

D a n g e r o u s D o g s

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Q I live in a 60 apartment co-op building. There are four tenants/shareholders who own dogs. Three have dogs that are well behaved, liked by just about everyone, and have never been a problem. The fourth, however, has two vicious dogs that have attacked individuals, and in one case bit a shareholder's young son.

Over 100 reports have been made to the co-op board and the property manager and at least one complaint has been filed with the local police precinct, but it seems that the co-op board and the property manager are powerless to do anything about this shareholder's lack of control of her dogs. Although the dogs are usually leashed, the shareholder doesn't always hold on to the leashes—or she allows the dogs the full length of the leash, leaving it up to individuals to keep their distance.

Asking the board to pass some kind of resolution to muzzle (her) pets seems to be unconstitutional” and the board is powerless to make

the shareholder get rid of her dogs. We get the impression that the co-op board is totally powerless to do anything about this situation and that we have to continue putting up with being terrorized every time we encounter the shareholder and her pets in the common areas especially in the lobby and in front of the elevator.

Unfortunately not everyone reports their encounters. In light of the news report of a California resident mauled to death by vicious dogs in her building, what legal recourse do you suggest be taken by the co-op board to prevent such a tragedy in our building? Can the co-op have her and/or her dogs removed from the premises without the co-op being sued? Or what other alternatives are there? —Manhattan Shareholder

A According to Adam Leitman Bailey, of Adam Leitman Bailey Law Firm P.C., in Manhattan, Depending on our proprietary lease, your co-op may have many solutions to protect shareholders like yourself. First, the board may pass a house rule or bylaw that requires all dogs to be kept on a leash of maximum dimensions attached to the owner-caretaker, and/or require that some sort of a muzzle be used if the board determines that a dog has an inclination to injure shareholders.

“Remember, especially after the Court of Appeals decision in the 40 West 67th Street v. Pullman case decided May 13 of this year, the decision-making power of the board of directors is given great deference. The Court specifically mentioned that a board in a co-op ‘may significantly restrict the bundle of rights a property owner normally enjoys.’”

“Second, a co-op may have an action against a shareholder under a legal theory called ‘nuisance.’ If the cooperative prevails under the nuisance theory, the remedy would include the cancellation of the shareholder’s shares and eviction of the shareholder. When determining whether a nuisance has occurred, the New York courts will look to whether the shareholder’s dog engages in conduct that consistently interferes with other’s rights, health, and safety.

“Remember that the dog would need to do much more than scare other shareholders to qualify under the legal definition of a nuisance. Although the case law is very limited, a recent New York case stated that in order for a co-op to be successful in its lawsuit, the cooperative corporation must prove that the dog substantially and unreasonably interfered with the property rights of defendants’ fellow tenants shareholders.”

“The courts have also acknowledged that co-ops cannot use this theory to vitiate the statutory law giving a dog a permanent home in a cooperative once the board fails to commence legal action within three months of knowing that the dog resides in your building.

“Finally, those shareholders that have been injured may have civil causes of actions against the owner of the dog for damages, and/or a criminal action. In any event, your board of directors should start with a strong letter to the owner of the dogs in a hope to quickly abate the problem.”