

Condo Smarts

Headline: Automatic bank payments

Topic: Strata Fees, Bylaws; fines,

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Dear Tony: Several years ago, our strata corporation adopted a bylaw requiring owners to provide payments by automatic bank withdrawal. At the time several owners raised concerns about the strata corporation having access to their banks accounts but were assured it was only for strata fees and nothing else. To make this simple I opened an account just for my strata fees and deposit the money on the 15th of each month for the following strata fee payment. I just received a notice from my strata property manager that there are insufficient funds for the strata fees and I am now in arrears. The notice also demanded payment and notified me that a lien would be filed against my unit if I don't pay. I contacted the manager and she informed me I was fined \$200 for parking in the wrong space and that amount was applied to my strata fee account. Of course, I am outraged. She sent me a copy of my Bank Payment Service Agreement to authorize payments. It says on the form the strata corporation may apply and withdraw fines or penalties from the account. Is this legal? By signing this form, have we waived our rights and authorized the payment? The irony here is I don't have a car and don't use parking, so the violation claim is bogus.

Colleen P. Victoria

Dear Colleen: While automatic bank payments for strata fees are practical for monthly fees, inexpensive to manage and reduce the risk of lost cheques or unreported cash payments, they can be abused by councils and managers who do not follow the enforcement conditions of the *Strata Property Act*. When an owner provides their consent for direct withdrawal, it is important to read the document.

You do not have to consent to any fees other than monthly strata fees, and even if you do, the application

of fines, damages or insurance deductibles under your bylaws still requires the strata corporation to first apply section 135 of the *Act* before any action is possible. Bylaws and user agreements do not override the *Act*.

Before a strata corporation imposes a fine or penalty, they must first give the owner or tenant the notice of complaint with the particulars in writing, entitle the owner or tenant the opportunity to respond in writing or request a hearing, then the strata council are required to render a decision regarding the outcome of the fine or penalty. Fines are never automatically imposed. This also applies to the late payment of strata fees. As the payment of strata fees is a bylaw, the late payment may result in a fine; however, this is still a bylaw penalty and the same enforcement conditions apply.

The corporation/manager cannot apply other charges to your account without your consent. Once again, it is important to review your bank service agreement to determine if you have consented to any fees such as bylaw penalties, damages or insurance deductibles being first applied to your account before strata fees are paid.

To resolve this formally, request a hearing with council, provide them with the documentation to refute the claim and if this is a credible bylaw complaint, demand the particulars in writing, and request a formal decision in writing. There are many misunderstandings with strata corporations and managers often relating to poor communication between the parties. A formal written decision of the council will be the evidence you may need to rely on if you need to apply to the Civil Resolution Tribunal to order a remedy.

It is important for owners to monitor their accounts monthly as late payments may result in a rate of interest being imposed under the bylaws and added to the fees. Interest bylaws on strata fees and special levies, if they do not exceed 10% compounded annually and calculated monthly form, part of the fee. It's the same advice banking and credit institutions give all clients. Check your statements and accounts at least monthly. If a penalty has been imposed without complying with the Act, immediately notify your manager and council of the error and request a correction. If you are in doubt about what you signed for, request a copy of the agreement provided to the strata council or manager.