

## Strata Living

Headline: What a difference a day makes!

Topic: Hearings, Hardship

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**Dear Tony:** What happens when proper notice of a council decision is not sent to an owner? We had a recent situation where an owner demanded a hearing to request permission to alter a bath tub in a strata lot to one of the walk in type tubs. The owner was requesting permission as a condition of a sale of their strata lot. The strata council has several concerns about the risk of water leaks and chose to investigate the request further, but the owner has proceeded with the alteration without permission, citing the Strata Property Act that required the council to respond within 7 days of the meeting, which we failed to do. Does this automatically grant the strata owner permission to make the alteration?

*Randy Cameron, Richmond*

**Dear Randy:** Section 34 of the *Act* applies when an owner submits a request for a hearing. Request for council hearing:

- (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
- (2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.
- (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

While the strata has a duty to reply, the lack of a response does not necessarily imply that permission has been granted, unless the Act or the Bylaws creates the exemption or authorization. When a strata council convenes a hearing with a decision requested, they may be unable to respond to the request in the limited time period without further information, but that alone could be a response. If your strata corporation requires additional information, respond within the 7 day period to the person who requested the hearing. Request additional information and details that will enable the strata corporation to make a decision, within the limitations of your bylaws. Information gathering is not an acceptable tactic to delay responding to owners' requests. Strata council as well as owners have the responsibility to comply with the bylaws and the Act. Be careful of other time limitations set by the Act. Hardship exemption requests under rental bylaws for example, have strict time periods requiring response. A court decision in 2014 dismissed a claim for fines against an owner who had allegedly rented in violation of the strata rental bylaws, because the owner had applied for a hardship exemption, and the strata corporation responded a day later than required by the Act. When a strata corporation fails to respond in time to a hardship hearing request, the exemption is automatically granted.

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