

Condo Smarts

Headline: Protecting Voting Rights

Topic: Voting

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Dear Tony: Our strata recently changed management companies and in the changeover we discovered we are owed over \$12,000 in fines from 15 strata lots. Our strata has a bylaw that prohibits an owner from voting at general meetings, or being elected to council if their strata lot owes any unpaid fees, fines, user fees or insurance deductibles. At our annual meeting last week, the new manager upheld the bylaw and advised 15 owners, several of whom were unaware of these charges, they could not vote because these fines and fees were unpaid. As you can probably imagine there was a lot of confrontation at the meeting. Several of the resolutions on the agenda only passed by one or two votes, and the 15 owners who were vocally opposed to these resolutions have threatened to sue the strata if we don't call another meeting and allow everyone to vote. I have seen this bylaw in other strata corporations and I am curious if the bylaw is enforceable.

Charlie W.

Dear Charlie: The *Strata Property Act* sets out a condition that a strata corporation may adopt a bylaw that makes an owner of a strata lot ineligible to vote if the strata corporation is entitled to file a lien against that strata lot. This bylaw applies to majority and three quarters vote resolutions only.

In order for the strata corporation to be able to file a lien, the owner will have to be in arrears of paying strata fees, special levies, authorized interest, the cost of filing liens and administrative legal costs, for work orders issued by a local authority, and those costs permitted where a developer does not comply with the Act. These are lienable or secure debts.

The Act has already deemed that the owners must pay the amounts, and the liens are given priority over other

charges on the title like mortgages. In order for the strata to be "entitled to file a lien" the strata must first send a demand notice to the owner, which gives them an opportunity to challenge the claimed fee and request a hearing. If after 14 days the fee is still owing, the strata is then entitled to file the lien, which then activates the voting bylaw.

The problem with your bylaw is that a strata cannot file a lien for fines and damages. Bylaws that do not comply with the Act, or that attempt to subvert the Act to grant a condition or exemption not permitted are unenforceable. To be able to challenge the enforceability of a bylaw strata owners currently have to make an application to the Supreme Court of BC or commence an Arbitration, both of which are time consuming and costly.

With the implementation of the Civil Resolution Tribunal in the coming year, owners, tenants, occupants and strata councils will be authorized to make an application to the tribunal to challenge whether a bylaw is enforceable, whether it was enforced properly and whether it was properly passed.

If your strata corporation has deemed owners ineligible to vote, make sure you have followed the Act, you have the correct bylaws in place, and you have documentation at the registry desk with a copy of the issued demand notice. A good rule of thumb is to send the demand notices when you send out notice of general meetings. The time period will be satisfied and the owner will have the opportunity to resolve the matter before the meeting. If a decision about voting eligibility has to be made at the meeting, it is a decision of the chairperson of the meeting as the elected council president, vice president or other authorized person elected by a majority vote of the owners at the meeting.