

BYLAWS

The Good, the Bad and The Ugly

Presented By

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Discussion Items

- >What is a bylaw
- >Bylaws – Everyone has them
- >What is the difference between a bylaw and a rule
- >Unenforceable Bylaws
- >Bad bylaws you probably have
- >Good bylaws you probably don't

Strata Governance

A Strata Corporation is an artificial legal entity created under the *Strata Property Act* (like a business corporation) that represents the interests of the owners of the strata lots that comprise it.



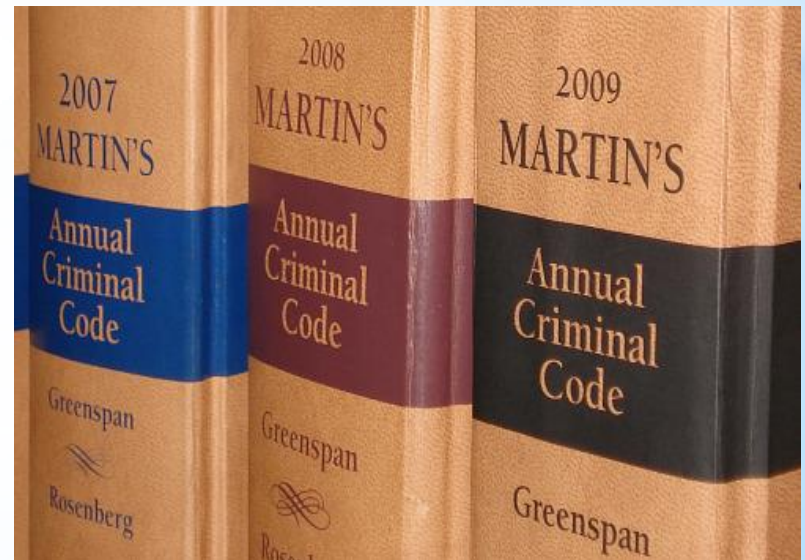
Strata Governance

A strata corporation is a form of democratic government.



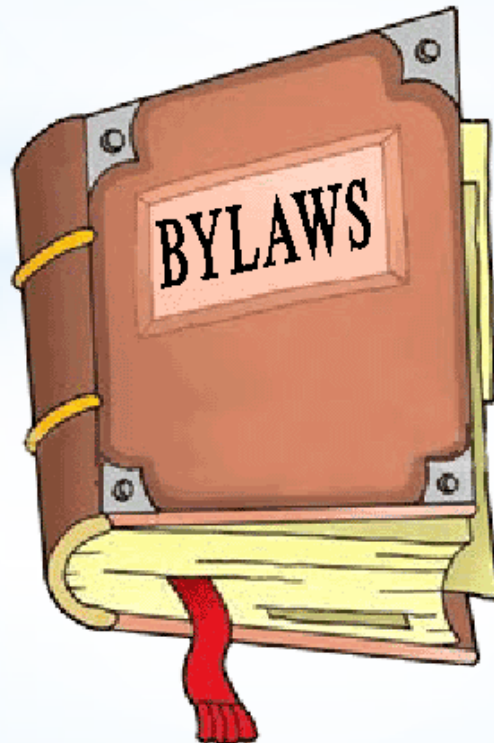
Strata Governance

Like most democratic governments Strata Corporations are governed by a complex series of rules regulations that have been crafted and adopted by the government. The purpose of such rules and regulations is to govern the body's future conduct and the conduct of its citizens.



Strata Governance

There are two types of legislation which governs strata corporations. The first and most important type is known as "Bylaws"



Bylaws

Section 119 of the *Strata Property Act* requires a strata corporation to have bylaws and sets out what those bylaws may govern.

Nature of bylaws

119 (1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

Bylaws

One thing you will notice right away about section 119 is the rather limited scope of bylaws when compared to other forms of legislation.

1. Bylaws may be passed to govern the control, management, maintenance and use of the common property and the strata lots;
2. Bylaws may be passed to regulate the relationship between the Owners and the Strata Corporation;
3. Bylaws may be adopted regarding the administration of the Strata Corporation.

One thing that is conspicuously absent from section 119 is the ability of a Strata Corporation to pass bylaws governing owner's relationships with each other.

