

Condo Smarts

Headline: Management Confidentiality Agreements

Topic: Management Contracts

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Dear Tony: I own 4 rental units in a 75 unit strata corporation. I have served on council on a number of occasions, attend all of the strata corporation general meetings and have maintained a close relationship with many of the owners, and I believe have been a good condo owner and landlord. Two of my tenants have lived in the building for more than 10 years and I have never had a complaint from the strata. I received a notice of a fine last week from the management company claiming that my tenants have been causing noise in the building, and was fined \$200 for 3 separate alleged events totaling \$600. I called the management company and requested copies of the complaints given to council and demanded a hearing with council. The manager advised that the strata management contract grants the authority to the management company to enforce the bylaws. So I requested a copy of the management contract, to which I was then told that the contract had a confidentiality agreement which prohibited the distribution to any of the owners, other than council. So now I am sitting with a \$600 bill for a claim I cannot verify or prove from a company who believes they have the authority to control our property while keeping their contract confidential and preventing owners from reviewing the terms and conditions of the contract? Is a management company permitted to create a confidentiality clause preventing the owners from seeing the contract?
Don M

Dear Don: The strata management contract must comply with the provisions of the *Real Estate Services Act*, Regulations and Rules of the Real Estate Council. Likewise it has to comply with the *Strata Property Act*, otherwise the strata corporation will be in violation of the Act. Copies of contracts under the Act must be maintained by the strata corporation. They are also part of the list of documents that owners and tenants may request copies of, which must be provided within 14 days. Make a written request for a copy of the records quoting section 35 and 36 of the Act and be sure to copy your request to the council as well as the management company. The business arrangements of the strata corporation are the

business arrangements of the owners, and they are entitled to this information. If the management company have put a confidentiality agreement in the contract, it does not override the requirements of the Act. The strata corporation still has an obligation to provide a copy of the contract on request.

The enforcement of bylaws in most strata corporations, unless the Schedule of Standard Bylaws has been amended, remains solely within the authority and obligation of the strata council. They are not permitted to delegate the decision. This is a majority vote decision of council at convened council meetings. I checked your strata bylaws and the bylaws have not been amended, so no, the strata council do not have the authority to delegate the enforcement of bylaws or the imposition of fines and penalties. It is also important for strata councils and owners to remember that before a strata corporation may impose a fine or penalty they must give the owner/tenant notice of the complaint in writing and stipulating the particulars of the complaint. The owner and/or tenant has the right to respond in writing to the claims or request a hearing of council. Before a complaint or dispute elevates, it is helpful to request a hearing with council to address the complaints or allegations. Within one week of the hearing the strata council must give you a written notice of their decision. In the future, strata corporations, owners and tenants will be able to commence a Tribunal Proceeding to address such compliance issues. The Civil Resolution Tribunal Web Site went live this week. The site will host information about the tribunal, how it will work, updates on implementation progress, and enable the public to ask questions and provide comments to the CRT team. Go to: civilresolutionbc.ca

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