

Proline Advantage Bulletin on Bylaws

We are preparing information bulletins for complicated items and issues that we believe are of importance for owners and council members in the strata corporations that we manage. If there are items that you believe would provide valuable information to strata owners, please let us know at proline@prolinemanagement.com and we will consider addressing them in future bulletins.

THE STRATA CORPORATION'S BYLAWS

What are Bylaws?

A strata corporation's bylaws govern how an owner or tenant in a strata corporation may use their strata lot, the common property, limited common property and common assets. The bylaws also govern the administration of the strata corporation. Given that bylaws are able to regulate nearly every aspect of life in a strata corporation, they have significant influence on the operation of the strata corporation and an owner's or tenant's use and enjoyment of their home.

While owners and tenants in a strata corporation have many of the same rights that we associate with property ownership, in a residential strata corporation, bylaws can provide significant limits on many of the rights that are typically associated with ownership of property. For example, bylaws may restrict your ability to rent or to have a pet, set out the type of flooring that you are allowed to have in your unit, require approvals for alterations to your strata lot and set out when you can operate appliances, to name just a few. The strata corporation's ability to regulate many aspects of life in a strata corporation is broad and generally limited only by the requirement that the bylaws not conflict with the *Strata Property Act* or other applicable legislation, such as the *Human Rights Code*.

All strata corporations have bylaws. Unless amended bylaws have been filed in the Land Title Office, a strata corporation's bylaws are the Standard Bylaws set out in the *Strata Property Act*.

What are Rules?

A strata corporation may also have rules, but is not required to do so. Unlike bylaws, rules may only regulate use of common property, limited common property and common assets. Rules cannot govern an owner's or tenant's use of their strata lot. The strata council has the ability to create and amend rules for a strata corporation without prior consultation from owners. Rules are not filed in the Land Title Office, but are provided to prospective purchasers of a strata lot with the Form B – Information Certificate and to tenants as part of the Form K – Notice of Tenant's Responsibilities.

CREATING AND AMENDING BYLAWS AND RULES

A strata corporation's bylaws may be the Standard Bylaws under the *Strata Property Act*, a set of bylaws filed by the Developer prior to the start-up of the strata corporation, or amended bylaws approved by the owners at a general meeting. If Developer-created bylaws or amended bylaws have not been filed at the Land Title Office, the strata corporation is subject to the Standard Bylaws. In some cases a Developer will file some alternative bylaws, but the Standard Bylaws will continue to apply, as well.

A strata corporation is able to amend, repeal or add bylaws at an annual or special general meeting. As a strata corporation evolves over time, it is often necessary to update bylaws to reflect the particular realities of a strata corporation. To amend a bylaw, notice of the proposed amendment must be set out in the notice of general meeting and the resolution must be approved by a $\frac{3}{4}$ vote of owners at the general meeting that vote (i.e. those not in attendance or abstaining are not counted).

In many cases, it is advisable for the strata corporation to seek legal advice prior to proposing a bylaw amendment as there are certain bylaws that are often subject to challenge or that need to be carefully crafted to ensure that a strata corporation is able to

enforce them. For example, bylaws that impose rental restrictions, pet restrictions or age restrictions or bylaws related to smoking should always be reviewed by a lawyer prior to being proposed to owners. A periodic legal review of a strata corporation's bylaws is often a useful exercise to ensure that your bylaws stay current with developments in the legislation or case law related to strata corporations.

Rules are created by the strata council to deal with specific issues related to common property or limited common property. Rules are often used to create easily adaptable, but enforceable, guidelines for common amenities, parking and moving into and out of a complex. Rules can be created or amended by a majority vote resolution at a strata council meeting. Once created or amended, notice of the rules must be provided to the owners and then be ratified at the next general meeting by a majority vote resolution. If new or amended rules are not ratified by owners at the next general meeting, they cease to exist. Once ratified, they continue to exist until amended or repealed.

ENFORCEMENT OF BYLAWS AND RULES

Enforcement of bylaws and rules is the responsibility of the strata council. To commence a bylaw enforcement proceeding, a complaint must be received or violation of a bylaw or rule must be plain and obvious. It is best practice for a strata corporation to require complaints be provided in writing to ensure the council's ability to enforce the alleged breach of a bylaw or rule.

