include a "no-pet" rule, the matter becomes contractual. Upon purchase of a sectional title unit or signature of a lease to rent a unit, the purchaser or tenant agrees to these rules and is contractually bound to abide by them. The purchaser or tenant agrees that the majority may curtail his or her rights in the interests of harmonious living in a high-density environment. They argue that South African law recognises that unfettered ownership rights may be limited where the purchaser has exercised free will and elected to be placed in that position of his or her own volition. Such an instance is where you purchase a unit in a sectional title scheme which limits the type of animals you may keep on the premises, or which contains an absolute prohibition on the keeping of pets.⁶⁰

I do not agree that the matter is purely contractual and that a purchaser buying into the scheme would be bound by a "no-pet" rule. The rules as prescribed and amended by a body corporate in accordance with section 10 of Act 8 of 2011 must be interpreted as laws made for the body corporate of that scheme.⁶¹ The aim of the prescribed and amended rules is to provide a framework for peaceful co-existence and a healthy increase in unit value for the schemes which implement such an approach.⁶²

The view that the rules are contractual is based on the premise that the rules originated on the basis of a mutual agreement between the sectional owners.⁶³ The rules differ from an ordinary contract in that certain rules (i.e.

⁵⁸ Sections 10(3) and 5(b) of the STSMA.

⁵⁹ *Cooper* case para 45 (Basten JA).

⁶⁰ *Civin and Pereira* 2015 *De Rebus* 36; *Rademeyer Attorneys* 2016 <https://www.rademeyer.co.za/no-pets-allowed/>; *Durham* 2014 Jul *Paddocks Press Newsletter* 5.

⁶¹ STSM Regulations reg 6.

⁶² *Heyns and Partners Inc* 2018 <https://heyns.co.za/2018/05/28/can-trustees-ban/>.

⁶³ See also *Wiljay Investments (Pty) Ltd v Body Corporate, Bryanston Crescent* 1984 2 SA 722 (T) 727D; *Lottering v Palm* 2008 2 SA 553 (D) 557A-C; and *Body Corporate*

the conduct rules in Annexure 2) can be amended by special resolution and will then bind the minority without their consent. Moreover, the rules of a sectional title community are not created by conscious agreement between the sectional owners. In practice it is more likely to be the developer who draws up the rules and arranges for their subsequent registration.⁶⁴ A further argument against a contractual basis for the binding force of the rules is that in terms of the STSMA⁶⁵ the chief ombud has the responsibility and the authority to examine the rules and approve any changes to the prescribed rules by the developer or the body corporate, or to suggest further amendments to the prescribed rules that have been changed. The trustees must then effect the amendments and submit them to the members for approval by either special or unanimous resolution. This is contrary to the basic principle of freedom of contract.⁶⁶ Instead, the rules should be regarded as the invention of the quasi-legislative power of a unique, autonomous, statutory body that differs in many respects from ordinary common-law voluntary associations or other sport, social, or cultural associations.⁶⁷ In the New South Wales *Cooper* case, Basten JA accepted that the *Strata Schemes Management Act* 50 of 2015 creates a statutory framework within which a type of local community can be created and administered where the physical proximity of units creates the opportunity for both cooperation and conflict.⁶⁸

I submit that the test used in the New South Wales Court of Appeal case *Cooper v The Owners – Strata Plan No 580682020*⁶⁹ to hold a rule containing a blanket prohibition on the keeping of pets invalid, corresponds substantially to the reasonableness criterion used in the *Community Schemes Ombud Act* to order a management or conduct rule invalid⁷⁰ or unreasonable, having regard to the interests of all owners and occupiers in the scheme.⁷¹ A rule containing a blanket prohibition on the keeping of animals is unreasonable and therefore invalid because it does not provide

of the Pinewood Park Scheme No 202 v Dellis (Pty) Ltd 2013 1 SA 296 (SCA) para 14.

⁶⁴ Section 13(1)(c) of the STA.

⁶⁵ Sections 10(5)(b) and (c) of the STSMA.

⁶⁶ Horn and Pienaar 2020 *Stell LR* 96-97.

⁶⁷ Spoelstra J in *Wiljay Investments (Pty) Ltd v Body Corporate, Bryanston Crescent* 1984 2 SA 722 (T) 727D-F remarked: "The rules, read with the provisions of the Act, contain a constitution or the domestic statutes of the body corporate." See further Pienaar and Horn *Sectional Titles* 209-213; Pienaar and Horn 2020 *THRHR* 305-306.

⁶⁸ *Cooper* case para 45 (Basten JA).

⁶⁹ *Cooper v The Owners – Strata Plan No 58068* [2020] NSWCA 250.

⁷⁰ Section 39(3)(c) of CSOSA.

⁷¹ Section 39(3)(d) of CSOSA.

a mechanism by which the body corporate can consider the individual circumstances of each owner or animal; unreasonably and unnecessarily precludes the exercise of the ownership rights of use and enjoyment in accordance with contemporary standards which include the entitlement to keep a pet; and does not permit a balanced consideration of the many aspects of the issue. Such a rule operates only in the interests of sectional owners who oppose pet ownership.

4 Trustees attaching conditions for approval or body corporate introducing a rule restricting the keeping of pets

I have established that an absolute prohibition on the keeping of animals in sectional title schemes cannot be justified. It is, however, within the power of the trustees to attach reasonable restrictive conditions to their approval and to withdraw their permission if the conditions are breached.⁷² This conduct rule protects pet owners from unreasonably strict rules and equally confers on the other owners the right to a nuisance-free and peaceful environment, with both parties considering each other's needs. Examples of reasonable conditions are that dogs are allowed on the common property only when leashed, and that the animal may not cause damage to the common property or harm or nuisance to other residents or animals. The withdrawal of consent must be on reasonable grounds and must be implemented by following the rules of due process. The body corporate is not entitled forcibly to remove a pet from a person's possession. This can be done only by an order of court or a CSOS adjudication order.⁷³

Likewise, the body corporate has the power to adopt a new rule restricting the keeping of animals in a scheme. This means that the body corporate may adopt a new rule limiting the number of pets per section or even the type or further particulars of pets allowed in the scheme. The new rule must

⁷² Rules 1(1), 1(3) and 1(4) of Annexure 2 to the STSM Regulations.

