

CRT Update: Amended Orders and the Requirement to File a Formal Mailing Address in the Land Title Registry

Publication / Date: The CHOA Journal Fall 2019

Written by: Tony Gioventu / CHOA

Why the Flexibility of the Civil Resolution is Beneficial for the Public

In a decision of the Civil Resolution Tribunal (CRT) between *The Owners, Strata Plan K 669 v. 1104456 B.C. Ltd, September 25, 2018*, an error in quoting previous court decisions occurred. The misquote of previous decisions resulted in a number of strata corporations understanding they could restrict the age of ownership of strata lots. Under the original analysis, the adjudicator referred to previous valid and upheld bylaws that related to “ownership”; however, the decisions actually referred to “occupiers” not ownership. The difference is significant as a bylaw is not enforceable under the *Strata Property Act* to the extent that it (a) contravenes this Act, the regulations, the *Human Rights Code* or any other enactment or law, (b) destroys or modifies an easement created under section 69, or (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot. The flexibility of the CRT permits an amendment to the order, and the following amendment was issued July 9, 2019.

Amended Order: Does the bylaw restricting age violate the Human Rights Code?

The amendment did not alter or reverse the decision. The bylaw restricting the age of residents was found to be enforceable, with a decision awarding fines and penalties.

36. The SPA, section 123(1.1), allows a strata to pass a bylaw restricting the age of people who may live in a strata lot.
37. The *Human Rights Code*, in sections 8 and 10, generally prohibits discrimination in housing and tenancy. However, section 41(2) of the *Human Rights Code* says that nothing in the Code prevents distinctions being made due to age in other statutes.
38. Indeed, the Supreme Court of BC found a bylaw restricting the age of occupiers in a strata complex to 55 and over was valid in *Marshall v. Strata Plan No. NW 2584* (1997), 1996 CanLII 8500 (BC SC). That finding was supported in *Drummond v. Strata Plan NW 2654*, 2004 BCSC 1405, where the BC Supreme Court upheld a strata bylaw restricting occupancy to those 19 years and older. Also, the BC Human Rights Tribunal found a bylaw restricting occupiers to those 55 or older was valid in *Ryan and Ryan v. Strata Plan VIS 3537*, 2005 BCHRT 559.

How do I give proper notice to my strata when filing a CRT complaint?

Every day 100's of emails and calls are managed by CHOA advisors from strata councils, property managers, owners, tenants, and commercial users. Most complaints relate to the 5 P's of strata living; Pets, People, Pot, Prostitution and Parking. Most of these issues are bylaw enforcement and may be easily managed by strata corporations; however, the nature of

most strata councils is to ignore the easy solutions until those matters become a costly and disruptive crisis in their community. Enforcing bylaws is not an option for strata corporations.

Strata corporations must have bylaws and must enforce their bylaws. How bylaws are enforced is optional and at the discretion of council. Bylaw enforcement is often as simple as a cordial warning letter that resolves most infractions. Fining, penalizing or taking action through the Civil Resolution Tribunal (CRT) is optional, but when a strata council refuses to enforce bylaws the best option for owners and tenants is a Supreme Court action or an application to the CRT seeking a decision where the strata corporation is ordered to enforce the bylaws. Noise or nuisance are the most common complaints. Often inquiries begin with: "We live in a unit on the first floor and our strata council permitted an owner to install hardwood floors in our wood frame building on the second floor contrary to our bylaws. The noise is unbearable and our council will not enforce the bylaws." The sequence that follows requires the affected owners to file court applications or a CRT complaint. Herein lies the problem.

Many strata corporations are not filing a formal address for the strata corporation as required by the *Strata Property Act*, resulting in default orders through the CRT. A strata corporation must ensure the correct mailing address for the strata corporation is filed in the land title office, and if the address changes, such as when a new property management company is hired, the corporation must file a change of address. Notice to the strata corporation may also be delivered to any council member or directly to the property manager, in the methods permitted by the Act.

Under the current CRT rules, amended April 1, 2019, the CRT now serves most respondents named in a Dispute Notice by regular mail. The Dispute Notice is deemed received 10 days after mailing in most circumstances. For strata corporations, this means the Dispute Notice is mailed to its most recent registered address filed at the

Land Title Office. In the event the strata corporations' registered address is incorrect or not filed and the CRT is not notified, it is likely that the dispute will proceed through the CRT's default process and result in a default decision. Although the strata corporation is able to file a cancellation request after it is notified of a default decision against it, the strata corporation could avoid that process, and the possibility that its cancellation request is denied, by ensuring its registered address at the Land title Office is accurate.

The solution is simple. Confirm your strata corporation has filed a Form D, Strata Corporation Change of Mailing address in the Land Title Registry. If you are a smaller strata corporation, serve notice on all council members in the event there is no address filed. A print out of the General Index from the Land Title Registry will identify when your most recent address filing was completed. When a strata corporation is created, the official address is often filed by the developers' lawyers identifying their offices. Once the first Annual General Meeting is held, file a change of address to ensure your strata corporation receives proper notice.