Bylaws

A Strata Corporation can't just pass any Bylaw it sees fit. There are many restrictions governing what kind of bylaws can be passed. Those restrictions are found in section 121 of the *Strata Property Act*.

We will talk more about section 121 later.

Bylaws

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Strata Governance

The second type of internal legislation governing Strata Corporation is known as "Rules"



Rules

Section 125 of the *Strata Property Act* empowers Strata Corporations to enact Rules. It is important that you understand the restrictions section 125 places on Rules.

Rules

125 (1) The strata corporation may make rules governing the use, safety and condition of the common property and common assets.

(2) A rule is not enforceable to the same extent that a bylaw is not enforceable under section 121 (1).

(3) All rules, including those posted on signs, must be set out in a written document that is capable of being photocopied.

(4) The strata corporation must inform owners and tenants of any new rules as soon as feasible.

(5) If a rule conflicts with a bylaw of the strata corporation, the bylaw prevails.

(6) A rule ceases to have effect at the first annual general meeting held after it is made, unless the rule is ratified by a resolution passed by a majority vote

(a) at that annual general meeting, or

(b) at a special general meeting held before that annual general meeting.

(7) Once a rule has been ratified under subsection (6), it is effective until it is repealed, replaced or altered, without the need for further ratification.

Rules

The biggest difference between Rules and Bylaws is their significantly reduced scope.



A strata council may only adopt Rules: *governing the use, safety and condition of the common property and common assets.*

Rules

A strata corporation can not adopt a rule restricting the use of a Strata Lot. For instance the following can not be rules:

- 1. Pet Restrictions*
- 2. Rental Restrictions*
- 3. Age Restrictions*
- 4. Occupancy Restrictions*
- 5. Noise bylaws*
- 6. Bans on commercial use of strata lots.*

Rules

Section 125(5) of the *Strata Property Act* provides that bylaws trump rules. It follows then that Rules can not amend bylaws:

For instance a strata corporation can not pass a bylaw that states:

The use of a strata lot will be governed by the House Rules as adopted by the Strata Council from time to time.

As clear as this appears, I frequently see Rules meant to apply to Strata Lots or Bylaws which purport to be modifiable by Rule.

Rules v. Bylaws

In conclusion, it is important that you understand the fundamental differences between Rules and Bylaws

Bylaws - Everyone Has Them

Browsing your local MLS listings you may have come across listings of strata titled properties which contains one of the following statements:

"non conforming strata" or

"no bylaws"

Bylaws - Everyone Has Them

These listings might leave you with the impression that there are Strata Corporations out there that do not have a council or any bylaws.

In truth all Strata Corporations must have bylaws and councils. Section 120 of the *Strata Property Act* provides as follows:

Standard Bylaws

120 (1) The bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office.

(2) On deposit of the strata plan an owner developer may file bylaws that differ from the Standard Bylaws.

Bylaws - Everyone Has Them

Simply put, if your strata corporation has not adopted bylaws of its own, or has not adopted bylaws since 2001, your strata corporation is governed by the standard bylaws.

Bylaws - *Standard Bylaws*

Some Strata Corporations opt to make targeted changes or additions to the *Standard Bylaws* instead of adopting a comprehensive set of bylaws. It is not uncommon to see the following statement in a set of bylaws:

NOTE TO READER: The following bylaws are in addition to and supplement the *Standard Bylaws*.

Bylaws - Standard Bylaws

With the Standard Bylaws applying to so many strata corporations, it is imperative that you know and understand is in them. There are a few sections in the *Standard Bylaws* that might take you by surprise.

The *Standard Bylaws* can be found attached as a schedule to the *Strata Property Act*.



Standard Bylaws - Pets

Did you know that the Standard Bylaws contains a pet restriction.

It is my experience that most Strata Corporations operating under the *Standard Bylaws* are unaware of this.

Standard Bylaws - Pets

3(4) An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:

- (a) a reasonable number of fish or other small aquarium animals;
- (b) a reasonable number of small caged mammals;
- (c) up to 2 caged birds;
- (d) one dog or one cat.



Standard Bylaws - Repair

Did you know that the Standard Bylaws require the Strata Corporation to repair and maintain the exterior of all buildings including windows and doors in all types of Strata Corporations but for those specifically designated as "Bare Land Strata Corporation."