⁷³ Durham 2014 Jan *Paddocks Press Newsletter* 4 suggested that the owner should be given notice of the breach and granted an opportunity to give evidence at a hearing and be allowed to remedy the situation. The trustees must decide by majority vote on their withdrawal of consent and the resolution must be minuted. The owner must then be given written notice of the withdrawal of consent and allowed a reasonable time to remove the pet. See *Trustees of Body Corporate of Somerset Country Estate v George du Plessis* CSOS 00602/KZN/17 for an adjudication order to remove two dogs from the scheme for a breach of the strict conditions set for keeping the dogs.

be reasonable, non-discriminatory, and appropriate to the circumstances of the scheme.⁷⁴

Regarding *Abraham v The Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC)*,⁷⁵ this is an eco-friendly residential golf club estate containing over 890 residences.⁷⁶ After stating that written permission must be obtained before a dog may be brought onto the estate, the pet control rule of the estate continued:

Dogs must be small and not be of a known aggressive breed. In regard to the size of dogs, they should be of a breed which will not exceed 20 kg when fully grown.⁷⁷

When their application to keep a Saint Bernard dog was refused on the ground that when fully grown the dog would weigh somewhere between 55 and 80 kilograms, the applicants asked the court to review and set aside the refusal and refer the matter back to the respondent.⁷⁸ Their main ground was that the directors misdirected themselves by not applying their minds to whether, notwithstanding the size of the dog, the application for the registration of the dog might be granted.⁷⁹ Olsen J found that the rule as to size was clarified to so significant an extent to limit debate, argument, and discord in the interests of all concerned.⁸⁰ He concluded that the directors had no discretion to register a dog of a "non-aggressive breed" which is found to be one which will exceed the twenty kilogram limit when fully grown, save for the truly exceptional case presented by guide dogs for the blind.⁸¹ The court therefore ordered the applicants to remove the dog from the estate within three months from the date of the order.⁸²

⁷⁴ Sections 10(3) and (5)(b) of the STSMA. See *Body Corporate for River City Apartments CTS 31622 v McGarvey* [2012] QCAT 47 para 21, where the body corporate contended before the Queensland Civil and Administrative Tribunal that an investigation of the apartment building would have revealed that the two lifts which served the 41 levels of the scheme are small and inadequate for the passage of animals and that the common area on each floor provides little room for passage to apartments.

⁷⁵ *Abraham v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC)* (7124/12) [2014] ZAKZDHC 36 (17 September 2014) (*Abraham case*).

⁷⁶ *Abraham case* para 3.

⁷⁷ *Abraham case* para 6.

⁷⁸ *Abraham case* paras 11 and 15.

⁷⁹ *Abraham case* para 20.

⁸⁰ *Abraham case* para 39.

⁸¹ *Abraham case* para 48.

⁸² *Abraham case* para 56. See in general Kelly 2015 Mar *Paddocks Press Newsletter* 2.

In *Cluny Body Corporate v Dewald Barkhuizen*⁸³a conduct rule providing that an owner must obtain the written approval of the trustees to keep an animal, reptile, or bird in the scheme, continued that:

No more than 2 (two) pets per unit and no large breed dogs (e.g. Bull Mastiff, German Shepherd, Doberman, Rottweiler) are allowed.⁸⁴

The applicant submitted that the respondent kept two Jack Russells and a Labrador in his townhouse unit and prayed for the removal of one of the dogs from the scheme. The adjudicator found that reasonableness entails a rule to be necessary, not too wide in scope, to be based on good reason – which means sensible in the circumstances – and to promote the best interest of the sectional community in preserving the quality of life in the scheme or the value of the units as investments.⁸⁵ He therefore ordered that the owner remove one of the dogs from the scheme. He pointed out that although a Labrador might be considered a large-breed dog, Labradors are not specified as such in the scheme rule in question and therefore it was reasonable for the owner to keep the Labrador.⁸⁶

From a comparative perspective, by-law 3(4) of the Schedule of Standard By-laws of the *British Columbia Strata Property Act* of 1998 provides an example of a by-law (rule) that restricts the keeping of animals in strata schemes:

An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following: (a) a reasonable number of fish or other small aquarium animals; (b) a reasonable number of small caged mammals; (c) up to 2 caged birds; (d) one dog or one cat.

5 The provisions on deemed consent for the keeping of assistance animals to assist disabled persons in sectional title schemes

5.1 General

Although earlier South African case law found that the trustees could not refuse consent for a disabled person to keep a guide dog in a sectional title scheme,⁸⁷ the keeping of blind, hearing, and assistance animals was

⁸³ *Cluny Body Corporate v Dewald Barkhuizen* CSOS 553/WC/17.

⁸⁴ *Cluny Body Corporate* case paras 10-13.

⁸⁵ *Cluny Body Corporate* case para 24.

⁸⁶ *Cluny Body Corporate* case para 26.

⁸⁷ See *Body Corporate of Sandown Village Scheme v A Magnus* (D&CLD) (unreported) case number 8556/2000 of 16 August 2001; *Cluny Body Corporate* case para 25; and *Abraham* case para 48.

regulated for the first time in conduct subrule 1(2) of Annexure 2 to the STSM Regulations. This subrule provides that an owner or occupier suffering from a disability and who reasonably requires a guide, hearing, or assistance dog must be considered to have the trustees' consent to keep that animal in a section and accompany it on the common property. I submit that this subrule falls hopelessly short of regulating this matter adequately and that lessons in this regard can be learned from the comparable Australian jurisdictions of New South Wales⁸⁸ and Queensland, and the Canadian jurisdiction of British Columbia.

5.2 No reference to other legislation

This subrule makes no reference to legislation dealing with the keeping of dogs which is found in comparable provisions in Australian and Canadian jurisdictions. The New South Wales SSMA⁸⁹ provides that a by-law prohibiting or restricting an owner or occupier of a lot (section) with a disability from keeping an assistance animal as referred to in section 9 of the *Commonwealth Disability Discrimination Act 1992* (DDA)⁹⁰ in a lot (section) or to use it on the common property, has no force or effect.⁹¹ The SSMA further provides that a by-law may require a person who keeps an assistance animal on a lot to produce evidence to the owners corporation (body corporate) that the animal is an assistance animal as referred to in section 9 of the DDA.⁹² If the owner or occupier can show that his or her animal meets the requirements for an assistance animal and that he or she qualifies under the specific range of disabilities outlined, the owners corporation cannot prohibit him or her from keeping the assistance animal.⁹³

The *Queensland Body Corporate and Community Management Act 28 of 1997* (BCCMA) provides that an owner, tenant, or occupier with a disability under the *Guide, Hearing and Assistance Dogs Act of 2009* has the right to be accompanied by such a dog and that a by-law cannot restrict or exclude the right of the owner to keep the guide, hearing, or assistance dog on the lot.⁹⁴ The wide objects of the *Guide, Hearing and Assistance Dogs Act of*

⁸⁸ See especially Andreone 2021 <https://gostrata.substack.com/p/my-strata-companion-is-an-animal/>.