When a complaint is received, the strata council must decide whether to issue a warning or commence formal enforcement proceedings. In many cases, a warning is a reasonable first step to rectify a complaint. For example, many newcomers to community living are not fully aware of their impact on those around them and a simple warning letter advising them of disturbances they cause will prevent reoccurrence of such problems in the future without the need to commence formal bylaw enforcement procedures.

Once a strata council has decided to commence formal enforcement of a bylaw or rule, it must provide particulars of the complaint to the owner or tenant who has allegedly breached the bylaws. If the complaint is about a tenant, a copy of the complaint must also be provided to the owner of the unit. The particulars of the complaint must be provided in writing and inform the person that they have a right to respond to the complaint in writing or request a hearing before the strata council to address the complaint. Bylaw enforcement hearings are addressed in the following section.

After considering any response or items raised in a bylaw enforcement hearing, the strata council must determine whether to dismiss the complaint or to impose a fine or another allowable penalty, such as remedial work or denial of access to a recreational facility. The strata council must promptly inform, in writing, those persons affected of its decision.

If the provisions of the *Strata Property Act* are not closely followed, collection of any fines that are imposed can be very difficult. It is important that complaints provide particulars such as time, date and nature of any bylaw violations and that this information be provided to the alleged offender.

Owners of strata lots that rent to tenants should be aware that any fines imposed against a tenant as a result of bylaw enforcement proceedings may be collected from the owner of the unit. While the strata corporation does have the legislative right, in some instances, to commence eviction proceedings against a tenant for bylaw violations, this right is not recognized under the *Residential Tenancy Act*.

BYLAW ENFORCEMENT HEARINGS

As mentioned above, an owner or resident that is the subject of bylaw enforcement proceedings is entitled to request a hearing before the strata council under the *Strata Property Act*. If a hearing is requested, it must be held within four weeks of the request. The Regulations under the *Strata Property Act* define a hearing as an opportunity to be heard in person at a council meeting. As a result, there must be a quorum of council at the hearing.

After the hearing, the strata corporation must provide a written decision regarding the bylaw enforcement complaint to the relevant parties within eight days. Minutes of the hearing must be produced, with careful consideration given to the potential privacy concerns of those involved in the complaint.

In general, it is preferable if a hearing occurs as part of a regularly constituted strata council meeting, usually at the beginning of a meeting. The complainant and the person complained of are both able to attend the hearing and present their sides of the case to the strata council. The strata council may ask clarifying questions of any party to assist in making a decision and will make a decision in camera after the relevant parties have left the meeting.

In some cases a bylaw enforcement hearing can be very emotional and it is important for strata council members to remain objective and open to hearing both sides prior to rendering any judgment. As the courts have shown themselves willing to reduce or eliminate bylaw fines where processes are not properly followed, it is crucial that the hearing requirements be strictly met where there is a possibility of litigation.

RESTRICTIVE BYLAWS

The *Strata Property Act* states that a strata corporation has the right to adopt three main types of restrictive bylaws: rental restriction bylaws, pet restriction bylaws and age restriction bylaws.

Rental Restriction Bylaws:

The *Strata Property Act* gives strata corporations the ability to restrict the rental of residential strata lots. A strata corporation may prohibit any rentals, restrict the number of units that may be rented by owners at any given time or limit the duration of any rentals of units. There are a number of delaying provisions and exemptions from rental restrictions that must be considered where a strata corporation is looking to enforce a rental restriction bylaw against an owner. The most common exemptions are (i) for the first purchasers from a Developer, who typically retain the right to rent their units for so long as they own their strata lot, (ii) for family members, which includes only the parents and children of both the owner and the owner's spouse, and (iii) rentals allowed for the purposes of financial hardship. Hardship exemption requests require an owner to demonstrate significant financial hardship to the satisfaction of the council and can be limited in duration as part of any strata council approval. There are a number of important deadlines to be considered when hardship requests are made, so a strata council in receipt of such a request should contact their property manager immediately. Violations of rental restriction bylaws can result in fines of up to \$500.00 per week.

