

Bylaw Enforcement

Do we have to?

What if we don't?

DAMN! For Real?

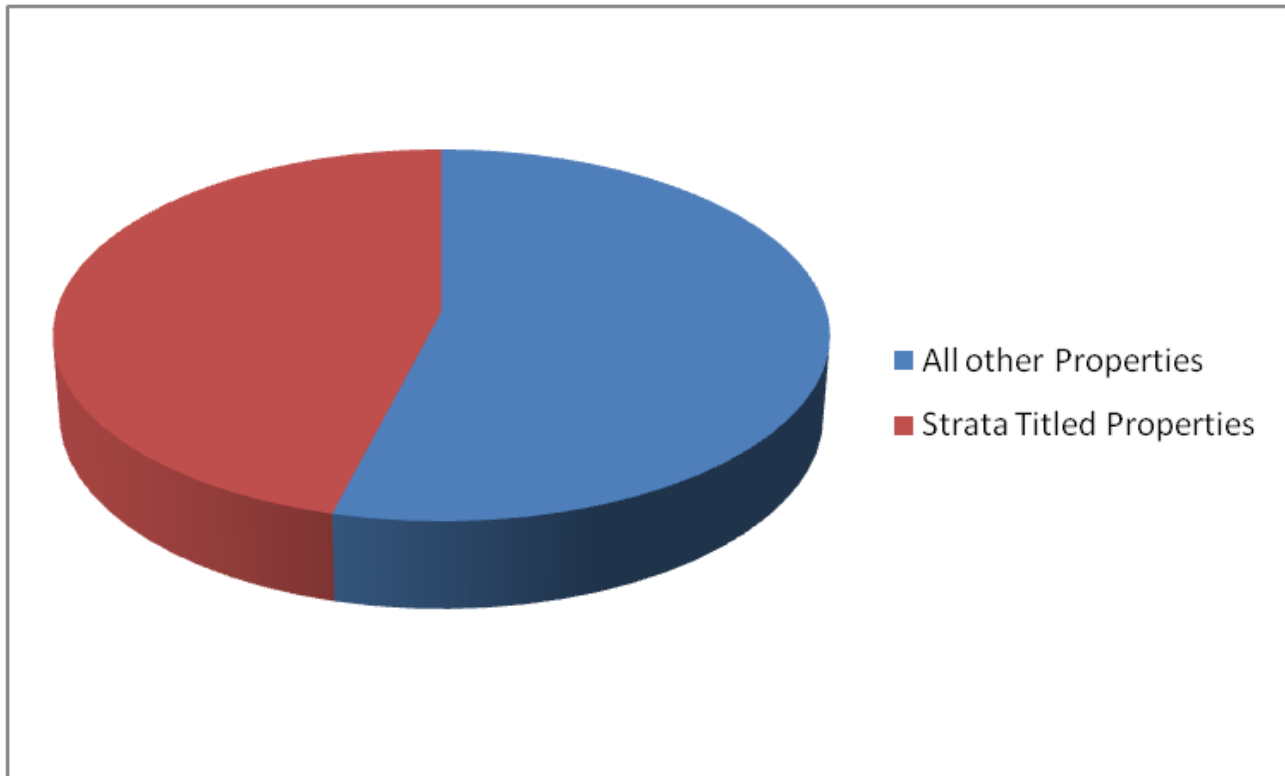
Ok what do we have to do?

GUILTY! What can we do to them?

What if they don't do as we tell them?

Bylaw Enforcement

- Strata titled properties represent 46% of all sales in the Victoria Real Estate Board.



