

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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Many strata corporations are in the midst of updating their bylaws so that they will be enforceable under the *Strata Property Act*. However, what should the council do when they receive a letter from an owner advising that his next door neighbour has noisy parties every Saturday night? Dealing with complaints between neighbours becomes even more awkward for the council when one of the individuals involved is a council member. This article will explain the process that should be used for enforcing bylaws.

I note that the *Strata Property Act* alludes to the 'strata corporation' taking certain steps to enforce its bylaws. For the purposes of this article I have changed the reference from the 'strata corporation' to the 'council'. Subject to the *Strata Property Act*, the regulations and the strata corporation's bylaws, the council exercises the powers and performs the duties of the strata corporation, including the enforcement of bylaws and rules.

Under section 129 of the *Strata Property Act*, strata corporations may enforce a bylaw or rule by imposing a fine, remedying a contravention, or in certain circumstances they can deny access to a recreational facility. The council can also decide to warn a person or give the person time to comply with the bylaw or rule prior to enforcing it.

Fining is the most popular method of bylaw enforcement. It is important to note that owners can be fined if a bylaw or rule is contravened by the owner or another occupant, a person who is visiting the owner or who is admitted to the premises by the owner. Tenants can be fined if a bylaw or rule is contravened by the tenant or another occupant, a person who is visiting the tenant or who is admitted to the premises by the tenant, but cannot be fined for the acts of subtenants. Presumably, a strata corporation can similarly fine subtenants for contravening the bylaws.

Another method of enforcement is for the council to do what is reasonably necessary to remedy a contravention of its bylaws or rules, including doing work on or to a strata lot, the common property or common assets and removing objects from the common property or common assets. The council may require that the reasonable costs of remedying the contravention be paid by the person who they may fine for the bylaw contravention.

A third method of bylaw enforcement is for the council to deny an owner, tenant, occupant or visitor the use of a recreational facility that is common property or a common asset. The denial can only be for a reasonable length of time and can only be used if the owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility.

Under section 135 of the *Strata Property Act*, in order to properly use a method of bylaw enforcement the council must follow some basic rules of procedure to ensure that the owner complained of has a chance to properly defend himself. The council should ensure that they:

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- receive a complaint about the contravention;
- give the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant,
- if the person is a tenant, give notice of the complaint to the person's landlord and to the owner; and
- give notice of their decision in writing.

Once a council has complied with this section in respect to a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of the bylaw or rule without further compliance with this section.

So, what should the council take into account if the person requests a hearing? If emotions may run high at the hearing, it is helpful if the council does some pre-planning before the hearing. One consideration is what is the best location for the hearing. The surroundings should be comfortable for all the participants and should be in 'neutral territory'. A hearing that takes place in the person's suite who originally complained about the noise, for instance, will not be comfortable for the individual answering the complaint. A seating plan should be considered. Direct, eye to eye contact between the two individuals involved in the dispute may raise their emotions to such a level that it is impossible to continue with the hearing. The council members and the owners involved may be comfortable sitting around a dining room table, or living room couches and chairs.

It is very important for the council to also decide prior to the hearing what procedure will be followed and to inform the participants so that they can prepare for it. For instance, in the 'noisy neighbour' scenario perhaps the council will give the neighbour that made the complaint, (we'll refer to this neighbour as Frank) an opportunity to speak and then the neighbour who the complaint was made against (who we'll call Joe) can ask Frank some questions. The council can then ask Frank questions. The process will then be reversed and Joe will be allowed to speak to the complaint and then Frank and the council will ask him questions. The council can help Frank and Joe be ready for the hearing and be as relaxed as possible by providing them with a written explanation of the hearing process prior to the hearing taking place. If Frank does not wish to participate in the hearing, Joe can speak to the written complaint only. If Joe does not wish to attend the hearing or give a written response, council can base their decision on Frank's written complaint only. If the complaint is of a different nature, such as the installation of an air conditioner on the outside of the building without the council's permission, the complaint may have been made by council and it may not be necessary for a complainant to testify. In the case of the air conditioner, part of the hearing process may be to visit the site so that the council can understand what has occurred.

After the council has heard from everyone involved, the participants should be thanked for participating and informed that the council will consider everything that has been discussed and will render a written decision. Only the council, and perhaps the strata manager, should be present during their deliberations so that council members can speak freely. If a council member is involved in the dispute he or she should not participate in the hearing as a member of the council and should not participate at all in the deliberations. In the scenario discussed above, the council may decide to take no action against Joe, or give him a warning or render a fine.

Bylaw disputes may also be resolved through a negotiated resolution reached by the parties involved or through mediation. There are other methods of bylaw enforcement, such as commencing court or arbitration proceedings or requesting a hearing at the residential tenancy board. Those methods are beyond the scope of this article.

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