⁸⁹ *Strata Schemes Management Act* 50 of 2015.

⁹⁰ *Disability Discrimination Act* 135 of 1992 as amended (the DDA).

⁹¹ Section 139(5) of the SSMA.

⁹² Section 139(6) of the SSMA.

⁹³ LookUpStrata Team NSW 2018 <https://www.lookupstrata.com.au/strata-committee-companion-animal/>. See also *Strata Schemes Management Regulation* 501 of 2016 sch 3 cl 5(4).

⁹⁴ Sections 181(1)-(3) of the *Body Corporate and Community Management Act* 28 of 1997.

2009 are: (1) to allow persons with a disability to be accompanied by guide, hearing, and assistance dogs in places of accommodation and particular public places and public passenger services;⁹⁵ and (2) to ensure the quality and accountability of guide, hearing, and assistance dog training services by providing a simple and consistent means of identifying properly trained guide, hearing, and assistance dogs and the approval of the services of these dogs.⁹⁶ Section 12 provides that handlers and trainers who are accompanied by a properly trained guide, hearing, or assistance dog or a trainee support dog,⁹⁷ must display a clearly visible identity card⁹⁸ or have the card available for inspection at the request of a person exercising control over the strata scheme, and must ensure that a guide or hearing dog wear a harness or identifying coat, and an assistance dog an identifying coat.⁹⁹ In addition, the executive committee or manager of the strata scheme may not refuse to rent accommodation to an accompanied handler of a person with a disability, charge an amount because the dog is present, separate the person with a disability from the dog, or refuse the handler and the dog entry to any part of the scheme, except to a part of the scheme where food is ordinarily prepared for consumption by residents or members of the public.¹⁰⁰

British Columbia's *Strata Property Act* of 1998¹⁰¹ provides that a by-law that prohibits a pet or other animal or restricts the access of a pet or other animal to a strata lot or common property does not apply to: (1) a guide dog or service dog; or (2) a dog that is a member of a retired guide or service dog team if the person who is a member of the team is an owner, tenant, or occupant.¹⁰² This provision, introduced in January 2016, means that strata corporations (bodies corporate) cannot prevent lot owners, tenants, and visitors to strata property from being accompanied by a certified guide or

⁹⁵ *Guide, Hearing and Assistance Dogs Act*, 2009 long title, ss 3(1)(a) and 3(2)(a) and (b).

⁹⁶ Sections 3(1)(b) and 3(2)(c) and (d) of the *Guide, Hearing and Assistance Dogs Act*, 2009.

⁹⁷ Section 12(1) of the *Guide, Hearing and Assistance Dogs Act*, 2009.

⁹⁸ Under s 12(4) of the *Guide, Hearing and Assistance Dogs Act*, 2009 a person with a disability, an alternative handler, and an approved trainer, must have a primary identity card, an alternative handler's card, and a trainer's identity card respectively.

⁹⁹ Sections 12 (2) and (3) of the *Guide, Hearing and Assistance Dogs Act*, 2009. Reg 5 of the *Guide, Hearing and Assistance Dogs Regulation*, 2019 sets out the requirements for identifying coats for guide, hearing, and assistance dogs. See further Queensland Government: Communities, Disability Services and Seniors 2021 <https://www.communities.qld.gov.au/industry-partners/guide-hearing-assistance-dogs/about-guide-hearing-assistance-dogs-legislation/>.

¹⁰⁰ Sections 12A(1) and (4) of the *Guide, Hearing and Assistance Dogs Act*, 2009.

¹⁰¹ *Strata Property Act*, 1998 (SBC 1998 Ch 43).

¹⁰² Section 123(1.01) of the *Strata Property Act*, 1998.

service dog.¹⁰³ In this provision "guide dog", "retired guide or service dog team" and "service dog" have the same meaning as in the *Guide Dog and Service Dog Act*.¹⁰⁴

5.3 No distinction between service and assistance dogs

No clear distinction is drawn between service dogs and assistance dogs. It appears that in South Africa assistance dogs are equated with service dogs which are trained to cater for a specific disability in a disabled person¹⁰⁵ while those suffering from new, recognised types of disability, for example, depression among millennials, could also benefit from the mere presence of a dog without any specific training. The Australian Human Rights Commission remarked that their comprehension of what constitutes an assistance animal is evolving, and that assistance dogs can support a wider range of persons with disabilities than service dogs.¹⁰⁶ This is in tandem with the United States' Department of Housing and Urban Development (HUD) recognition of the need for both trained and untrained assistance animals in homes to provide therapeutic emotional support for individuals with disabilities. This means that assistance animals cover a wider range of animals than "service animals" as defined in the Department of Justice's regulations implementing the *Americans with Disabilities Act* of 1990, and differs from service animals in that a more thorough inquiry into the disability-related need is required.¹⁰⁷ Schedule 4 to the *Queensland Guide, Hearing and Assistance Dogs Act* of 2009 defines an "assistance dog" as a dog trained to perform identifiable physical tasks and behaviour to assist a person with a disability to reduce the person's need for support.¹⁰⁸ Consequently, an assistance dog provides support to a broader group,

¹⁰³ British Columbia Law Institute 2016 <https://www.dcli.org/new-rules-for-strata-corporations-on-guide-and-service-dogs-in-force-today>.

¹⁰⁴ Section 123(1.02) of the *Strata Property Act*, 1998.

¹⁰⁵ The *City of Johannesburg Metropolitan Municipality By-law Relating to Dogs and Cats*, 2006 defines "guide dog" in s 1 as: "[A] dog which has been trained to assist a blind or poor-sighted person and includes a service dog which has been trained to assist a person who is mentally or physically incapacitated".

¹⁰⁶ Australian Human Rights Commission 2016 <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth/>.

