

Condo Smarts

Headline: Conditional demands from Potential Buyers – Tire Kickers

Topic: Buying

Publication date: September 19, 2010

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: Our strata council has managed to get us into a bit of trouble in our strata over a request from a buyer. The buyer wanted to make major changes to our roofing and deck areas for her personal use. The seller bullied the council into meeting with the buyer, who agreed to a number of changes. In the end, council would not grant the written permission without a legal agreement and an assurance that the strata's engineer would be retained for the project. The buyer backed out of the deal and the seller is now threatening to sue the strata corporation. As a group of concerned owners we want to know if potential buyers have rights around the use or change of our property? The other option that was presented was the current owner would make the application for the changes and the new owner would proceed with the changes. So if we gave permission to one owner, do they have the right to transfer those conditions to the next owner? Karla Chang, Kitsilano

Dear Karla: Strata corporations are constantly being pressured into exemptions or special circumstances from either buyers, sellers or their respective agents. The relationship is between the strata corporation and the current owner, not potential owners. If you read the language of the Standard Bylaws closely, you soon discover that the "owner" must obtain written permission, before they make any of the prescribed changes. While that current owner may be prepared to meet the conditions of the bylaws, and have met the conditions required by the strata corporation, the subsequent owners, may have no such intentions. The obligation of the strata corporation, if requested by the owner, or their assigned agents, is to provide copies of requested documents, the bylaws or rules of the strata corporation.

Apply conditional requests to other types of property use and bylaws, and it's obvious how complicated this becomes. For example, a strata's bylaws permit 2 rentals, and only 1 unit is rented leaving a space. Could they grant permission for a rental to a buyer who is not even an owner yet? Where do the other owners in the strata take priority? What happens if you agree to this and an owner requests the rental vacancy? How would you fulfill the commitment the

strata made to the buyer? The same requests often apply to parking, storage lockers, home based businesses, changes in landscaping and exclusive use of common property. Because the strata corporation must have bylaws, and may enforce those bylaws against owners and tenants, how could the strata have any authority or obligation to a potential buyer? The buyers usually does not have a relationship with the strata corporation - their only relationship, until they become an owner, is typically a contractual relationship with the seller. Even if the buyer wanted to access records or documents of the strata, they are still doing this with the permission of the owner or tenant assigned owners rights, or a person authorized by that owner or tenant as set out in the Strata Property Act.

There may be occasions where the strata corporation has a request that may in fact require some response. Special accommodation for example, where an owner requires a ramp installed to access a townhouse. The ramp would have to be installed as a condition of the sale, otherwise the buyer may not have access to the strata lot. It would be possible to bring the seller in on this request and permission could be granted to have the changes made by the seller prior to the sale of the strata lot, and the conditions of the alterations could continue on to the new owner. It would be a reasonable expectation that the parties making the application would agree to cover the costs of the legal or consulting services for the strata corporation to ensure proper agreements and alterations have been created, thereby meeting the needs of the buyer, the seller and protecting the interest of the strata corporation.

Whenever a strata corporation becomes involved in the conditions of sales agreements, special conditions or exemptions, the potential for complications and disputes grows exponentially. Every strata at some point is requested to ignore an age restriction because the buyer, who is really only 47, will be 55 in 18 months, or ignore a pet bylaw because the dog is 16 years old and won't last much longer, or the buyer promises they will be rid of their boat trailer by Christmas, although they never really say which

**For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.**

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

Christmas. All the while, the owners and tenants in the strata are left wondering what the point of the bylaws was in the first place. Tire kickers may demand concessions or accommodations; but as a strata council, your obligation is the enforcement and application of the bylaws and rules. Understanding your role and duties as a strata council member is critical. Continuing education is an important part of strata operations. Check out the fall seminar schedule @ www.choa.bc.ca.

For more information on CHOA resources, and member benefits, please visit the website at www.choa.bc.ca. Questions may be directed to the Advisor by phone at 1-877-353-2462 or email your questions to advisor@choa.bc.ca.

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.