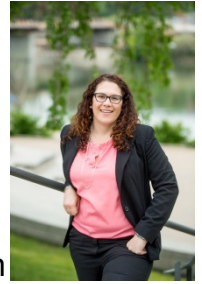


BYLAW DO'S & DON'T'S

By Jamie Herle, Cuelenaere LLP



Owners of condominiums should know what their by-laws and rules of the condominium corporation say. The by-laws are unique to each condominium corporation and will have important provisions regarding how the board is elected, who can stand for election, rights and duties of owners and the corporation and important provisions regarding use, such as number of occupants, right to rent, restriction of pets and/or smoking, style guidelines for repairs, use of common property and much more. The bylaws of the condominium corporation are created to define the rights and obligations of the individual owners/occupants in order to promote an equitable, safe, enjoyable community for everyone living there.

DO: Read your bylaws and know what they say. These are not one of those pesky documents that you can overlook. The provisions on them, once properly passed and put into place are binding on the unit owner, tenants and their visitors. You must know what the rules are to abide by them as there are ramifications for not following your by-laws.

Every condominium is governed by its own unique rules, and regulations contained in its bylaws. The bylaws can be very detailed or relaxed depending on the condominium corporation, its specific circumstances and needs.

Owners/occupants are required by law to abide by the provisions of the bylaws. If owners/occupants do not abide by the bylaws the condominium corporation has a few different options to handles same. If the bylaws give the condominium corporation the authority the condominium corporation can do the following:

1) If the breach can be remedied the condominium corporation can make the owner/occupant who caused the infraction, remedy the breach, i.e. have an owner fix the damage they caused to the hallway, grass or other common property.

2) The condominium corporation can take the necessary steps to remedy the breach, repair any damage and charge the cost back to the unit owner.

3) Section 99 of *The Condominium Property Act, 1993* (the "Act") gives the condominium corporation the right to start an action in Small Claims Court to recover from any owner, tenant or other person or any combination of them a penalty of up to \$500 with respect to the contravention, provided the bylaws authorize the corporation to commence the action.

4) Section 100 of the Act allows an owner and the condominium corporation to agree in writing to submit a dispute to arbitration. The parties choose an arbitrator who has experience or knowledge on the matter in dispute to hear the matter. The arbitrator's decision is final, binding, and enforceable. The costs of the arbitration are shared equally between the parties.

Some current bylaws provide fines for contravening a bylaw or give the right to the condominium corporation to fine a unit owner. Bylaw provisions for fines are generally unenforceable. Courts have found that the provision for fines stray into a quasi-judicial function which condominium corporations do not have the right to exercise. Only governments and courts can impose penalties or fines, individual condominium corporations cannot. Therefore, if your bylaws have provision for a fine, you should speak to a lawyer as those bylaw provisions will most likely be found to be unenforceable.

Education is key to a happy condominium life. Before breaking the rules one must consider the rationale behind the bylaw. Bylaws are not introduced to penalize individuals or to upset people. Most bylaws are made after careful consideration with a view to enhancing the condominium community as a whole. As well some bylaws are in place due to safety and fire regulations. An individual violation of the fire code for example may result in the condominium corporation being fined and in turn increased condominium fees. Most of the time a simple discussion with one of the board members will help you to understand why the rules are in place and deter individuals from breaking same. You have bought into common ownership and unless you are planning on leaving you have to live with the other owners/occupants, I suggest erring on the side of reason.

If you are unsure of what authority your condominium corporation has in its bylaws to do any of the above to enforce, contact your corporation's lawyer.

...to be continued, the next article will discuss the process/steps suggested for the board for bylaw enforcement.