Standard Bylaws - Repair

Repair and maintenance of property by strata corporation

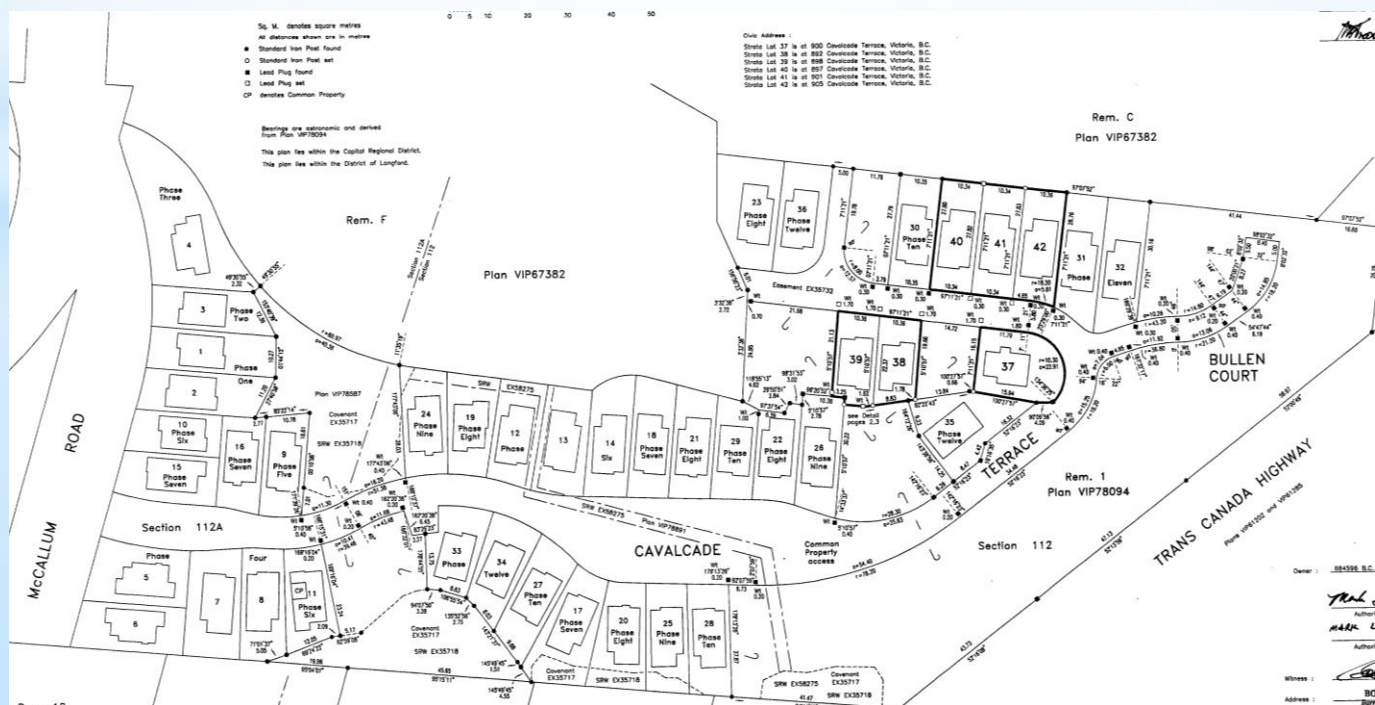
8 The strata corporation must repair and maintain all of the following:

(d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to

- (i) the structure of a building,
- (ii) the exterior of a building,
- (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,
- (iv) doors, windows and skylights on the exterior of a building or that front on the common property, and
- (v) fences, railings and similar structures that enclose patios, balconies and yards.

Standard Bylaws - Repair

The standard provisions may make sense in condominium buildings, townhouses, and even attached duplexes and triplexes, but does it make sense where the houses are detached like they are in the plan below:



Standard Bylaws - Council

The *Standard Bylaws* do not contain provisions allowing people other than owners and tenants who have been assigned the landlord's rights to sit on Council.

It is my experience that 1 in every 20 strata council members is ineligible to be on council because they are not owners and there is no bylaw allowing them on council.



Standard Bylaws - Quorum

The *Standard Bylaws* do not contain provisions allowing for a general meeting to continue in the absence of 1/3 of the Owners. Which means that the whole meeting will have to be adjourned for a week.