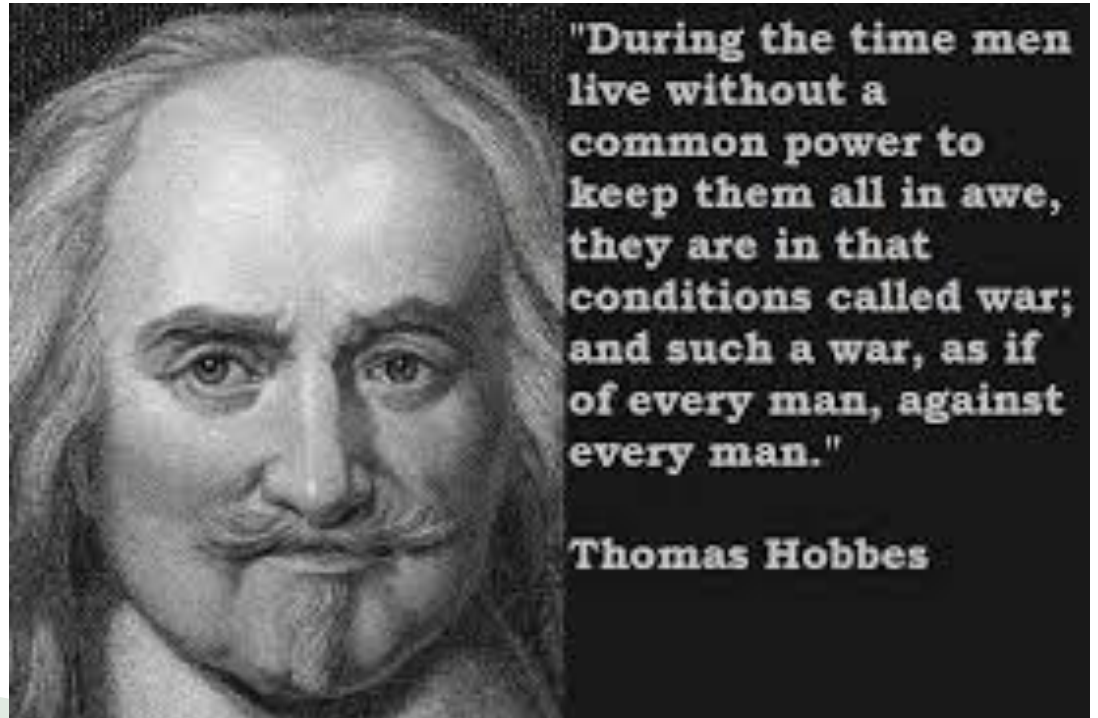
Bylaw Enforcement

- ▶ Strata Corporations artificial entities created by the legislature to represent the interests of a group of individual owners.
- ▶ The owners who make up the membership of Strata Corporation represent a microcosm of our society as such their needs, wants, desires, and values are often divergent.



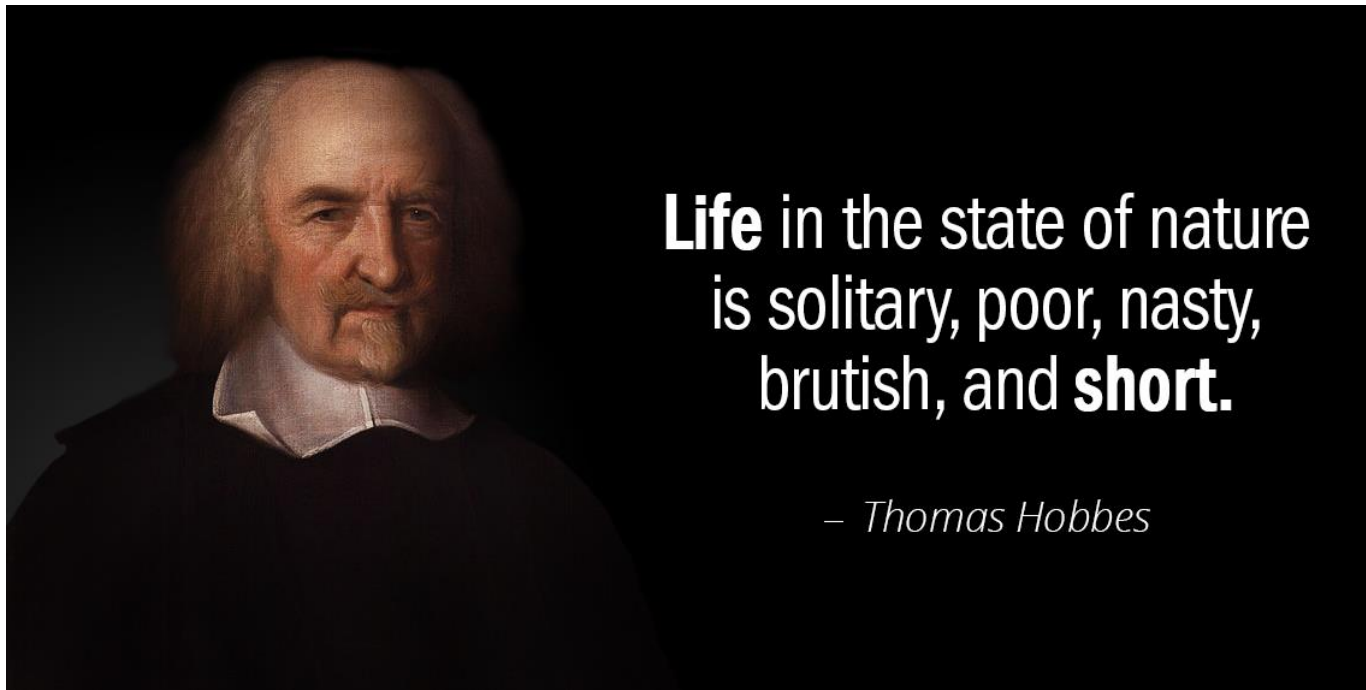
Bylaw Enforcement

- ▶ Where needs, wants and values diverge, in the absence of structure, chaos rules.
- ▶ In the words of Thomas Hobbes



Bylaw Enforcement

- ▶ Life in that state of war of each against all wasn't something to be desired.