Pet Restriction Bylaws:

A strata corporation has the ability to restrict the number and types of pets that owners may have. Even the Standard Bylaws restricts the type and number of pets an owner can have to a reasonable number of fish or aquarium animals, a reasonable number of small caged mammals, up to two caged birds and one dog or one cat. Some strata corporations will prohibit pets altogether, while others will further limit the type or number of animals that an owner may keep in their strata lot. When a strata corporation imposes a pet restriction by bylaw amendment, the restriction takes effect the moment the amendment is approved and all pets that currently reside at the strata corporation are exempted. For example, if a strata corporation approved a bylaw amendment to prohibit owners from having dogs, any dogs living at the strata corporation at that time would be exempt from the pet restriction bylaw.

Age Restriction Bylaws:

A strata corporation can limit the age of persons residing in a strata lot. As with the pet restriction bylaw, any residents of a strata corporation on the day that an age restriction is passed are exempt from the bylaw. The legislative guidance used to be that age restrictions of less than 55 would apply only to owners in a strata corporation, as the *Human Rights Code* prohibited them from applying to tenants. While age restrictions can apply to owners and tenants equally as a result of legislative changes that were made to the *Human Rights Code*, some strata corporations have age restriction bylaws that apply two different standards. If dealing with an age restriction dispute, it is important to be aware of the legislation and bylaws that apply.

THE HUMAN RIGHTS CODE AND BYLAWS

The *Human Rights Code* is intended to permit a full and equal participation in our society by all of our members, regardless of physical characteristics, origin, age and disability, for example. The Code prohibits discrimination based on a broad array of characteristics and requires that strata corporations, among others, offer reasonable accommodation to owners, tenants and residents. In the event of any conflict between the Code and any other statute or laws, the Code prevails. What this means for strata corporations is that it may be prevented from enforcing some provisions of its bylaws with respect to certain residents. For example, a strata corporation with a pet restriction would be required to allow a resident with a disability requiring a service pet to have that service pet. A strata corporation with a prohibition on hardwood or hard surface flooring may be required to allow a resident with severe allergies to have hardwood or hard surface flooring. Strata corporations have been increasingly involved in cases before the Human Rights Tribunal based on alleged discrimination or the way in which requests for reasonable accommodation have been handled. The obligation to accommodate many types of individuals has been consistently confirmed, despite any prohibitions that may be contained in bylaws, and the fact that a bylaw was in place before an owner or resident moved into the strata corporation has been determined to be irrelevant. The duty of a strata corporation to accommodate is present whether an owner or resident was aware of the prohibition or not. It is important where human rights issues are involved that a strata council consult with their property manager immediately. In many cases, it will be advisable to obtain legal advice from a person well versed in strata corporation law to ensure that the strata corporation does not find itself entangled in an expensive human rights complaint. Ensuring that the process of accommodation is managed properly is crucial to a strata corporation facing a request under the *Human Rights Code*.

FREQUENTLY ASKED QUESTIONS

Q: Does a complaint have to be in writing? **Answer:** The *Strata Property Act* does not require that a complaint be in writing. In some cases, a verbal complaint can be reasonable, such as a council member noting that a particular unit has items on their balcony that are not permitted under the bylaws. However, the Act also requires that an owner who is accused of a bylaw infraction be given the particulars of the complaint so that they are able to properly respond to an alleged violation. Requiring that complaints be in writing is best practice for strata corporations that are looking to enforce complaints properly and be able to collect fines for violations if challenged. Furthermore, for complaints regarding tenants, ensuring that they are in writing will give a landlord a much better ability to ultimately evict a tenant and have such an eviction upheld by the Residential Tenancy Branch. Relying only on unwritten complaints for such a purpose could easily result in such an eviction being set aside by an arbitrator.