Standard Bylaws - Conclusion

There are many reasons why you need to know the Standard Bylaws and many more why you might want to replace them.

Unenforceable Bylaws



Unenforceable Bylaws

A Strata Corporation can't just pass any Bylaw it sees fit. There are many restrictions governing what kind of bylaws can be passed. Some of those restrictions are found in section 121

Unenforceable bylaws

- 121** (1) A bylaw is not enforceable to the extent that it
- (a) contravenes this Act, the regulations, the [Human Rights Code](#) or any other enactment or law,
 - (b) destroys or modifies an easement created under section 69, or
 - (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

Unenforceable Bylaws



Human Rights

Unenforceable Bylaws

Bylaws that contravene the Human Rights Code.

The Human Rights Code was enacted to prevent discrimination against individuals on the basis of certain inherent characteristics including religion, race, age, sex, family status and physical and mental disability.

Bylaws that discriminate against classes of owners on any of the above grounds except for age are defacto unenforceable.

Unenforceable Bylaws

There are many common misperceptions about AGE RESTRICTION BYLAWS

1. Only age restrictions of 55+ are legal.
2. Age restrictions only apply to Owners
3. Age restrictions of under 55+ do not apply to Tenants
4. Age restrictions only apply to one occupant
5. Age restrictions do not apply to anyone born into the strata corporation.
6. If there are children living in the building the age restriction bylaw is unenforceable.

I have seen owners, council members, property managers and realtors, repeat all of the above misperceptions.
They are all wrong.

Unenforceable Bylaws

AGE RESTRICTION BYLAWS

Section 123(1.1) of the Strata Property Act specifically permits Strata Corporations to adopt age restriction bylaws;

The Human Rights Code grants an exemption from the normal rules regarding discrimination on the basis of age, where another statute permits such discrimination.

Therefore Age restriction bylaws are enforceable against all occupants and tenants;

Age Restriction bylaw do not apply to a person who resides in the strata lot at the time the bylaw is passed.

Unenforceable Bylaws



White, Trinidadian, Pastafarians must not own, or occupy a strata lot or enter on to the common property.

If a Strata Corporation was to enact a bylaw like the above, that prohibited a specific race, ethnicity, or religion from occupying a strata lot or coming on to the common property like the following, it would clearly violate the provisions of the Human Rights Code and be found to be unenforceable.

Most Strata Corporations I have come across are already aware of this. I have never seen a bylaw that discriminates on the basis of race, or ethnicity.

Unenforceable Bylaws

The issue is that bylaws can don't have to be discriminatory on their face, to have a discriminatory effect.

Many seemingly innocent bylaws can have a discriminatory effect on certain individuals which is usually unintended.

Let us take a look at some:

Unenforceable Bylaws

Owners, occupants and tenants must not install hard-surface floors.

Many Strata Corporations have a bylaw like the above. There are good public policy reasons behind enacting such a ban, namely to reduce noise transmission and noise complaints.

The problem is that such a bylaw can discriminate against individuals who have latex or dust mite allergies.

Such a bylaw was found to be discriminatory in *Koieczna v. Strata Plan NW 2489* BCHRT

Unenforceable Bylaws



The Strata Corporation will designate one (1) common property parking stall in the underground garage to each strata lot whose owner has a driver's license and car.

In bigger centers parking space is at a premium and there may not be enough parking or secured parking to go around. The above bylaw is common and makes sense.

The problem is that such a bylaw can discriminate against individuals who are blind, or disabled and there is no reason why they should not receive a parking stall.

Such a bylaw was found to be discriminatory in *Ganser v. Rosewood Estate Condominium Corp* (2002)



Unenforceable Bylaws

Owners, occupants and tenants must not keep a dog in a strata lot or bring a dog on to the common property.

Man's best friend isn't always wanted in Strata Corporations

The problem is that such a bylaw can discriminate against individuals who are blind, disabled, or suffer from a condition where a service dog is required.

Such a bylaw was found to be discriminatory in
Judd v. Strata Plan LMS 737 BCHRT

Unenforceable Bylaws

In order to maintain the visual integrity of the building, owners, occupants and tenants must not install exterior shades, blinds or awnings on the building exterior.

