

Condo Smarts January 17-20, 2018

Bylaw Enforcement?

Dear Tony: Our strata has never provided any information regarding the enforcement of bylaws to our owners. This recently became an issue over 2 owners, one a council member, who had not paid their special levies or strata fees for over 6 months. At our annual meeting someone started questioning why we had over \$40,000 in receivables and we were told that was confidential information. As a result, we lost confidence in our council and elected 5 new council members who have discovered that council had been cutting special deals with owners on payment schedules and totally ignoring bylaw enforcement. We have also lost the ability to collect an insurance deductible from an owner who did their own plumbing, causing a flood. The owner recently sold so the rest of us were stuck with the \$10,000 deductible. Judith W. P.

Dear Judith: As a basic requirement of governance in the Strata Property Act, “the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules”. The enforcement is determined through the Act and the bylaws of each strata corporation. The Act then says the strata corporation “may” do one or more of the following to enforce bylaws by imposing a fine, remedying a contravention by physical actions permitted in the Act, or denying access to a recreational facility permitted by the Act. It is common for strata corporations to go for years without ever having to impose bylaw enforcement penalties. Provided the council can manage compliance with the bylaws further enforcement may not be necessary. In your situation, your strata council are not only ignoring their bylaw enforcement against owners, but also council members. Your bylaws stipulate that owners must pay their strata fees on the first of each month. If they do not, then a bylaw violation has occurred which triggers two separate types of penalties in many strata bylaws. The first is the financial penalty. In your strata, interest is automatically calculated at a rate of 10% annually and imposed monthly. Interest in bylaws is not a bylaw infraction and may be automatically calculated and included in an amount to be liened against a strata lot. The second enforcement issue is a bylaw that impacts the eligibility of council members to be either elected to council or continue to sit on council if the strata corporation is entitled to file in lien against a strata lot. Your strata has even gone as far as adding a third bylaw requiring council to issue a demand notice for payment for strata fees and special levies and notice of being entitled to file a lien if the owner does not pay within 14 days. Your bylaws indicate “the strata council must issue the notice within 5 days of anyone being late on their payments”. As a result of not enforcing the bylaws, your strata council permitted a fellow council member to continue to act contrary to the bylaws and interest has not been imposed or collected and the debts are still outstanding with no collections started. There is no harm in sending out demand notices to enable the strata corporation to file a lien and take further action if the owners cannot pay their fees. Nothing requires the strata to file a lien after the demand has been sent; however, a strata corporation cannot take the next step on collections to secure debts without issuing the notice. A decision to enforce a bylaw is a decision of council at a council meeting. Council are not permitted to delegate bylaw enforcement to the property manager or a single council member. A general list of bylaw enforcement and collection decisions that are included in the council minutes, but exclude personal information, is a valuable record for both council and owners. It provides council with a record of their decision making and the ability to track monthly progress and indicates to the owners that bylaws are being enforced and collections are being applied equally and fairly against everyone. If the council are not willing to enforce bylaws, elect a new council who will. The Civil Resolution Tribunal is always another option to order your strata to enforce its bylaws.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
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