

Condo Smarts

Headline: Denying access to the building

Topic: Bylaws; Denying Access

Publication / Date: The Province, Oct 29, 2015

Written by: Tony Gioventu

Dear Tony: I am on a strata council that is promoting a bylaw that I believe has serious consequences for our community. The council want a bylaw that gives them discretion to disable an owner's FOB for access to the building, their floors and the parking garage, if the owner violates a bylaw or does not pay for fines or damages associated with bylaw enforcement. I have tried to explain to them that an owner has a right to access their home, but the council refuses to listen and they are behaving like a bunch of tyrants. How do we get the message across that there are serious problems with this bylaw?

Patricia N.

Dear Patricia: The *Strata Property Act* permits strata corporations to adopt bylaws that regulate the use and enjoyment of common property, limited common property and strata lots. The *Act* only permits the denial of access of a recreational facility that relates to the contravention of a bylaw or rule that is associated only with that facility. For example, a strata adopted a bylaw or rule that prohibits glass objects in the pool area. An owner has been found in contravention of the bylaw or rule, and is prohibited from accessing the pool for a reasonable length of time.

Denying access to a strata lot or the common areas such as lobbies and elevators is not permitted by the *Act*. There are a number of serious risks for the strata corporation if they block an owner or tenant's access to the strata lot. By denying access to the strata lot, your strata is preventing a person from entering their home, risking their livelihood, their personal safety, the safety and wellbeing of their families or any of their pets that may be in the strata lot, their financial risks, their ability to maintain, repair and inspect their strata lot. Put such a decision into perspective for a moment. If an owner is denied access to the building and their strata

lot because the strata council decided under an alleged bylaw contravention the owner should be blocked access, who is going to be responsible for the personal risks to that owner or tenant because they cannot access their unit? They may have special medical needs and could be blocked from accessing their medication. The block may obstruct their ability to do their job or they may require documents or materials from their residence that relate to their work place. They may have a cat or dog that requires immediate attention and will be in a crisis if no one can access the unit or more seriously they may children who have come home from school or other residents who now have blocked access to the safety of their home.

Strata corporations who adopt these bylaws and enforce them, place both the strata corporation and the owners and tenants at significant risk. Your strata will be exposed to claims of property damages, personal damages or complaints under the BC Human Rights Code. If the strata has an owner, tenant or occupant who is causing damage to the property or poses a threat to the safety of the residents, the strata corporation may make an application to the courts for an order preventing the person to be on the property. While it is a rare, the courts have issued orders when the circumstances are in the best interest of the strata corporation. Even if a person allegedly violates a bylaw, the strata must still give reasonable notice of the complaint and the tenant and owner have the opportunity to respond in writing or request a hearing to dispute the matter. That enforcement cycle can easily take 14-60 days before the strata has come to a bylaw enforcement decision, and even then it is only an allegation.