

Condo Smarts

Headline: Small trees become big trees
Topic: Alterations to common property; Landscaping
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Dear Tony: Our strata council have been struggling with the ongoing problems with one of our owners planting trees in their limited common property back yard area, as well as the surrounding common property of the strata corporation. This owner is very fond of large deciduous trees and has planted several chestnut trees as well as 3 dragon trees, and while everyone appreciates the benefits of our landscaping, we do not wish to significantly change the outside areas that cause a significant change to any of the owners. Council have had to remove several trees immediately after planting because the rate of growth and the potential damage caused to our parking podium by the root structures. These trees are also placed far too close to the buildings and will eventually cause more serious issues. The strata corporation have consulted with an arborist and our local city, all of whom agree that the unplanned tree planting poses a serious problem. As this is an ongoing problem, how do we get this person to stop planting the trees and imposing a significant cost and obligation on the owners. *Millie J.Y. Vancouver Island*

Dear Millie: The bylaws of strata corporations and those of the *Strata Property Act* which apply, impose conditions around the alteration of common property and the use and alteration of limited common property. Whether it is a tree being planted on the common property, installation of a satellite dish, an awning on a deck, or a storage locker in a parking space, all of these changes generally require the written permission of the strata corporation before an owner proceeds. Contrary to the belief of the violators, the strata corporation is not obliged to grant permission for common property alterations. In addition to the bylaws, and potential fines for violations, the strata corporation also has the support of the Act which prescribes that the strata corporation may do what is reasonable necessary to remedy a contravention of its bylaws or rules by doing work on the common property and removing objects from the common property. They may also require that the reasonable costs of remedying the contravention be paid by the person. However, the strata council

must ensure that they have followed the required bylaw enforcement procedures.

Here is a typical sequence of enforcement for unauthorized alterations. Generally after step 3 or 4 most issues are resolved. 1) the strata council receives the complaint about the alleged violation 2) the council notifies the owner/tenant of the particulars of the complaint in writing permitting the person to respond in writing or request a hearing. 3) after the response or hearing the council decide on the outcome and notify the person, including the result of any fines or penalties which are imposed. If the matter is not resolved at this point enforcement escalates. 4) The council proceeds with the next steps to remedy the violation which will include legal advice on enforcing the bylaw which may require a special general meeting to approve the funds and court action to proceed with bylaw enforcement. 5) A court application for an order to enforce the bylaw which will hopefully end the violation of the bylaw and continued altering of the property. 6) If the owner does not comply with the order the next step is an application for enforcement/contempt order. While most disputes resolve early on in the cycle, there is occasionally a need for serious court intervention which may result in a significant cost and penalties for the owner.

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