¹⁰⁷ Calabrese Law Associates 2020 <https://www.calalaw.com/blog/what-condominium-owners-should-know-about-the-changing-pet-policy-landscape-and-applicable-laws/>.

¹⁰⁸ Sch 4 of the *Guide, Hearing and Assistance Dogs Act*, 2009 "assistance dog", "guide dog", and "hearing dog".

including people with physical disabilities, autism, PTSD, and people experiencing mental health issues.¹⁰⁹

5.4 Deemed consent restricted to dogs

South Africa's conduct rule restricts the deemed consent for keeping animals in a sectional title scheme to *dogs* that fall into this category. Similarly, in Queensland the access rights of guide and hearing dogs have been in place since the enactment of the *Guide Dogs Act* of 1972 and were extended to assistance dogs only by the *Guide, Hearing and Assistance Dogs Act* of 2009. The New South Wales SSMA replaced the term "guide and hearing dogs" with the term "assistance animals" only in 2015, so providing that animals other than dogs could qualify as assistance animals. This was confirmed by the Australian Human Rights Commission, which remarked that the understanding of what constitutes an assistance animal is evolving and that the support required for a person with a disability can come from a variety of animals and apply to a range of persons with disabilities.¹¹⁰

The United States recognises that miniature horses – generally less than three feet tall – can be trained as assistance animals to guide a blind owner, pull a wheelchair, and support a person suffering from Parkinson's disease who, by bracing against the horse, can walk more easily and safely. An owner might choose a miniature horse as an assistance animal because he or she is allergic to dogs, or because his or her religion regards dogs as "unclean".¹¹¹ Miniature horses can live and work for about thirty years – far longer than assistance dogs.¹¹²

The United States also formally recognises that Capuchin monkeys can be trained as assistance animals to help pick things up, open doors, turn on light switches, turn the pages of a book, operate microwave ovens, open bottles, and wash their owner's face. They can help people with quadriplegia, very serious spinal-cord injuries, severe injuries to their hands

¹⁰⁹ Report 4 *Guide, Hearing and Assistance Dogs Amendment Bill*, 2015 para 2 notes that examples are an assistance dog pulling a wheelchair or carrying and picking up items, helping people with mobility impairment, or alerting and supporting people with medical conditions or psychiatric disorders in "at risk" situations.

¹¹⁰ Australian Human Rights Commission 2016 <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth/>.

¹¹¹ Dogs have been seen as impure and the Islamic tradition has developed several injunctions that warn Muslims against most contact with dogs. See Peta 2022 <https://www.animalsinislam.com/islam-animal-rights/dogs/>.

¹¹² Wikipedia 2022 https://en.wikipedia.org/wiki/Service_animal/.

and arms, and multiple sclerosis. After being socialised in a human home environment as infants, the monkeys undergo extensive training – generally in schools run by private organisations – before being placed with suitable persons with disabilities.¹¹³ The training takes seven years on average, but the monkey's working life can span 25–30 years, which is two to three times longer than a guide dog.

5.5 Insufficient provisions for training of assistance animals

Save for guide and hearing dogs,¹¹⁴ inadequate provision is made for the *training* of other types of assistance animal in South Africa. Similarly, no legislation in New South Wales provides for accreditation of assistance animals or what qualifies as an animal training organisation.¹¹⁵ Disabled persons have the right to train their own assistance animal on condition that evidence is provided that the training meets the requirements for an assistance animal.¹¹⁶

The Queensland *Guide, Hearing and Assistance Dogs Act* of 2009 requires that a dog must be certified as a guide, hearing, or assistance dog by a person or organisation that has been approved to train a guide, hearing, or assistance dog.¹¹⁷ An individual or an organisation may apply to the chief executive official of the Department of Seniors and Disability Services for approval as one of the three types of trainer.¹¹⁸ The approval of a trainer or an institution must be reviewed every three years.¹¹⁹ The transitional provisions of the Act contain a list of approved training institutions¹²⁰ and a

¹¹³ Wikipedia 2022 https://en.wikipedia.org/wiki/Service_animal/.

¹¹⁴ The South African Guide-dogs Association for the Blind (GDA) also trains dogs to assist persons with disabilities other than blindness. See Disability Info South Africa 2021 <http://disabilityinfosasa.co.za/visual-impairments/assistive-devices-equipment/guide-dogs/>. In the *Cluny Body Corporate* case the trustees contended that the respondent had not submitted training certificates as proof of the alleged training of the dogs.

¹¹⁵ Grace Lawyers 2016 <https://sca.associationonline.com.au/news/assistance-animals-and-the-new-nsw-legislation/>.

¹¹⁶ NSW Office of Local Government 2021 <https://www.olg.nsw.gov.au/public/dogs-cats/responsible-pet-ownership/assistance-animals/>.

¹¹⁷ Regulation 6 of the *Guide, Hearing and Assistance Dogs Regulation*, 2019 outlines the type of records the trainer must keep and the periods for which the records must be kept (generally for seven years).

¹¹⁸ Sections 15(1) and (2) of the *Guide, Hearing and Assistance Dogs Act*, 2009. For application Form GHA-4 must be completed. See further s 17(2)-(5).

¹¹⁹ Sections 21 and 23 of the *Guide, Hearing and Assistance Dogs Act*, 2009. Ss 24 to 33 deal with the immediate suspension, cancellation, and voluntary surrender of the approval.

¹²⁰ Section 122 of the *Guide, Hearing and Assistance Dogs Act*, 2009 mentions amongst others: Guide Dogs Queensland; Guide Dogs Victoria; Seeing Eye Dogs Australia.

list of guide and hearing dogs trained and certified by any of the listed institutions.¹²¹ Importantly, an approved guide, hearing, or assistance dog trainer, may certify a guide, hearing, and assistance dog for a person with a disability only if the dog has been desexed and vaccinated, is not of a restricted or dangerous breed, and has passed a public access test¹²² conducted by the approved trainer or employee of the institution within seven days before being certified, among other conditions.¹²³

The British Columbia *Guide Dog and Service Dog Act* of 2015 contains the most extensive provisions on the certification of guide and service *dogs*; guide dogs and service dog handler *teams*; guide dog and service dog *trainers*; guide and service *dogs in training*; and *retired* guide or retired service dog teams.¹²⁴ Regulations 2 to 6 of the *Guide Dog and Service Dog Regulation 223* of 2015 outline the application and renewal processes for each of the above certificates. These processes allow the registrar to determine whether dogs and handlers meet all the conditions and requirements for certification.

