

**Condo Smarts**

Headline: Voting Rights

Topic: Voting

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**Dear Condo Smarts:** My strata has its AGM next week and they have informed me that I cannot vote at the meeting unless I pay outstanding fines for an alleged pet bylaw contravention from last year. I disagree with my council's decision about the dog and refuse to pay the fine. I checked and the strata does not have a bylaw that prevents me from voting. Can the strata council deny my democratic rights? Ken Miles, Victoria

**Dear Ken:** The procedures for eligible voting rights for matters that include a majority or a three quarters vote are set out clearly in the Strata Property Act. The act permits a bylaw that can be used to determine voting eligibility, if the strata corporation is "entitled to file a lien" against a strata lot. That's the first part of the requirement. The strata must properly adopt and file the appropriate bylaw that complies with the Act & Regulations. Once a strata corporation has the bylaw in place, the next step is the proper enforcement of the bylaw. First we have to establish what me be included in a lien. A lien may only be filed for the following options, overdue strata fees or special levies, a reimbursement of the cost of work orders ordered by an authority, or the strata lot's share of a judgment against the corporation. In addition, strata corporations are also permitted to charge a rate of interest that is set by the Act on the late payment of strata fees and special levies. If the bylaw that includes the rate of interest complies with the Act & Regulations, the strata may also include those amounts with a lien or demand notice. Assuming the strata has adopted the proper bylaw regarding voting, and the items that are overdue may be lienied, to be "entitled to file a lien" the strata corporation must take the following steps to activate the bylaw, which may render an owner ineligible to vote at the general meeting.

For example, strata fees are due on the first of the month. John in strata lot 14 does not make a payment on October 1st, or his direct withdrawal is declined. On October 2<sup>nd</sup>, a demand letter is sent to John in strata lot 14 advising that the strata fee payment is overdue, and if he does not pay the amount within 14 days, the

strata corporation will be "entitled to file a lien". In addition to the 14 days notice, the period must also include the delivery and receipt of notice, so in total, 20 days from the date it was sent. If the AGM is held on October 22<sup>nd</sup> or later, and John had not paid the amount owing, then he would be ineligible to vote. The only exception would be the requirement of a unanimous vote. The application of the bylaw is one part, but the practical application for strata councils and strata managers, indicates that there is a requirement for monthly arrears reports and financial statements, to ensure council can properly apply and enforce the bylaw.

Strata corporations also need to exercise care in administering the funding that they receive that is specifically designated for strata fees or special levies. If the owners have given the strata corporation post dated cheques or authorized pre approved deposits for strata fees or special levies do not apply those amounts received to items such as bylaw fines, penalties or insurance deductibles. Those amounts cannot be included in a lien, and the strata corporation may be creating a contractual arrears problem between and owner and their mortgagee, violating the provisions of the bank agreements or preapproved payments, or attempting to create a garnishment order for costs they have no authority to include in the filing of liens. Once you have to take the next step of filing liens, it is helpful for the strata corporation to remember that using legal services will be beneficial. Reasonable legal costs, land title and court registry fees and reasonable disbursements may also be included with the amount of the lien for later recovery.

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