

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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Now that summer has arrived, the good weather brings out the gardener in all of us. Unfortunately, everyone has a different opinion of what a garden should look like, and few gardening issues cause more controversy than the removal of trees. Every summer CHOA receives several calls from outraged owners, upset because trees were cut down and removed from common property.

When a strata corporation is considering removing a tree they need to ensure they follow proper procedures, otherwise the strata corporation may face serious consequences such as penalties, fines and possible court actions.

There are many questions a strata should ask, and answer, prior to removing a tree. These include: What sections of the *Strata Property Act* apply? Who can decide to remove a tree? What type of vote is needed? Is the tree healthy or diseased? Has a professional arborist recommended the tree be removed for the safety of the strata corporation? What will it cost to remove the tree? Has the strata included the removal cost as part of the annual budget? Will a special levy be necessary or will Contingency Reserve Funds be used? What municipal bylaws apply? Are municipal permits required? What insurance and/or liability issues are involved with tree removal? Who can actually cut down the tree?

Firstly, when we look to the *Strata Property Act* it is important to review section 71 – this section states as follows:

Change in use of common property

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

(a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or

(b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

Tree removal could be considered a “significant” change, especially if the tree is healthy, therefore a resolution, passed by a $\frac{3}{4}$ vote at a properly convened general meeting is required.

Secondly, money issues will have to be decided. Removal of trees can cost as little as \$250.00 or in some cases even up to \$10,000. The strata may have planned ahead and included the tree removal cost as part of the approved annual budget. However, if this was not the case the strata may need to raise the necessary funds to remove the tree by either a Special Levy or use Contingency Reserve Fund (CRF) – either option requires a resolution to be passed by a $\frac{3}{4}$ vote. If your strata is considering a special levy please review section 108 of the *Strata Property Act*. This section sets out numerous criteria that must be met in order for the resolution to comply with the Act. If considering using CRF funds please review section 96 of the Act.

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Thirdly, before cutting a tree down a strata corporation should check with their local municipality. In response to growing public concerns, regarding the need to have regulatory powers to protect trees, the Provincial government amended the Municipal Act in 1992 enabling municipalities to pass local tree protection bylaws. Many municipalities now have bylaws limiting or restricting tree removal from private property. In some cases municipal bylaws even require that trees are properly maintained or they can restrict the amount of trimming, pruning or alterations that are allowed. Municipalities with tree protection bylaws typically require that an application for a tree cutting permit is completed and approved, plus a fee be paid. If the appropriate permit is not sought municipal bylaws often allow for penalties, including fines and/or the need to replace the removed tree with a like-sized tree to the one that was removed.

An example of a city with a tree protection bylaw is Kelowna. Any person who violates the tree protection bylaw is liable for a fine not exceeding \$2,000 for each violation. Where more than one tree is cut down, a separate offence is committed in respect to each tree. Kelowna's bylaw further states that when a protected tree is cut down, the person who committed the offence may be required to replace the tree at a ratio of two replacement trees for each tree removed. In addition to the City of Kelowna, the City of Vancouver, City of Victoria, City of Prince George, City of Abbotsford, City of Port Coquitlam, and the City of Nanaimo are among the many municipalities that have tree protection bylaws. Municipal tree protection bylaws vary; therefore, a strata corporation should always check with the local municipality before cutting down a tree.

Fourthly, if a strata does decide to cut down a tree after following proper procedures, no owner should take on the task themselves. What if the tree fell incorrectly and landed on a building or hydro wires? What if an owner was injured in the process? No strata corporation should risk such a liability. If the decision is made to cut down a tree then professional advice and assistance should be sought. When hiring a professional the strata should require proof of appropriate WCB coverage as well as professional liability coverage. The strata corporation should also have the contract reviewed by a lawyer to ensure the strata corporation is protected if something is to go wrong.

Trees provide many environment benefits: they clean the air, buffer noise, catch rain water, protect against the suns rays, moderate temperatures and provide shade in the summer. Don't get caught asking the important questions too late - once a tree is cut down it is gone forever. Therefore, before removing a tree a strata corporation should do their research to ensure any action they take complies with all applicable legislation and ensure proper approval is obtained.

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