The operation of the Act is overseen by the Registrar of Guide Dogs and Service Dogs appointed by the Minister under section 9 of the *Guide Dog and Service Dog Act* of 2015. Importantly, two distinct procedures must be followed in the certification of guide and service dogs by: (1) dog handlers who have been trained by an organisation accredited by either Assistance Dogs International (ADI) or International Guide Dogs Federation (IGDF); and (2) all other applicants regardless of their training programme.¹²⁵

To ensure that dogs from an alternative, non-accredited training programme have been trained to a high standard and pose no public safety risk, the applicant must provide two certificates. The first is a certificate from a physician or nurse practitioner confirming that the applicant's medical condition requires a fully trained guide dog (for visual impairment) or fully trained service dog (for other conditions), to assist him or her in daily living. The second is a certificate from a veterinarian that the dog has been spayed

¹²¹ Section 123 of the *Guide, Hearing and Assistance Dogs Act*, 2009. See further Van der Merwe 2022 *Stell LR* forthcoming.

¹²² Under s 35(1) of the *Guide, Hearing and Assistance Dogs Act*, 2009 a "public access test" is a test approved by the chief executive to assess whether a guide, hearing or assistance dog: (1) is safe and effective in a public place or on a public passenger vehicle; and (2) able to be controlled by the primary handler or the primary handler with the support of an alternative handler.

¹²³ Section 45A of the *Guide, Hearing and Assistance Dogs Act*, 2009.

¹²⁴ Sections 5-6 of the *Guide Dog and Service Dog Act*, 2015 (Ch 17).

¹²⁵ British Columbia Government 2020 <https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog/>.

or neutered.¹²⁶ The registrar will certify the dog only on confirmation by the Justice Institute of British Columbia (JIBC) that the dog and handler team has successfully passed the BC Guide Dog and Service Dog Assessment.¹²⁷ The assessment consists of forty prescribed tasks to prove that the guide or service dog has a suitable disposition and behaves appropriately in public.¹²⁸

5.6 What type of disability qualifies for assistance?

Finally, there is confusion regarding what type of disability would qualify for assistance by an assistance animal or what evidence a disabled owner or occupier must provide as proof that he or she reasonably requires an assistance animal. South Africa provides constitutional protection against discrimination for persons with disabilities in the form of the Bill of Rights and the *Promotion of Equality and Prohibition of Unfair Discrimination Act 4* of 2000. However, the term "disability" is not specifically defined in either. The South African disability sector prefers the definition in article 1 of the *United Nations Convention on the Rights of Persons with Disabilities*, ratified by South Africa in November 2007, which reads as follows:¹²⁹

Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

There is, however, no direct authority in South African law as to what evidence the disabled person must bring to the table to prove that he or she *reasonably requires* a guide, hearing, or assistance dog.

The Australian Commonwealth *Disability Discrimination Act 135* of 1992 and the New South Wales *Anti-Discrimination Act 48* of 1977 use slightly different definitions of disability, but both definitions are very broad and include almost any health condition, impairment, or disability imaginable. This includes "traditional" categories of disability, such as: intellectual

¹²⁶ Section 5 of the *Guide Dog and Service Dog Act, 2015* and reg 2 of the *Guide Dog and Service Dog Regulation, 2015*.

¹²⁷ British Columbia Government 2020 <https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog/>.

¹²⁸ Some of the tasks required of the dog are: #10 Not solicit public attention: dog focussed on the handler and ignored other people; #20 Sit command next to plate of food: no attempt to eat or sniff at food; #26 Noise distraction (drop object on floor behind the dog): The dog remained composed; #39 Evident team relationship and knowledge of access rights; #40 The dog is clean and groomed with no offensive odour, and friendly and relaxed.

¹²⁹ Werkman's Attorneys 2013 <https://www.mondaq.com/southafrica/arbitration-dispute-resolution/147254/definitions-of-disability-and-the-2011-census/>.

disability, physical disability, mental illness, having a disease that is either temporary or permanent, acquired brain injury, behavioural disability, developmental disability and learning disability.¹³⁰ The definition of disability covers temporary, permanent, past, present, future, and imputed disabilities.¹³¹ The strata owners corporation (body corporate) may require the disabled owner or occupier who keeps an animal to produce evidence that the animal meets the requirements for an assistance animal and that the animal and owner qualify for any of the specific range of disabilities outlined.¹³² In such a case the owners corporation is not allowed to prohibit the keeping of the assistance animal on the lot (section).¹³³

The Queensland *Guide, Hearing and Assistance Dogs Act* of 2009 defines a disability as a condition that is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment (e.g., a visual or hearing impairment), or the presence in the person's body of organisms causing illness or disease. This condition must result in a reduction in the person's capacity for communication, social interaction, learning, mobility, self-care, or management and cause the person to need support.¹³⁴ The *Guide, Hearing and Assistance Dogs Regulation*, 2019 states that a disabled person must have a *certificate of disability*, signed by a registered health practitioner practising in the medical, occupational therapy, physiotherapy, or psychology profession, or a person who is eligible for practising membership of the Speech Pathology Association of Australia.¹³⁵

In the British Columbia government a medical form confirming the requirements for a guide or service dog completed by a medical doctor or nurse practitioner after reviewing the information about the patient's condition and the guidelines supplied on the back of the form, must express an opinion as to whether the patient's condition requires a fully trained guide dog (for visual impairment) or a fully trained service dog (for other conditions) to assist him or her in daily living. The guidelines given on the medical form contain a non-exhaustive list of conditions that may warrant the use of a guide or service dog for daily living, and the types of tasks such

¹³⁰ Interestingly, addiction to a "prohibited drug" is a disability under the DDA but not under the NSW *Anti-Discrimination Act* 48 of 1977.

¹³¹ Section 4 disability (h)–(k) of the DDA.

¹³² This is a combination of SSMA ss 39(5) and (6). See LookUpstrata Team NSW 2018 <https://www.lookupstrata.com.au/strata-committee-companion-animal/>; NSW Office of Local Government 2021 <https://www.olg.nsw.gov.au/public/dogs-cats/responsible-pet-ownership/assistance-animals/>.