Bylaw Enforcement


- ▶ This is Canada, and we aren't really into chaos up here. We know what we truly value and those values are etched right into our constitution.



Bylaw Enforcement

- ▶ In order to ensure that Strata Corporations benefited from Peace, Order and Good Government some form of control was necessary.
- ▶ Thankfully the legislature ensured that all Strata Corporations would have the basic tools necessary to remove them from the state of nature.


Rules & Bylaws



Bylaw Enforcement

- ▶ The *Strata Property Act* provides that all strata corporations, regardless of their size, have bylaws.
- ▶ Those that haven't adopted their own custom bylaws are deemed to be governed by the *Standard Bylaws* that are attached as a schedule to the *Strata Property Act*.

Rules & Bylaws



Bylaw Enforcement

► Part 7 — Bylaws and Rules

- **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.
- **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.

Rules &


Bylaws



Bylaw Enforcement

- ▶ Bylaws serve as a strata corporation's governing law. The Social Contract that binds the owners and directs them towards a common goal.
- ▶ Bylaws can be tailored to reflect the values of its members and may differ substantially from strata to strata


Rules & Bylaws



Bylaw Enforcement

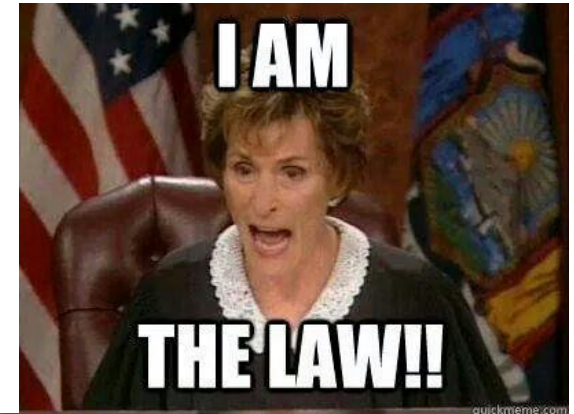
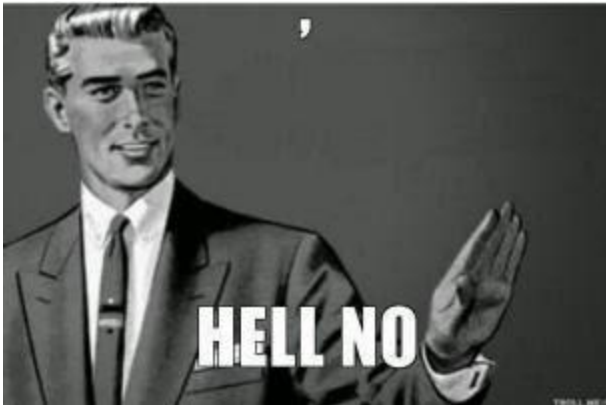
- ▶ Strata Corporations have tools in the forms of bylaws, rules and the *Strata Property Act* to ensure that our blissful state of POGG is maintained.
- ▶ However, tools, like bylaws and rules, are only valuable if they are used. If they are not used, they are no more than flowery words on a page.

Rules & Bylaws



Do we have to?

- ▶ There appear to be three schools of thought when it comes to enforcing the bylaws and rules.



Do we have to?

- ▶ I call these three schools of the thought.



Do we have to?

- ▶ The legislature foresaw that some Strata Councils may be inclined not to do anything with the tools that they had been given.
- ▶ Not only did the legislature see fit to ensure that Strata Corporations have bylaws. They also required Strata Corporations to enforce the bylaws.

Do we have to?

- ▶ Section 26 of the *Strata Property Act*
- ▶ Council exercises powers and performs duties of strata corporation
- ▶ 26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

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Do we have to?

- ▶ Section 26 of the *Strata Property Act* requires councils to enforce the bylaws and rules of the Strata Corporation.
- ▶ Simply put...



What happens if we don't?

- ▶ At this stage I can predict what you are thinking...
- ▶ We actually have to enforce the bylaws???.....



What happens if we don't?

