

Condo Smarts October 2, 2019

What's the Deal with In-Camera Minutes?

Dear Tony: Our strata council has been engaging in some bizarre activities lately in how they hold council meetings and report decisions to the owners. Our bylaws have an unusual condition that relates to in-camera minutes. The bylaw stipulates that in-camera minutes are recorded and kept in a secret place unless there is a court order for their release. Doesn't this set our strata corporation up for a significant amount of conflict or expose to the potential of law suits? Our owners are beginning to question whether our strata council are holding secret files on each owner as some recent information has been disclosed about past owners that was not included in the minutes? Martin C.

Dear Martin: Your strata corporation and owners have two separate issues. The first is whether in-camera meetings result in minutes and how those minutes would be stored or accessed. The second is the collection of personal information and how that is managed and whether a person is entitled to their personal information. Under the *Strata Property Act Schedule of Standard Bylaws*, there are several references to the minutes of council meetings but no direct acknowledgement of in-camera proceedings or how they are conducted. Remember these are the Standard Bylaws that apply to every strata corporation, unless they have been amended.

Council meetings are convened in person or by electronic means provided everyone is capable of communicating. A common example is a conference call or Skype meeting. Owners are entitled to attend as observers unless the meeting is a hearing or matter relating to a bylaw contravention or other matters that may unreasonably interfere with an individual's privacy, and the results of votes at a council meeting must be recorded in the minutes. The absence of observers is an indication a strata council may have an "in-camera" session to protect personal information. "In-camera" implies there is a session that is off the record, no observers, and limited to the attendees decided by council. When a strata council determines it is time to move in-camera, the minutes of the meeting show the time and possibly the reason. The in-camera session is convened, council discuss the matter, then exit the in-camera session. For example, the council moved in-camera at 8:45pm to address a bylaw complaint hearing requested by an owner. At 9:15pm, the in-camera meeting was terminated. The council have determined that strata lot 18 was in breach of the bylaws and has imposed a fine of \$200. The risk with bylaws that attempt to protect minutes of in-camera meetings is they may not comply with the provisions requiring disclosure of information under section 35 of the Act, and a bylaw cannot limit access to those minutes with the requirement of a court order, as compliance with the Act may also be ordered by an arbitrator or the Civil Resolution Tribunal. In addition, the bylaw has now indicated that council are recording minutes and gathering information about owners, tenants or occupants, which they are holding in secret and preventing access. Under the Personal Information Protection Act, if an organization collects information about a person, that person is entitled to access their personal information. If your strata council has collected or retained information relating to an owner, tenant or occupant, regardless of your bylaws, you must provide the collected information to that person on their request. This would include information relating to that person in any minutes of the strata corporation. This is one of the reasons why strata corporations are required to establish a privacy policy and appoint a privacy officer.

Strata corporations often confuse minutes and decisions with information provided by owners to assist the council with decision making. Your strata corporation may be required to collect information from an owner regarding a financial hardship or medical condition requiring accommodation. Discussing the content of this information at an in-camera meeting does not require minutes; however, the documents may provide the council with the information necessary to defend their decisions if challenged. Don't be the council who abuses in-camera minutes to hide

business from your owners. Protect privacy, discuss matters in-camera, and record your decisions in the council minutes accessible to everyone.

Tony Gioventu, Executive Director CHOA

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