There are many reasons to enact such a bylaw: uniformity of appearance, prevention of damage to the building envelope ect.

The problem is that such a bylaw can discriminate against individuals who are blind, disabled, or suffer from a condition which makes them vulnerable to direct sunlight or high heat.

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Unenforceable Bylaws

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Unenforceable Bylaws

In all of the Human Rights Cases mentioned above the Strata Corporation's otherwise benign bylaws were found to have a discriminatory effect against the complainant.

However in Human Rights Cases when a bylaw is found to have a discriminatory effect the Strata Corporation has the power and duty to accommodate the individual if the necessary accommodation does not pose a significant hardship to the Strata Corporation.

In none of the cases did the Strata Corporation do so.

Unenforceable Bylaws



Unenforceable Bylaws

Bylaws that contravene other Acts are unenforceable.

We live in a world that is legislated to the extreme. There are so many rules, regulations and bylaws passed by all levels of government that even lawyers have a hard time keeping up with them.

It is easy for Strata Corporations to adopt bylaws that run afoul of other legislation.

Unenforceable Bylaws

Once granted, the permission to rent a strata lot will continue until the earlier of: a.) the owner taking up residence in the strata lot, or b.) the sale of the strata lot.

Condition b.) violates both:

1. section 121(1)(c) of the *Strata Property Act* in that it places a restriction on the sale of the strata lot; and
2. section 49 of the *Residential Tenancy Act* in that a landlord vendor has no right to give notice to a tenant unless the purchaser is moving in.

Unenforceable Bylaws

Owners and tenants who rent their strata lot out for periods of under a month shall provide the Strata Corporation with the names, and contact information of the guests in the strata lot, and the company managing the rentals.

Bylaws like this are becoming ever more common in the age of Air BnB. The problem is that most residential Strata Corporations are not zoned for transient accommodation, and a Strata Corporation can not authorize uses that are barred by its zoning or restrictive covenants registered against the Strata Corporation.

Unenforceable Bylaws

Bylaws that contravene the *Strata Property Act's* provisions are also unenforceable.

Here are a list of common bylaws which in most cases violate the act.

Unenforceable Bylaws

Unenforceable Repair Bylaws

Owners, occupants and tenants must repair, maintain and replace all doors and windows.

Unless an exterior door or window opens on to a part of a strata lot, that door or window is common property - (which can occur in older buildings and detached house stratas.) Section 71 of the Strata Property Act prohibits Strata Corporations from downloading the repair and maintenance of common property on to owners.

Unenforceable Bylaws

Unenforceable Council Bylaws

1. Strata Council members shall be elected to council for two year terms.
2. Strata Council members must not be on council for more than 4 years in a row.

The first bylaw violates section 25 which requires that a strata council (whole) be elected each year.

The second bylaws violates section 28 which gives all owners the right to be on council and only allows for them to be barred from council if they are in arrears.

Unenforceable Bylaws

Unenforceable Rental Bylaws

The number of strata lots which may be rented or leased is limited to 5.

It is surprising how often I see rental restrictions that contain little more than the above statement. Section 141(3) and the recent *Carnahan decision* of our supreme court requires that any rental restriction bylaw which sets out a limit must state how that limit is to be administered.

Unenforceable Bylaws

Unenforceable Rental Bylaws

Owners who rent their strata lot shall use a professional property manager to manage the rental.

Who drafted this the property manager? This bylaw may be well intentioned but it violates section 141(2) by placing a restriction on rentals that is not permitted by the Act.



Unenforceable Bylaws



Unenforceable Rental Bylaws

Owners who wish to rent their strata lot must apply to the Council in writing and provide the Council with the names, contact information, and resume of their prospective tenants.

Ummm Noooo! Again this bylaw may be well intentioned as Strata Corporation's have a vested interest in keeping bad tenants out but it violates section 141(1) by illegally screening tenants.

Unenforceable Bylaws



Unenforceable Rental Bylaws

1. Owners may not rent or lease their strata lots.
2. This rental restriction bylaw does not apply to owners who owned their strata lots at the time of its passing.

Section 143 of the *Strata Property Act* provides a grandfathering scheme for new rental restrictions. This is not it. This bylaw creates a rental restriction that is not authorized by the Act.