- ▶ In truth, Strata Corporations can be made to enforce the bylaws. The legislature saw to that to by enacting section 165 of the *Strata Property Act*:
- ▶ Other court remedies
- ▶ 165 On application of an owner, tenant, mortgagee of a strata lot or interested person, the Supreme Court may do one or more of the following:
 - ▶ (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
 - ▶ (b) order the strata corporation to stop contravening this Act, the regulations, the bylaws or the rules;
 - ▶ (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

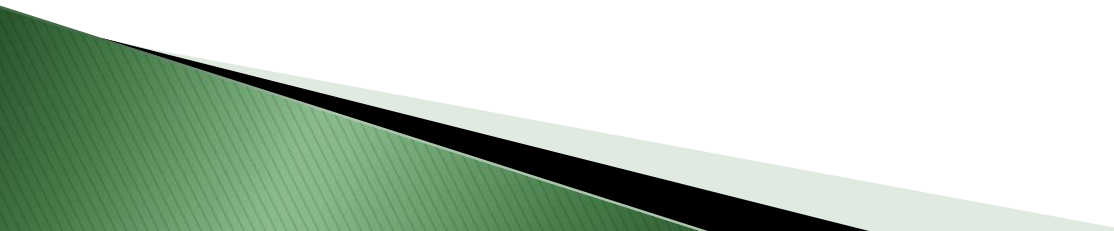
What happens if we don't?

- The Civil Resolution Tribunal has made litigation faster, easier and cheaper.
- This has also enabled Strata Corporations and their owners to litigate disputes that were hitherto too small or not important enough to justify the costs or efforts involved with litigation before the supreme court.
- Where litigation used to be reserved for repair and maintenance issues and issues where significant sums of money were at stake, now we are seeing more litigation surrounding the enforcement, or lack of enforcement of the bylaws.

DAMN!! For Real?

- ▶ Section 165 allows owners to apply to the Court or the *Civil Resolution Tribunal* for an order compelling the Strata Corporation or the Council to enforce the bylaws.
- ▶ Both the Supreme Court and the Civil Resolution Tribunal have taken Councils to task for failing or refusing to enforce the bylaws.
- ▶ Chorney v. The Owners, Strata Plan VIS770, 2013 BCSC 14
- ▶ D.W. v. The Owners, Strata Plan BCS XXX, 2017 BCCRT 107
- ▶ Fox v. The Owners, Strata Plan KAS 1911, 2017 BCCRT 137
- ▶ Masse et al v. The Owners, Strata Plan VIS 6348 et al, 2018 BCCRT 112

What do we have to do?

- As a result of the new relative ease of litigation, another change occurred.
 - There used to be a prevailing belief or unwritten agreement that if no one was complaining too loudly about bylaw violations, Councils would simply look the other way, even if they were aware of them.
 - It looked something like this.
- 



What do we have to do?

- It also looks like this.



- I see a lot of this occurring.

What do we have to do?



What do we have to do?

- Now the prevailing belief is that if a strata council or an individual member becomes aware of a bylaw breach they are under a positive duty to take action to enforce the bylaws.
- This duty even extends to the point that in the absence of an outside complaint, a Council member must make the complaint and then recues themselves from dealing with the complaint when it comes before the rest of Council.

What do we have to do?

- So to be clear:
- This is discouraged and This is encouraged



What do we have to do?

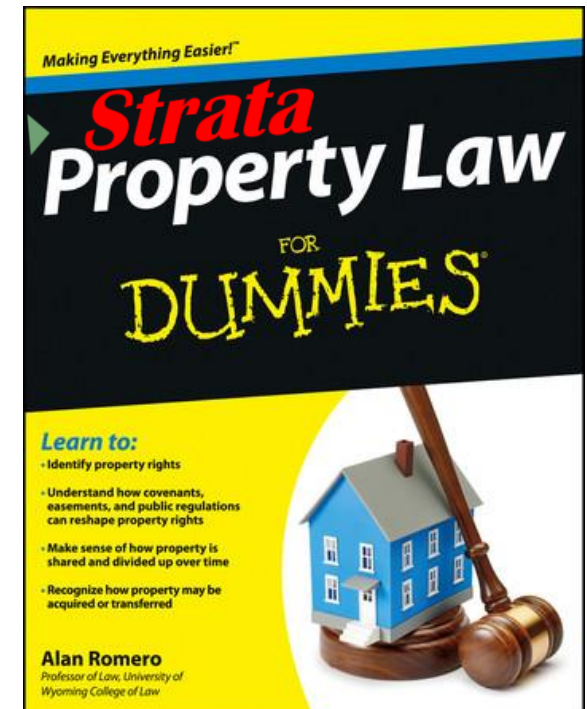
- ▶ The case law shows that Strata Corporations have no choice but to enforce the bylaws.
- ▶ So what do you do?

