

Condo Smarts December 20-23, 2017

A Buyer's Challenges

Dear Tony: We recently purchased a 2 bedroom condo on Vancouver Island for our parents to use as a comfortable retirement location. My father has several physical disabilities and has special access requirements. We assumed once we had purchased the unit we would be able to conduct all of the renovations necessary to the interior and to the entry door; however, the Strata Council have either denied our request for alterations, blocked our attempts at alterations or have simply refused to respond to any additional requests. We were hoping to have the work complete before February 1st, but the delays in approvals and the complications with the Strata Council have made it clear we are going to have to take further action if we want to move ahead. Council have continuously cited their bylaws which stipulate that alterations to a strata lot and common property are subject to the discretion and approval of Council. How would a buyer ever know how that discretion is applied if the conditions for alterations are not included in the bylaws? We had no indication this would be a problem at the time we purchased as many of the units have already had significant alterations. Glenna D.

Dear Glenna: Discretionary bylaws are problematic for all Strata Corporations to enforce and even more difficult for owners, tenants and occupants to understand. Because the bylaws set no conditions or limitations, the discretionary element of changing Council members, personalities, relationships and historic practices often influence the decisions, making it impossible to apply fairness to the bylaw enforcement process. Before an owner makes alterations to their strata lot or the common property, you must always start with a written application stipulating the alterations they wish to make, and detailing the scope of the work. Request a response in writing so you can confirm if the Strata Council is requesting additional information, construction details, or requiring other conditions set out in the bylaws that may affect your alterations. If the Strata Council does not respond, in writing, demand a hearing with Council and present your request with written details. The Strata Council must hold the hearing within 4 weeks of receiving the request and must provide you with a written response to your request within 7 days of the hearing. If the Strata Council does not comply with the requirements of the hearing, or they are imposing conditions that are not reasonable, you may consider an application to the Civil Resolution Tribunal (CRT) to obtain a decision to order the Strata Corporation to permit the alterations, challenge the enforceability of the bylaw, or to even consider whether there is an unfair application of the bylaws or restrictions being applied in your circumstance. In addition to the CRT, owners and tenants may also consider an application to the Human Rights Tribunal to challenge possible unfair restrictions imposed by the Strata Corporation that may restrict accommodation and access. Once issued, both CRT and HRT orders are binding upon the parties, and while there is a short window for an appeal of a decision, this will help to expedite and clarify the decision process. While the duty of Council is to enforce bylaws, they must also act reasonably and fairly, and owners retain their rights and to maintain, repair and alter their strata lots under reasonable conditions. Remember, bylaws must comply with all enactments of law and the BC Human Rights Code. As a Strata Council, if you suspect your bylaw is enforceable, deal with it before it becomes a court or tribunal challenge.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
website: www.choa.bc.ca