Unenforceable Bylaws

Unenforceable Detached House Strata Bylaws

1. Owners must obtain their own insurance on their house.
2. The Strata Corporation repeals all the Standard Bylaws
3. There shall be no strata council or strata fees.
4. These bylaws can not be changed except by unanimous vote.

**NO,
just NO.**



Bad Bylaws



Bad Bylaws

Some bylaws aren't unenforceable, they are just bad, very very bad.

But they don't always appear to be bad at first. Sometimes they appear to be good and useful but there is a darkness lurking in them.



Bad Bylaws



An owner shall be liable for any damage occurring to common property, limited common property or a Strata Lot if such is caused by the act of neglect of the owner or their guest or invitee.

This bylaw might actually make it harder for you to go after owners who are responsible for damage. The Act uses the word "responsible" which is akin to a strict liability standard which is a very easy case to meet.

By importing negligence language this bylaw raises the bar.

Bad Bylaws



Owners must repair and maintain their strata lots including doors and windows that face on to balconies, balconies, patios and balcony enclosures, except for repair and maintenance that is the responsibility of the Strata Corporation under these bylaws.

This bylaw is actually legal in many older strata corporations. The problem is that balconies are a key part of the building's envelope and structure, it is imperative that they be maintained in a uniform manner.

Bad Bylaws



Repair and maintenance of property by strata corporation

8 The strata corporation must repair and maintain all of the following:

- (a) common assets of the strata corporation;
- (b) common property that has not been designated as limited common property;

This bylaw is also legal but it leaves the individual owners in charge of structural repairs to the building. Contrary to common belief, the structure of the building is not common property.

Bad Bylaws



The Strata Corporation shall charge interest at the rate of TEN (10%) percent per annum compounded annually and calculated on a monthly basis, on monthly strata fees that are more than 30 days in arrears. Such interest shall be deemed to be part of the unpaid strata fees and special levies for the purposes of Section 116 of the *Strata Property Act*.

This bylaw is legal and common but it leaves out Special Levies which are usually far larger than monthly assessments. It also requires the Strata Corporation to charge interest instead of making it discretionary.

Bad Bylaws



The Strata Corporation may charge a fine of \$50 per month on all unpaid monthly assessments and special levies.

This bylaw is also legal but the problem with it is that unlike strata fees and special levies secured by a certificate of lien, fines have no priority over a mortgage.

This makes the fines nearly impossible to collect.

Bad Bylaws



The Strata Corporation shall apply money received from an owner firstly to fines, secondly to user fees, thirdly to strata fees and special levies.

The legality of this bylaw is questionable on a number of fronts. The biggest problem with it is that it gives fines a priority that is not intended or explicitly authorized by the *Strata Property Act*. Bankers do not like this bylaw as it imperils their mortgage security.

Good Bylaws

Quorum



(2) Notwithstanding Section 48(3) of the Act, if within $\frac{1}{2}$ hour from the time appointed for an annual or special general meeting a quorum is not present, the meeting shall be terminated if the meeting was convened upon the requisition of the owners; but in any other case, the meeting shall stand adjourned for a further $\frac{1}{2}$ hour from the time appointed and, if at that time a quorum is still not present for the meeting, the eligible voters present in person or by proxy shall constitute a quorum.

Good Bylaws

Alterations

An owner is responsible for and must repair, maintain and replace any improvements, alterations and additions made to their strata lot or adjoining common property, or limited common property, which they have the benefit of, including but not limited to balcony enclosures, which were made by them or a previous owner of their strata lot. An owner must also make good any damage to a strata lot, limited common property or the common property that is caused by or arises out of any improvements, alterations and additions made to their strata lot or adjoining common property, or limited common property, which they have the benefit of, which were made by them or a previous owner of their strata lot.



Good Bylaws

Hot water tanks

An owner must:

Provide the strata corporation with proof of the age of their hot water tank and the expiry date of its warranty;

ensure that their hot water tank is in proper operating condition at all times; and

replace the tank within the warranty period specified by the manufacturer.

If an owner fails or refuses to replace the hot water tank or provide proof of its age contrary to paragraph 2(5) of these consolidated bylaws, then the Strata Corporation may enter onto the strata lot on 48 hours written notice and replace the hot water tank and charge any related costs and expenses back to the owner, including legal costs on a full indemnity basis.