¹³³ Section 139(5) of the SSMA.

¹³⁴ Section 5(1) of the *Guide, Hearing and Assistance Dogs Act*, 2009.

¹³⁵ Regulation 5(6) of the *Guide, Hearing and Assistance Dogs Regulation*, 2019.

dogs may assist a person with. It notes that neither *therapy dogs* taken on visits to people to give them an opportunity to interact with the dogs, nor *emotional support dogs* that only provide comfort and support to the dog owner, qualify as guide or service dogs.

7 Conclusion

From the above it is clear that the reasonableness criterion plays a very important role in regulating the keeping of animals in sectional title schemes.

First, the written consent of the trustees required for the keeping of animals may not be withheld unreasonably. This means that the trustees must carefully consider the nature and physical features of the individual animal, the appropriateness of the apartment building and the common property for keeping that animal, and whether other animals of the same kind are allowed in the scheme. Consequently, the default rule is that individual animals are allowed in sectional title schemes unless the trustees refuse on reasonable grounds that such an animal may be kept in the scheme.

Second, the trustees may set conditions for the approval of the individual animal in the scheme. Such conditions could be that the animal may not cause a nuisance, may enter the common property only on a leash, and is not allowed in the swimming pool area or areas where food is prepared. The approval may be withdrawn when these conditions are breached.

Third, a new conduct rule regulating the keeping of animals in the scheme must be reasonable and not discriminatory and appropriate for the specific scheme. In this situation the emphasis is not on the individual animal but rather on the kind of animal, dog, cat, reptile, or bird or the breed or physical features of the animals that are considered unsuitable for being permitted in the scheme. Therefore, whereas a new conduct rule containing a blanket prohibition on the keeping of animals in a scheme will be considered unreasonable and invalid, a new conduct rule restricting the type of animal, or the breed or physical features of individual animals, would not be considered unreasonable.

In the final analysis, the reasonableness criterion involves the objective balancing of the interests of residents who keep animals in the scheme and residents who prefer not to keep animals.

Once allowed in the scheme, the animal's behaviour must be such that the interests of other owners or residents in the scheme are not unreasonably negatively affected by the presence of the animal. If a condition for its

keeping is breached, the approval of the trustees may be withdrawn, and the owner or resident required to dispose of the animal. Although the trustees may not remove the animal by force, the trustees or an affected resident may approach the ombud service for an adjudication order to have the animal removed from the scheme by the messenger of the court in which the order is registered.¹³⁶

If strict requirements are set for the proper training of assistance animals, this eventuality will never arise among assistance animals for disabled persons in sectional title schemes.

Bibliography

Literature

Baxter and Hoexter *Administrative Law*

Baxter L and Hoexter C *Administrative Law* (Juta Cape Town 1984)

Booyesen and Van der Merwe 2015 *Stell LR*

Booyesen J and Van der Merwe CG "A Critical Analysis of the Financial and Social Obligations Imposed on Sectional Owners in Sectional Title Schemes as well as Their Enforcement" 2015 *Stell LR* 168-189

Civin and Pereira 2015 *De Rebus*

Civin A and Pereira R "Paws Before Signing on the Dotted Line" 2015 January/February *De Rebus* 34-35

Durham 2014 Jan *Paddocks Press Newsletter*

Durham CM "Save Sweet Sophie! A Case Study of Trustees Withdrawing Consent" 2014 January *Paddocks Press Newsletter* 4

Durham 2014 Jul *Paddocks Press Newsletter*

Durham CM "Permission to Keep Pets" 2014 July *Paddocks Press Newsletter* 5

Horn and Pienaar 2020 *Stell LR*

Horn JG and Pienaar GJ "Exclusive Use Rights in Terms of the Sectional Title Legislation" 2020 *Stell LR* 91-109

Kelly 2015 Mar *Paddocks Press Newsletter*

Kelly A "Pet Stories" 2015 March *Paddocks Press Newsletter* 2

¹³⁶ Section 56(1) of the CSOSA.

Paddock 2019 Jan *Paddocks Press Newsletter*

Paddock G "Withdrawal of Permission to Keep Pets in Sectional Title Schemes" 2019 January *Paddocks Press Newsletter* 1

Paddock 2021 Jun *Paddocks Press Newsletter*

Paddock G "South Africa's Leading Sectional Title Academic Confirms that 'No Pets' Rules are Invalid" 2021 June *Paddocks Press Newsletter* 1

Pienaar and Horn *Sectional Titles*

Pienaar GJ and Horn JG *Sectional Titles and Other Fragmented Property Schemes* 2nd ed (Juta Cape Town 2020)

Pienaar and Horn 2020 *THRHR*

Pienaar GJ and Horn JG "The Development, Nature and Enforcement of Third Generation Sectional Title Rules" 2020 *THRHR* 299-317

Van der Merwe *European Condominium Law*

Van der Merwe CG *European Condominium Law* (Cambridge University Press Cambridge 2015)

Van der Merwe 2021 *TSAR*

Van der Merwe CG 2021 "Is a Scheme Rule Prohibiting the Keeping of Animals in a Sectional Title Scheme Invalid? Lessons from the Landmark Decision of the New South Wales Court of Appeal" 2021 *TSAR* 456-473

Van der Merwe 2022 *Stell LR*

Van der Merwe CG "Lessons from New South Wales, Queensland, and British Columbia to Assist South Africa in Adequately Regulating the Keeping of Assistance Animals by Disabled Persons in Sectional Title Schemes" 2022 *Stell LR* forthcoming

Case law

CSOS Adjudications

Cluny Body Corporate v Dewald Barkhuizen CSOS 553/WC/17

Trustees of Body Corporate of Somerset Country Estate v George du Plessis CSOS 00602/KZN/17

New South Wales

Cooper v The Owners – Strata Plan No 58068 [2020] NSWCA 250

Queensland Civil and Administrative Tribunal

Body Corporate for River City Apartments CTS 31622 v McGarvey [2012] QCAT 47

South Africa

Abraham v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) (7124/12) [2014] ZAKZDHC 36 (17 September 2014)

Body Corporate of Sandown Village Scheme v A Magnus (D&CLD) (unreported) case number 8556/2000 of 16 August 2001

Body Corporate of the Laguna Ridge Scheme No 152/1987 v Dorse 1999 2 SA 512 (D)