What do we have to do?

- ▶ If the Strata Corporation receives a complaint, or the Council discovers a bylaw violation and initiates their own enforcement process there are certain procedures it must follow.

What do we have to do?

- ▶ Once more the legislature had the foresight to appreciate that Strata Corporations would need some guidance on enforcing the bylaws.
- ▶ It published a guide to a enforcing the bylaws.
- ▶ While that guide isn't as thorough
- ▶ as some of the reference materials
- ▶ we have become used to ----→
- ▶ It does set out the minimum
- ▶ requirements for enforcing the
- ▶ Bylaws.



What do we have to do?

- ▶ Section 135 of the *Strata Property Act* sets out the procedures it provides as follows:
- ▶ **Complaint, right to answer and notice of decision**
- ▶ **135** (1)The strata corporation must not
 - (a)impose a fine against a person,
 - (b)require a person to pay the costs of remedying a contravention, or
 - (c)deny a person the use of a recreational facility
- ▶ for a contravention of a bylaw or rule unless the strata corporation has
 - (d)received a complaint about the contravention,
 - (e)given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
 - (f)if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.
- ▶ (2)The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).
- ▶ (3)Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

What do we have to do?

- ▶ The procedural requirements of section 135 of the *Strata Property Act* can be summarized as follows:
 1. Receipt of the complaint (as noted before recent thought is that the Strata Council itself can be the source of the complaint).
 2. The Council must investigate the complaint.
 3. Provisions of **written notice** of the complaint to the accused (which **must give the accused a reasonable opportunity to respond** including an opportunity to respond at a Council hearing).
 4. Once the accused has responded or been given a reasonable opportunity to respond, **the council must decide whether a bylaw or rule has been broken** by the accused.
 5. If the council decides that a bylaw or rule has been broken, it must then **decide how to enforce the bylaw or rule** against the accused and provide **written notice of its decision**, “as soon as feasible” to: the accused; and the landlord and owner.

What do we have to do?

- ▶ Many Strata Corporations fall short of meeting their procedural obligations under section 135 of the *Strata Property Act* by:
 - Failing to investigate the complaint received;
 - Dismissing the complaint without taking any due diligence;
 - Failing to provide written notice of the complaint to the subject of the complaint;
 - Failing to provide an opportunity for a written response or a hearing;
 - Jumping to conclusions as to the guilt of the subject of the complaint;
 - Demanding a payment of a fine in the letter that sets out the notice of complaint and the right to respond;
 - Failing to provide a fair hearing.

What do we have to do?

► INVESTIGATING THE COMPLAINT



What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ Many, if not the majority of complaints that Councils receive are regarding alleged nuisances by an owner. The *Standard Bylaws* and almost all custom bylaws contain prohibitions against the creation of nuisances.
- ▶ A nuisance is defined as an act or use of property that unreasonably interferes with a neighbor's use of their property.
- ▶ The use of the term “unreasonably” means that nuisances are based on an objective standard. In other words you must determine what the average reasonable person tolerate in like circumstances.

What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ The subjective feelings of the complainant are not determinative, particularly if they are overly sensitive.
- ▶ It takes into consideration the neighborhood, and construction of the building.



What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ The problem with nuisances being determined on an objective standard is that proving them requires objective evidence.
- ▶ Few complainants provide objective evidence.
- ▶ Obtaining objective evidence can be tricky and usually requires some investigation on the part of the Council.

What do we have to do?

