

## Condominium Home Owners' Association

Serving BC's Strata Property Owners since 1976

Bulletin: 300-201

### Condo Smarts

Headline: You're right, they can't do this

Topic: Bylaw enforcement – electric funds transfer

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**Dear Condo Smarts:** Last month my strata council advised me that I was being charged a \$200.00 fine for a bylaw violation. I recently discovered, before I had a chance for a hearing, that the strata automatically withdrew the \$200.00 from my account, because we use automatic transfers for strata fees. Can the strata corporation charge the fine to my account without my permission or knowledge?

-- Robert Ferguson, Qualicum Beach

**Dear Robert:** Bylaw violations are purely allegations made by a complainant, and heard and enforced by the strata corporation. What this strata corporation did exceeded their authority and they must return the funds to your account. Before the strata enforces a bylaw and imposes a fine or penalty, they must receive a complaint about a contravention, give you written notice of the complaint with the particulars, and a reasonable opportunity to answer the complaint including a hearing if requested.

Because of the difficulty of collecting fines, strata corporations have attempted to be creative in the enforcement and collection of bylaw penalties, forgetting that they don't have orders or judgments that give them authority to take further action.

A common example of this is stratas creating bylaws that claim any monies received by the strata will be automatically applied to fines and penalties.

How could a strata possibly take such action without a court decision?

The Strata Act only allows for liens to be placed for specific costs, and not for bylaw fines.

If the strata assumes it can pay fines first, using money that is allocated for the payment of strata fees or special levies, then the strata will be placing an owner in default of their strata fees payments. This often results in unfair and unauthorized liens being placed on owners properties.

In one case, this action resulted in an unsuccessful attempt by the council for a court ordered sale of a strata lot threatening the owner with the loss of their unit.

Unfair enforcement of bylaws usually ends up costing the strata corporation more in legal fees to defend their actions. Councils should not venture down this road without a written legal opinion.

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