

Condo Smarts

Headline: Writing Bylaws

Topic: Bylaws

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Dear Tony: Our strata corporation is considering adopting a rental restriction, a 45+ age restriction and a no smoking anywhere on strata property bylaw. We asked our strata manager to draft the bylaws for us but they are saying this is not a service they provide. I don't understand why they can't write the bylaw for us. They manage multiple properties, one of the other strata's they manage must have a bylaw we could use. We really cannot afford to get a lawyer to help us with this. Thanks,
Paulette in Nanaimo

Dear Paulette: It seems like an obvious solution to have your strata manager provide you with a bylaw that was written for another strata corporation, but there are legalities, pitfalls and risks associated with the writing of bylaws, and providing bylaws written for other strata corporations. Bylaws written for strata corporations take into consideration their specific needs, the limitations of any enactment of law, their strata plan, and any other restrictions or covenants that may apply. For example, a bylaw that limits or restricts rentals, is worded and applies differently for a mixed residential/commercial strata than for a residential strata corporation. Bylaws that limit or restrict alterations or construction in a townhouse strata may be significantly different in a bare land strata with a building scheme. The most common bylaws that we adopt, such as age, pet or rental restriction, smoking prohibitions, user fees for common facilities, or bylaws that limit or restrict certain types of business operations are often "poached" from other strata corporations and frequently are not transferrable and will not apply to your specific strata corporation needs. Why would a strata who paid for, or their lawyer and wrote the bylaws, knowingly be prepared to share a proprietary document?

Who is going to take the responsibility and liability for a bylaw that is deemed unenforceable? If an owner, tenant or occupant wants to challenge the enforceability of a bylaw, they are currently required to either commence an arbitration or make an application to the Supreme Court of BC. Both

options are time consuming and costly, which has been a significant deterrent to a bylaw challenges; however, at the end of this year, the Civil Resolution Tribunal will change all of that. The same application to the enforceability of a bylaw or to challenge how the bylaw was enforced will be eligible for adjudication under the Tribunal. The costs will be minimal and the time periods will be much shorter. Strata corporations will likely see a rise in challenges to many of their bylaws where enforcement challenges have been raised. If the strata manager provided you with the bylaw, they will also be vulnerable. I would bet the moment a strata is found to have an unenforceable bylaw, the first question to be asked will be, where did the bylaw come from? This will definitely result in complaints to the Real Estate Council and the BC Law Society.

Your strata management company is being paid for their service. As a result, your manager is being paid for their services. When they perform a duty for your strata corporation, these are duties that are included in their paid services, either as part of the monthly agreement or additional schedule of agreed services. Under the *Legal Professions Act* the writing of bylaws, resolutions, or constitutions for a corporate body for a fee is practice of law in BC.

Considering the financial risks associated with unenforceable bylaws, it is unfair and unrealistic to pressure your strata manager into providing bylaws. It is a small amount to budget to retain a lawyer to write or review new bylaws as they arise. The costs to defend will be much higher.

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