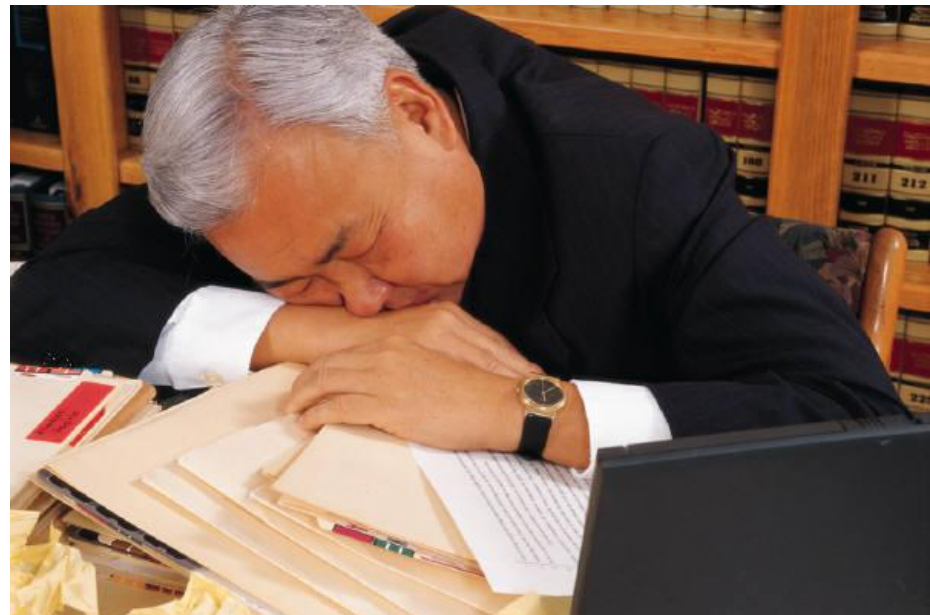
- ▶ INVESTIGATING THE COMPLAINT
- ▶ Strata Councils must make reasonable efforts to investigate the alleged breach which may include:
 - Attending a strata lot to attempt to observe unreasonable noise or odors coming into a strata lot;
 - Providing notice of entry to a strata lot (if the bylaws allow) to investigate for possible violations of a bylaw (usually laying down unauthorized hard surface flooring).
 - Meeting with witnesses including the complainant and accused
 - Reviewing audio and video recordings of the incidents.

What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ Strata Councils must make reasonable efforts to investigate the alleged breach which may include:
 - Obtaining audio or video recordings of unreasonable sound with the complainant's consent;
 - Obtaining opinions from experts regarding a possible breach of a bylaw ie. structural, envelope engineers for alterations, acoustic engineers for flooring, medical doctors for exposure to second hand smoke;
 - Obtaining written witness statements.

What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ Strata Councils must make reasonable efforts to investigate the alleged breach which may include:
 - Obtaining a legal opinion



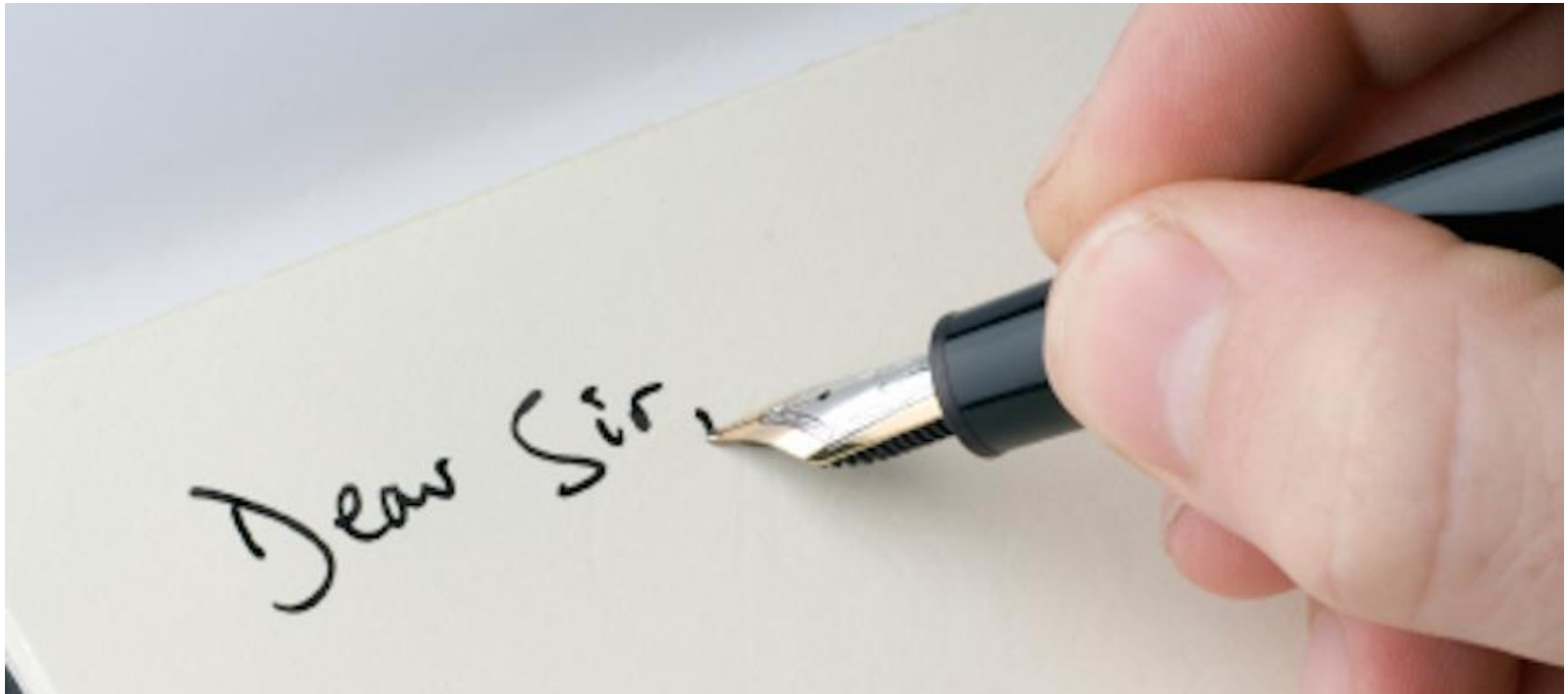
What do we have to do?

