

Condo Smarts May 31st – June 3rd, 2017

Conditional Bylaws: Are They Enforceable?

Dear Tony: We have a quirky bylaw that leaves the decision making on permitting pets up to the council. The bylaw says, “subject to the approval of the strata council, and owner is entitled to 1 cat, 1 dog or cage of birds.” This has always seemed a bit strange to the owners because as councils have changed, the types of pets they have allowed have also changed. This year we have a strata council who likes dogs and we have gone from 2 dogs to 8 dogs. There are no complaints, but several of us who have wanted dogs in the past were denied, and we are feeling a bit cheated by the unfairness. Are these types of bylaws enforceable? We have a harmonious community and no one is wanting to upset the balance, but there must be a way of making the bylaws fair. William N. Kelowna

Dear William: Discretionary bylaws are problematic for strata councils because they don't include any criteria on how the bylaw is enforced. The essence of your letter directs us to the concept of fairness. Fairness is a condition that applies to everyone equally regardless of circumstance. The difficulty the strata councils have to face is defending decisions where they decline one person's request but permit another because the council either favour or dislikes one of the parties. Enforcement of bylaws is not random. It is procedural and methodical under the Strata Property Act. It is the sole responsibility of a strata council to determine whether they believe a violation of a bylaw has been committed and whether there are any penalties which are published in the bylaws. As strata corporations, we have a duty to comply with the Human Rights Code of BC, and that may compel us to accommodate occupants with special conditions. Even those types of accommodations have some definition or interpretation under the code. A purely discretionary bylaw is extremely complicated for a strata council to apply. I often apply a series of questions to analyze a situation to determine if there is a weakness with a method. An owner has requested permission to have a dog. What is the test that the strata council may apply? Will the council be required to disclose the test to the applicant to determine whether they qualify for a dog or not? Will that test be recorded in the minutes so other occupants are aware of the conditions? Will that test be applied to all other occupants in the same manner? Are there any conditions within the test that enable a strata council to deny the request of an owner? Does the discretion of the bylaw imply the council can determine the size, age or breed of the dog? When challenged in the Civil Resolution Tribunal or the courts how will the council defend their actions if they cannot provide a reasonable test for the application of the bylaw? I recommend strata corporations try to avoid discretionary situations and establish clear, enforceable bylaws and apply the same level of enforcement to everyone owner, tenant and occupant.

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