

Strata Living

Headline: Enforcing Bylaws

Topic: Bylaws

Publication date: March 19, 2015

Publication: 24 Hours

Written by: Tony Gioventu

Dear Tony: We have a simple question that relates to bylaw enforcement. How long can we continue to fine an owner before we have to go to the next step? We have an owner who refuses to stop using their barbeque on their balcony. The owners above cannot open their doors and windows at dinner time, and there is a significant amount of smoke damage to the exterior of the building. We have always had a bylaw that prohibits barbeques, but this person has told everyone they cannot violate his rights to use his balcony for barbequing because the balcony is part of his strata lot. As a result, we have been fining him \$50 per week for the last 26 months and he owes \$1,300 in fines, but nothing changes. He has no intention of selling or moving so trying to collect the fees is another challenge. The owners do not want to fund or authorize a court action in Supreme Court to deal with this issue. Their opinion is why should they spend all this money to enforce the bylaws? Council is in a complicated situation.

Darlene M.

Dear Darlene: You are absolutely right, the costs of enforcing a bylaw can be overwhelming for most strata communities. You could easily be spending \$5,000-\$25,000+ in legal and court costs for a court order from the Supreme Court. The high costs place strata corporations in very awkward positions for two reasons. Why are we paying for someone else's bad behavior, and how can we get the majority of owners to support an action that affects one or two units? The introduction of the Civil Resolution Tribunal (CRT) later this year will

provide some much needed relief for strata corporations. The Tribunal, at an economical level and short time period will be able to issue an order for compliance of bylaws. That will relieve the strata or individual owners from the complications of financial costs of Supreme Court actions. But what is the purpose of fining if an owner does not comply and fines are so difficult to collect? Fines are intended to change behavior. It's the scenario of "the punishment fits the crime" where we assume that if we fine an owner they will stop violating the bylaws. The problem is, we now have 2 year limitation period for collections, and even if we do get a judgment from Provincial Court (small claims) that judgment does not take priority over mortgages, strata fees and special levies. As a result many strata corporations never bother attempting to sue for fines. Your objective is changing the behavior of this person. Enforceable bylaws apply to all property, and this person has no rights associated exclusively with his balcony. If the strata does not take action, an owner(s) may commence a court application or arbitration to order the strata to enforce the bylaws. If your owners will not approve the court action, it's time for legal advice on the next steps of action, and to consider at least an option to recover the fines. The CRT couldn't come soon enough for beleaguered strata corporations.

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email info@choa.bc.ca.

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.