- ▶ INVESTIGATING THE COMPLAINT
- ▶ One thing Councils should not do to investigate alleged bylaw violations is use video surveillance. See the Office of the Information and Privacy Commissioner Order P09-02 (*Shoal Point Strata Council*)



What do we have to do?

► PROVIDING NOTICE



What do we have to do?

► PROVIDING NOTICE

- The written notice of the complaint:
 - Must set out the details of the complaint including:
 - The time, date and description of the complaint;
 - The bylaw that was allegedly breached;
 - The evidence in support of the alleged breach
 - Must state that the accused has an opportunity to respond in writing or request a hearing before council.
 - Should provide a deadline for responding or requesting a hearing.
 - Should set out what will happen if the accused doesn't respond or request a hearing in time.

What do we have to do?

- ▶ PROVIDING NOTICE
- ▶ The written notice of the complaint:
 - Must Not state that the Council has found the accused guilty of the alleged breach.
 - Must Not state that the accused must pay a fine.



What do we have to do?

► THE HEARING



What do we have to do?

▶ THE HEARING

- ▶ Unfortunately there are no rules or regulations in the *Strata Property Act* or the *Regulations* regarding Council Hearings.
- ▶ The best advice is to follow the rules of natural justice by ensuring that:
 - The rules that the hearing will be conducted by are known by each party before the hearing:
 - The procedure of the hearing (in terms of who speaks when)
 - Amount of time each party will be given to speak;
 - Which witnesses if any will be called
 - Evidence (if any) is exchanged by each party at a set time prior to the hearing.
 - The Council (not the property manager) conducts the hearing;
 - The hearing is held at a neutral location, not a council member's home, the accused's home or the complainant's home;

What do we have to do?

▶ THE HEARING

- ▶ Unfortunately there are no rules or regulations in the *Strata Property Act* or the *Regulations* regarding Council Hearings.
- ▶ The best advice is to follow the rules of natural justice by ensuring that:
 - Council members who are witnesses, complainants or an interest in the matter recuses themselves;
 - The hearing must be held incamera, to the exclusion of owners, occupants and tenants that are not the witnesses or the accused.
 - The Accused must be given a reasonable opportunity to speak and to call witnesses if he has any.
 - The Council must be and must appear to be open minded.
 - The Council must not make statements indicating that they have prejudged the situation or have come to the hearing with their minds made up.

What do we have to do?

- ▶ **THE HEARING**
- ▶ The Council should make it clear at the outset of the hearing, specifically that the accused and complainant that a decision will not be rendered on the spot.
- ▶ Both sides should be ensured that they will be fully heard and that a decision will be rendered after they've departed.
- ▶ Council must only discuss the evidence presented at the hearing and then make their decision after the accused and witness have left.

What do we have to do?

- ▶ THE HEARING
- ▶ The hearing should be conducted in calm and professional manner. Try to keep tempers from flaring.



What do we have to do?

► THE DECISION



What do we have to do?

▶ THE DECISION

- ▶ Councils must provide a written decision on the subject of a hearing within 7 days. The requirement to provide a written decision does not explicitly state what the decision must constitute however the laws of natural justice do give us some guidance.
- ▶ The written decision should:
 - address the evidence and submissions in support of and against the alleged breach of the bylaws.
 - Address the credibility of any witnesses.
 - State the decision of the Council and the reasons the Council reached its decision including any authorities relied on;
 - Set out what the Council orders ie: fines, or remedial work under sections 85 or 133.
- ▶ Remember though if more information is required in order for Council to render a fully considered decision then the decision of Council might be for the accused or the complainant to submit more evidence.

GUILTY! What can we do to them?