Q: What level of fine is appropriate? Should it always be the maximum? **Answer:** The *Strata Property Act* sets the maximum fine for violation of a bylaw at \$200.00 (other than a violation of a rental restriction bylaw, which can be as high as \$500.00) and the maximum fine for violation of a rule at \$50.00. The maximum amount of fine for any strata corporation is as set out in the bylaws. For strata corporations using the Standard Bylaws, the maximum fine amounts are \$50.00 for violation of a bylaw and \$10.00 for violation of a rule. It is important for strata councils to remember that these fine amounts are maximums and that in many cases a lower fine amount will be reasonable. In deciding whether to impose a fine, a strata council must consider what would be reasonable in the circumstances based on the nature of the complaint, whether fines have been imposed on the person for similar violations in the past and whether the level of fine being considered has been consistent for other similar violations by others in the past. Where the level of fine is unreasonable in the circumstance or has been imposed differently on different classes of resident, a strata corporation could find a court reversing a significant portion of any fines that have been imposed.

Q: If I make a complaint, will I have to attend a hearing? **Answer:** Maybe. If you have made a complaint against a particular owner or resident and that person requests a hearing, you may be asked to attend the hearing to respond to the complaints that you have made and/or to provide additional detail to the strata council. In the event you do not wish to attend the hearing, the only information that the strata council will be able to consider with respect to the complaint is the information that you provided in your letter of complaint and any evidence that is provided by the person that is alleged to have breached the bylaws. In that case, it may be difficult for the strata council to make a determination that a bylaw violation has occurred and that a fine should be imposed.

Q: If I make a complaint, will my information be provided to the person I am complaining about? **Answer:** Maybe. While the strata corporation is obligated to protect your personal information in most circumstances, the Office of the Information and Privacy Commissioner has released guidelines indicating that strata corporations must release correspondence, including bylaw complaints, without removing any personal information. If the source of the complaint requests the correspondence that initiated the action, as they are able to do under the *Strata Property Act*, the strata corporation will be required to disclose the correspondence without redacting personal information. In addition, if the issue goes to court, you may be called to testify at trial and your personal information may become part of the court's trial record.

Q: Are there other ways to deal with bylaw complaints? **Answer:** In some cases a bylaw complaint is only one way of dealing with an issue. For example, with noise complaints there may be other effective avenues for a person to pursue the result they desire. For example, in the case of a loud party lasting into the middle of the night, the most effective means of addressing the issue may be to call the police, who can deal with the issue as it is occurring. While a bylaw infraction complaint may be an important item to follow, it will not resolve that particular issue as it is occurring. Other types of infractions may also be dealt with by bylaw enforcement officers of the municipality in which you are located. For example, while bylaws may require pets to be on a leash on common property, this common complaint can also be dealt with by bylaw enforcement officers. The bylaws of many strata corporations prohibit owners from engaging in activities that are prohibited by municipal zoning and other bylaws. A business that is operating in a residential strata lot in violation of strata corporation bylaws and municipal zoning bylaws may be most effectively stopped by a complaint to municipal bylaw enforcement officers, who have a broader range of powers to impose penalties and sanctions than a strata corporation.

Q: Can the strata council exempt me from a particular bylaw? **Answer:** Maybe. In the vast majority of instances, a strata council will not be able to provide an owner or resident with an exemption from the bylaws than where (i) the bylaws provide for council discretion to allow exemptions from a particular section, or (ii) a *bona fide* human rights exemption has been granted. For example, a strata council will not be able to provide an owner or resident with an exemption from a bylaw that states: "An owner, tenant or occupant must not keep any pets on a strata lot other than one dog." However, if the same bylaw added, "other than with the written permission of the strata council", the council would have the ability to grant an exemption in those circumstances. Because the instances in which exemptions may be granted can be complicated, it is recommended that you speak with your property manager if you are considering making a bylaw exemption request.

Q: If I live in a strata lot or own a strata lot, should I read and understand the bylaws? **Answer:** Yes. As an owner of a strata lot or a tenant in a strata lot, you are deemed to have read the bylaws and they are applicable to you. Ignorance of the bylaws is not a defense. Because the bylaws of a strata corporation govern your behavior while in your home and on common property and can provide significant and enforceable restrictions upon you, it is crucial that you have read the bylaws and understood how they affect you and your ability to enjoy your home and/or investment. If you have any questions about the bylaws of your strata corporation, please feel free to contact your property manager.