Body Corporate of the Pinewood Park Scheme No 202 v Dellis (Pty) Ltd 2013 1 SA 296 (SCA)

Govender v Naidoo [2019] JOL 42882 (KZD)

Lottering v Palm 2008 2 SA 553 (D)

Wiljay Investments (Pty) Ltd v Body Corporate, Bryanston Crescent 1984 2 SA 722 (T)

Legislation**South Africa**

Community Schemes Ombud Service Act 9 of 2011

Constitution of the Republic of South Africa, 1996

Promotion of Equality and Prohibition of Unfair Discrimination Act 4 of 2000

Sectional Titles Act 95 of 1986

Sectional Titles Schemes Management Act 8 of 2011

Australian Commonwealth

Disability Discrimination Act 135 of 1992

British Columbia

Guide Dog and Service Dog Act, 2015 (Ch 17)

Strata Property Act, 1998 (SBC 1998 Ch 43)

New South Wales

Anti-Discrimination Act 48 of 1977

Companion Animals Act 87 of 1998

Conveyancing (Strata Titles) Act 17 of 1961

Customs Act 6 of 1901

Strata Schemes Management Act 50 of 2015

Strata Schemes Management Amendment Act 1 of 2021

Queensland

Body Corporate and Community Management Act 28 of 1997

Guide Dogs Act, 1972

Guide, Hearing and Assistance Dogs Act, 2009

Guide, Hearing and Assistance Dogs Amendment Bill, 2015

United States

Americans with Disabilities Act, 1990

Uniform Common Interest Ownership Act, 1982

Government publications**British Columbia**

Guide Dog and Service Dog Regulation 223 of 2015

New South Wales

Companion Animals Regulations 441 of 2018

Strata Schemes Management Regulation 501 of 2016

Queensland

Guide, Hearing and Assistance Dogs Regulation, 2019

South Africa

City of Johannesburg Metropolitan Municipality By-law Relating to Dogs and Cats, 2006 (N 1334 in Gauteng Provincial Gazette 135 of 10 April 2006)

Sectional Titles Schemes Management Regulations, 2016

International instruments

United Nations Convention on the Rights of Persons with Disabilities (2007)

Internet sources

Andreone 2021 <https://gostrata.substack.com/p/its-an-nsw-pets-fest?token/>

Andreone F 2021 *It's an NSW Pets Fest* <https://gostrata.substack.com/p/its-an-nsw-pets-fest?token/> accessed 27 November 2021

Andreone 2021 <https://gostrata.substack.com/p/my-strata-companion-is-an-animal/>

Andreone F 2021 *My Strata Companion is an Animal* <https://gostrata.substack.com/p/my-strata-companion-is-an-animal/> accessed 27 November 2021

Atwood Marshall Lawyers 2020 <https://attwoodmarshall.com.au/by-laws-to-allow-pets/>

Atwood Marshall Lawyers 2020 *From the Doghouse to the Penthouse – It's Time to Let the Dogs In* <https://attwoodmarshall.com.au/by-laws-to-allow-pets/> accessed 7 May 2022

Australian Human Rights Commission 2016 <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth/>

Australian Human Rights Commission 2016 *Assistance Animals and the Disability Discrimination Act 1992* <https://humanrights.gov.au/our-work/disability-rights/projects/assistance-animals-and-disability-discrimination-act-1992-cth> accessed 23 July 2021

Bannerman Lawyers 2020 <https://bannermans.com.au/strata/articles/by-laws/-pet-owners-in-strata-celebrate-court-of-appeal-invalidates-no-pets-by-law-2/>

Bannermans Lawyers 2020 *Pet Owners in Strata Celebrate! Court of Appeal Invalidates No Pets By-law* <https://bannermans.com.au/strata/articles/by-laws/-pet-owners-in-strata-celebrate-court-of-appeal-invalidates-no-pets-by-law-2/> accessed 25 November 2021

British Columbia Government 2020 <https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog>

British Columbia Government 2021 *Guide Dog & Service Dog Certification* <https://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog/> accessed 27 November 2021

British Columbia Law Institute 2016 <https://www.dcli.org/new-rules-for-strata-corporations-on-guide-and-service-dogs-in-force-today/>

British Columbia Law Institute 2016 *New Rules for Strata Corporations on Guide and Service Dogs in Force Today* <https://www.dcli.org/new-rules-for-strata-corporations-on-guide-and-service-dogs-in-force-today/> accessed 27 November 2021

Calabrese Law Associates 2020 <https://www.calalaw.com/blog/what-condominium-owners-should-know-about-the-changing-pet-policy-landscape-and-applicable-laws/>

Calabrese Law Associates 2020 *What Condominium Owners Should Know About the Changing Pet Policy Landscape and Applicable Laws* <https://www.calalaw.com/blog/what-condominium-owners-should-know-about-the-changing-pet-policy-landscape-and-applicable-laws/> accessed 27 November 2021

Center for Disease Control and Prevention 2021 <https://www.cdc.gov/healthypets/health-benefits/>

Center for Disease Control and Prevention 2021 *Healthy Pets Healthy People* <https://www.cdc.gov/healthypets/health-benefits/> accessed 25 November 2021

Cordata Partners 2020 https://www.investmentpropertylawyer.com.au/no_pets_strata_by-law.htm

Cordata Partners 2020 *Court Strikes Down "No Pets" Strata By-law* https://www.investmentpropertylawyer.com.au/no_pets_strata_by-law.htm accessed 7 May 2022

Disability Info South Africa 2021 <http://disabilityinfosa.co.za/visual-impairments/assistive-devices-equipment/guide-dogs/>

Disability Info South Africa 2021 *Guide Dogs*
<http://disabilityinfosa.co.za/visual-impairments/assistive-devices-equipment/guide-dogs/> accessed 27 November 2021

Ferdman and Ingraham 2014 <https://www.iol.co.za/lifestyle/family/pets/south-africa-is-dog-country/>

Ferdman RA and Ingraham C 2014 *South Africa is Dog Country*
<https://www.iol.co.za/lifestyle/family/pets/south-africa-is-dog-country/>
accessed 25 November 2021

Grace Lawyers 2016 <https://sca.associationonline.com.au/news/assistance-animals-and-the-new-nsw-legislation/>

Grace Lawyers 2016 *Assistance Animals and the New NSW Legislation*
<https://sca.associationonline.com.au/news/assistance-animals-and-the-new-nsw-legislation/> accessed 27 November 2021