► REMEDIES AVAILABLE TO THE COUNCIL



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ There is nothing in the *Strata Property Act* that requires a council to fine a guilty party. The enforcement options found in sections 85, 129 and 133 are prefaced by the word “may.”

GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 1.) Give the guilty party a warning not to do it again



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 2.) Fine the relevant party pursuant to section 130 of the *Strata Property Act*



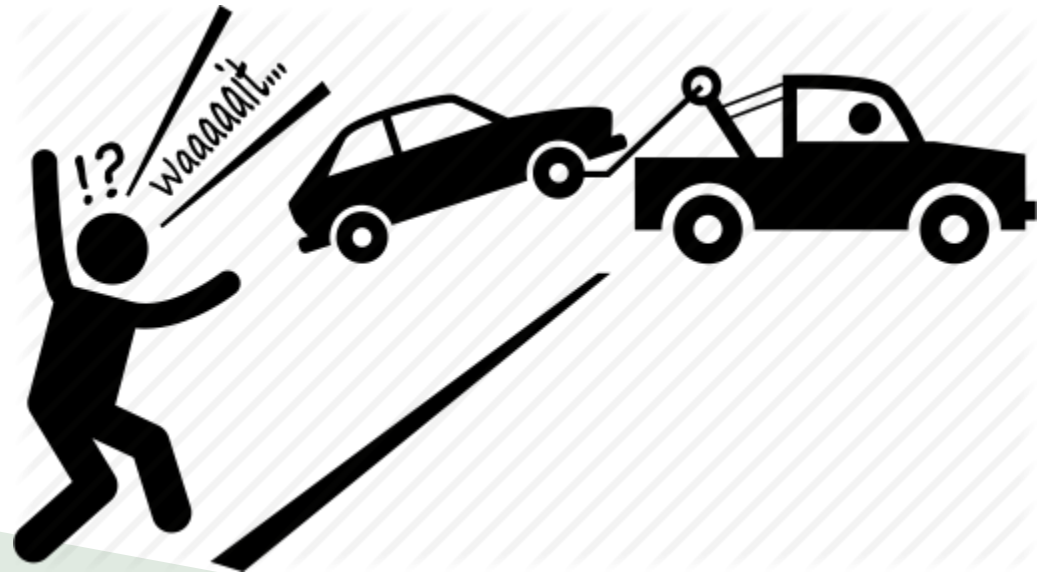
GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 3.) Ban the relevant party pursuant to section 129 of the *Strata Property Act*



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 4.) Remove items from the common property or do work to a strata lot to remedy a breach pursuant to section 133 of the *Strata Property Act*



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 4.) Remove items from the common property or do work to a strata lot to remedy a breach pursuant to section 133 of the *Strata Property Act*



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 5.) For extreme and repeated breaches the ultimate remedy is available.



GUILTY! What can we do to them?

- ▶ REMEDIES AVAILABLE TO THE COUNCIL
- ▶ Strata Councils have a number of remedies available to them:
- ▶ 5.) For extreme and repeated breaches the ultimate remedy is available.
- ▶ Forced Sale either for
- ▶ failure to pay fees; or
- ▶ for extreme bad
- ▶ behaviour



What if they don't play ball.

- ▶ Strata Corporations have multiple options to enforce their decisions if the owners don't play along:
 1. Applications to the Civil Resolutions Tribunal to resolve disputes
 2. Applications to the Small Claims Court / CRT to collect fines.
 3. Applications to the BC Supreme Court to collect strata fees and special levies.
 4. Applications to the BC Supreme Court to obtain an injunction requiring an owner to do something.

Closing Thoughts

- ▶ While it is true that the Courts have invalidated fines where Strata Corporations have failed to follow the provisions of the Strata Property Act.
- ▶ *Terry v The Owners, Strata Plan NW 309*, 2016 BCCA 449,
- ▶ That said take heart.

Closing Thoughts

- ▶ Strata Corporations are run by volunteer and mostly unpaid councils.
- ▶ Most of the council are may up of lay people.
- ▶ The courts recognize these facts and for the most part, show deference to the decisions of strata councils and are reluctant to intervene.
- ▶ It is usually only where councils fall well short of meeting the required procedures that they will penalize the council or intervene.

A dramatic scene of a man on a makeshift raft made of wooden planks, struggling against a massive, dark, and turbulent ocean wave. The man is shirtless, wearing a red belt and light-colored pants, leaning forward with determination. The raft is cluttered with various items, including yellow floats, ropes, and a net. The overall mood is one of intense survival and resilience.

“If you have choices, choose
the best. If you have no choice,
do your best!”

Nishan Panwar
quotescover.com



YOUR *Strata* NEEDS
YOU