Good Bylaws

Insurance



An owner shall reimburse the Strata Corporation maintenance, repair or replacement costs plus any losses or damages to an owner's strata lot, the common property, the limited common property or the contents of same, if:

that owner is responsible for the loss or damage; or

if the loss or damage arises out of or is caused by or results from an act, omission, negligence or carelessness of:

that owner; or,

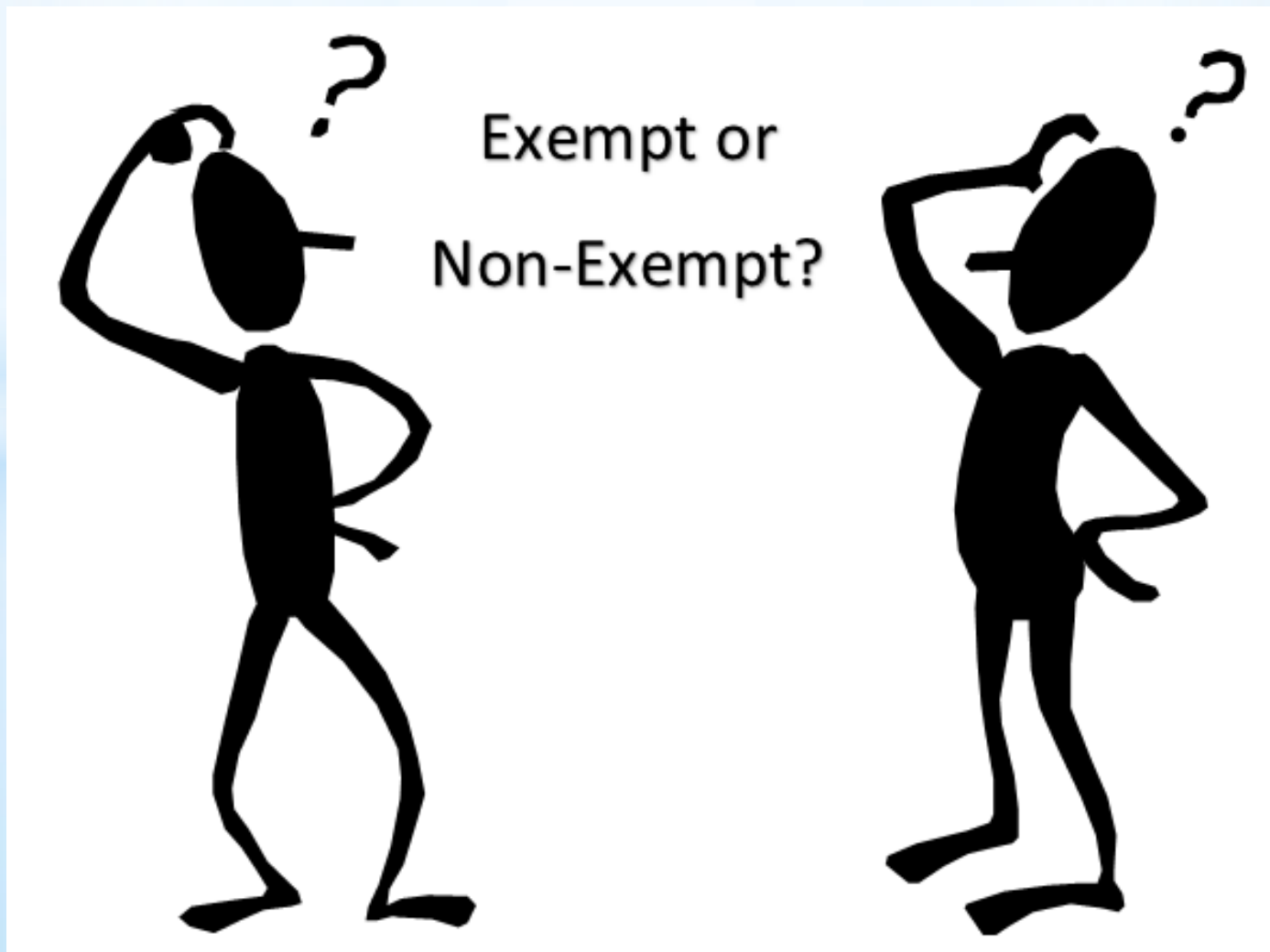
(ii) any member of the owner's family; or,

(iii) the owner's pet(s); or,

(iv) the owner's guests, employees, contractors, agents, tenants, volunteers, or their pets,

but only to the extent that such expense is not met by the proceeds received from any applicable insurance policy, excluding the insurance deductible which is the responsibility of the owner.