Heyns and Partners Inc 2018 <https://heyns.co.za/2018/05/28/can-trustees-ban/>

Heyns and Partners Inc 2018 *Can Trustees Ban Your Pet in a Sectional Title Scheme?* <https://heyns.co.za/2018/05/28/can-trustees-ban/> accessed 27 November 2021

JS Mueller & Co Lawyers 2021 <https://muellers.com.au/2017/wp-content/uploads/2020/10/Pet-Owners-Rejoice>

JS Mueller & Co Lawyers 2021 *Pets Owners Rejoice*
<https://muellers.com.au/2017/wp-content/uploads/2020/10/Pet-Owners-Rejoice.pdf> accessed 25 November 2021

Kretschmer 2015 <https://paddocksblog.com/2015/04/28/pets-and-property-prices-in-sectional-title-schemes/>

Kretschmer E 2015 *Pets and Property Prices in Sectional Title Schemes*
<https://paddocksblog.com/2015/04/28/pets-and-property-prices-in-sectional-title-schemes/> accessed 13 March 2021

LookUpStrata 2017 <https://www.lookupstrata.com.au/nsw-pet-rules-for-strata/>

LookUpStrata 2017 *NSW: Q&A Can I Keep Pets in a Strata Building?*
<https://www.lookupstrata.com.au/nsw-pet-rules-for-strata/> accessed 22 May 2022

LookUpStrata Team NSW 2018 <https://www.lookupstrata.com.au/strata-committee-companion-animal/>

LookUpStrata Team NSW 2018 Q&A "*No Animals Allowed*" – *Not Even a Companion Animal* <https://www.lookupstrata.com.au/strata-committee-companion-animal/> accessed 23 July 2021

NSW Office of Local Government 2021 <https://www.olg.nsw.gov.au/public/dogs-cats/responsible-pet-ownership/assistance-animals/>

NSW Office of Local Government 2021 *Assistance Animals* <https://www.olg.nsw.gov.au/public/dogs-cats/responsible-pet-ownership/assistance-animals/> accessed 23 July 2021

NSW RSPCA Guide 2021 <https://www.rspcansw.org.au/wp-content/uploads/2017/09/rspca-act-dogs-in-apartments/>

NSW RSPCA Guide 2021 *Should I Share my Apartment with a Dog?* <https://www.rspcansw.org.au/wp-content/uploads/2017/09/rspca-act-dogs-in-apartments/> accessed 25 November 2021

Pet Industry Association 2021 <https://piaa.net.au/australian-pet-ownership-statistics/>

Pet Industry Association 2021 *Pet Ownership Statistics* <https://piaa.net.au/australian-pet-ownership-statistics/> accessed 25 November 2021

Pet Secure 2021 <https://www.petsecure.com.au/pet-care/a-guide-to-worldwide-pet-ownership/>

Pet Secure 2021 *A Guide to Worldwide Pet Ownership: Worldwide Pet Ownership Statistics: Most Common Pets Around the World* <https://www.petsecure.com.au/pet-care/a-guide-to-worldwide-pet-ownership/> accessed 25 November 2021

Peta 2022 <https://www.animalsinislam.com/islam-animal-rights/dogs/>

Peta 2022 *Dogs in Islam* <https://www.animalsinislam.com/islam-animal-rights/dogs/> accessed 7 May 2022

POB Lawyers 2020 <https://www.pobilawyers.com.au/2020/10/14/cooper-v-the-owners-strata-plan-no-58068-2020-nswca-250-nsw-court-of-appeal-determines-blanket-no-pets-by-law-as-oppressive/>

POB Lawyers 2020 *NSW Court of Appeal Determines Blanket No Pets By-law as Oppressive* <https://www.pobilawyers.com.au/2020/10/14/cooper-v-the-owners-strata-plan-no-58068-2020-nswca-250-nsw-court-of-appeal-determines-blanket-no-pets-by-law-as-oppressive/>

determines-blanket-no-pets-by-law-as-oppressive/ accessed 27 November 2021

Queensland Government: Communities, Disability Services and Seniors 2021 <https://www.communities.qld.gov.au/industry-partners/guide-hearing-assistance-dogs/about-guide-hearing-assistance-dogs-legislation/>
Queensland Government: Communities, Disability Services and Seniors 2021 *About Guide, Hearing and Assistance Dogs Legislation* <https://www.communities.qld.gov.au/industry-partners/guide-hearing-assistance-dogs/about-guide-hearing-assistance-dogs-legislation/>
accessed 27 November 2021

Rademeyer Attorneys 2016 <https://www.rademeyer.co.za/no-pets-allowed/>
Rademeyer Attorneys 2016 *No Pets Allowed* <https://www.rademeyer.co.za/no-pets-allowed/> accessed 27 November 2021

Schindler Attorneys 2014 www.schindlers.co.za/wp-content/uploads/wp-post-to/
Schindler Attorneys 2014 *Internal Publications: Body Corporate of the Laguna Ridge Scheme No 152/1987 v Dorse 1999* www.schindlers.co.za/wp-content/uploads/wp-post-to/ accessed 27 November 2021

Werkman's Attorneys 2013 <https://www.mondaq.com/southafrica/arbitration-dispute-resolution/147254/definitions-of-disability-and-the-2011-census>
Werkman's Attorneys 2013 *South Africa: Definitions of Disability and the 2011 Census* <https://www.mondaq.com/southafrica/arbitration-dispute-resolution/147254/definitions-of-disability-and-the-2011-census> accessed 23 November 2021

Wikipedia 2022 https://en.wikipedia.org/wiki/Service_animal/
Wikipedia 2022 *Service Animals* https://en.wikipedia.org/wiki/Service_animal/ accessed 7 May 2022

List of Abbreviations

BCCMA	Body Corporate and Community Management Act 28 of 1997 (Queensland)
CSOSA	Community Schemes Ombud Service Act 9 of 2011
DDA	Disability Discrimination Act 135 of 1992 (Australian Commonwealth)
NCAT	NSW Civil and Administrative Tribunal
SSMA	Strata Schemes Management Act 50 of 2015
STA	Sectional Titles Act 95 of 1986
Stell LR	Stellenbosch Law Review
STSMA	Sectional Titles Schemes Management Act 8 of 2011
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir die Suid-Afrikaanse Reg