Exemptions



Exemptions

MYTH:

Many Strata Councils appear to believe that they can grant exemptions to any of the Strata Corporations bylaws.

Exemptions

REALITY:

The Strata Council has a duty to uphold and enforce the bylaws as they are.

The only exemptions a Strata Council may grant that are legally enforceable are:

1. Hardship Exemptions to a Rental Restriction Bylaw
2. Human Rights Based Exemptions.

CASE STUDIES

The OILBUCKS

Meet Steve and Sandy Oilbucks.

They have made a small fortune in the oilsands and want to buy a condo in their name to rent to their 19 year old daughter Sonia to reside in when attending Uvic.



CASE STUDIES

The OILBUCKS

The condo's bylaws state the following:

No person under the age of 25 may reside in a strata lot for more than 30 days in a Calendar year.

Steve and Sandy apply to the Strata Council for an exemption for their daughter. Can the Council grant it? If so why?

CASE STUDIES

The OILBUCKS

- 1. YES - The Council can grant the exemption on the grounds that the age restriction violates the Human Rights Code.**
- 2. NO - The Council must enforce the bylaws and can not grant the exemption.**

CASE STUDIES

Angelina Sweetney

Meet Angelina Sweetney, ("Annie") CEO for a respected animated film company.



Angelina suffers from no known illness or condition.
Annie is o.k.

CASE STUDIES

Angelina Sweetney

This is Angelina's dog - "Cupcake"



Cupcake is licensed as an assistance animal.

CASE STUDIES

Angelina Sweetney

Angelina has fallen in love with a water view penthouse suite your strata corporation, strata plan EPS 666 “Heaven’s Gate.”

The Strata Corporation’s bylaws state:

Owners, occupants and tenants must not keep any dog larger than 15 pounds without the express written consent of the Strata Council.

Angelina applies for an exemption for cupcake. The owner developer is council president and pushing hard for an exemption so he can sell his last remaining unit in the building and pay off his hefty arrears on it.

CASE STUDIES

Angeline Sweetney

- 1. YES** - Cupcake is a licensed assistance animal and the strata must allow it.
- 2. YES** - We want the owner developer gone and his arrears paid.
- 3. NO** - Annie is o.k. and the Strata Council must enforce the bylaws unless Annie can prove that she suffers from a condition or disability that requires accommodation.

CASE STUDIES

Angeline Sweetney

The Council is comprised of 4 people. The Owner Developer is the president.

The vote on Ms. Sweetney's dog occurs. It is a tie vote, 2 - 2 with the president and secretary voting for and the vice president and treasurer voting against.

The president uses his tie breaking vote in favor of granting the exemption.

IS THE VOTE VALID?

CASE STUDIES

Max Payne

Meet Max Payne. Max is the son of a beloved owner "Minnie." You never asked Minnie what Max does for a living because sometimes its best that you just don't know.



CASE STUDIES

Max Payne

Max has a dog:

Phobos



CASE STUDIES

Max Payne

Max also has itchy feet caused by a severe allergic reaction to latex in carpet:



CASE STUDIES

Max Payne

Max has seen some things, Max has done some things, and now he suffers from PTSD and anxiety.

Phobos is certified service dog, for the treatment of PTSD and Anxiety and Max has a doctor's letter spelling out in detail his medical need for the dog.

Max has a letter from his allergist stating that carpet aggravates his allergies and living in a carpeted suite could cause him shortness of breath, rashes and headaches.

CASE STUDIES

Max Payne

Max wants to buy into your strata.

The bylaws provide as follows:

1. NO DOGS

2. NO HARDSURFACE FLOORING

Minnie recently passed away and left Max the strata lot in her will. Max really wants to move in and has asked the Strata Council for an exemption for Phobos and to allow him to lay down hardwood floors.

CASE STUDIES

Max Payne

1. YES - to the dog but no to the flooring.
2. YES - To both.
3. NO - to both.



CIAO