

**CHANGING BYLAWS
FOR
CHANGING TIMES**

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BYLAWS – THE BASICS

What can bylaws cover?

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 – THE BASICS

However, there are limits

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.



BYLAWS – THE BASICS

- **The starting point for all bylaws is the Standard Bylaws under the SPA – s.120 SPA**
- **The Standard Bylaws apply to all strata corporations except to the extent that contrary bylaws are filed in the Land Title Office.**
- **Bylaws filed under the Condominium Act survived the transition unless they conflicted with the SPA – Regulation 17.11(5) SPA**
- **To be enforceable bylaws must be filed in the Land Title Office – not merely passed at an AGM or SGM – S. 128(2) SPA**



BYLAWS – THE BASICS

- **Bylaws must be passed by a $\frac{3}{4}$ vote of the owners at an AGM or SGM – s128 SPA**
- **Strata corporations with commercial and non-commercial strata lots must hold two votes and record the results separately. – *Omnicare Pharmacy Ltd. v. The Owners, Strata Plan LMS2854 2017 BCSC 256.***
- **The exact wording of the bylaw(s) being proposed must be included with the notice of the meeting – s.45(3) SPA**
- **The wording of a bylaw can only be amended if the change is not “substantial” – s.50 (2) SPA**



BYLAWS – THE BASICS

- **Newly created strata corporations cannot make any amendments until the second AGM – s.127 SPA**
- **Where the strata corporation is being constructed in phases, certain bylaws cannot be amended until after the AGM for the final phase.**
- **Those bylaws relate to:**
 - **The keeping of pets**
 - **The restriction of rentals**
 - **The age of occupants**
 - **The marketing activities of the owner-developer**



BYLAWS FOR OUR TIMES

Today we will discuss bylaws relating to:

- Short term rental accommodation
- Marijuana use
- Electrical vehicles
- Alterations
- Access Control Systems/Video Surveillance Systems
- Home based businesses
- Living arrangements
- Smoking
- Drones



SHORT TERM ACCOMMODATION

- What do we mean by “short term rental accommodation”?
- Referring to arrangements where a third party pays for the right to stay in a furnished strata lot for a period of a couple days to a couple of weeks (i.e.. Airbnb, VRBO, etc.)
- It can be more than that – what about home exchanges, home stay students, renting a room as opposed to the whole strata lot, letting “friends” stay for “free”.
- There is no universal legal definition; although certain municipal bylaws may define it for the purposes of regulating such activities.



SHORT TERM ACCOMMODATION

- Rental restriction bylaws don't apply to short term rental accommodation arrangements
- Short term rental arrangements are licenses not tenancies
 - *Strata Plan VR2213 v. Duncan* 2010 BCPC 123
 - *HighStreet Accommodations Ltd v. The Owners, Strata Plan BCS2478* 2017 BCSC 1039
- The difference is that a license arrangement does not give to the person using the strata lot exclusive use and control of the strata lot and is for a shorter duration than a tenancy
- Much will depend then on the agreement entered into between the owner and the occupant



SHORT TERM ACCOMMODATION

Drafting a bylaw to control short term accommodation – points to consider

- Needs to refer to the granting of a license
- Should provide examples of prohibited arrangements (i.e. vacation rental programs)
- Consider exceptions, if any, to be allowed (i.e. home exchange)
- What if the owner is present in the strata lot and simply rents out a room?
- Will it apply only to activities for which consideration is exchanged or will it apply to any occupancy wherein the owner is not present?



SHORT TERM ACCOMMODATION

Drafting a bylaw to permit short term accommodation – points to consider:

- **Will only a certain number be allowed?**
- **What information will the strata corporation require about the individuals staying there?**
- **How will access to the building be dealt with?**
- **Will guests be permitted to use common facilities? Under what conditions?**
- **Will a fee be charged for the use of common facilities and how much?**
- **How will visitor parking be regulated?**



SHORT TERM ACCOMMODATION

Alternative approaches

- Where a municipality has prohibited such uses then Standard Bylaw 3(1)(d) can be relied on:

“An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that is illegal”

- Restricting the use of the strata lot to single family use - *Ottawa-Carleton Standard Condominium Corp. No. 961 v. Menzies* 2016 ONSC 7699



MARIJUANA USE

- **Currently: only use for medical reasons (if authorized under the Access to Marijuana for Medical Purposes Regulations (“ACMPR”)) is permitted.**
- **As of July 2018 cultivation, processing and possession will be permitted (up to 4 plants per strata lot - no more than 100cm in height)**
- **Those activities will be subject to whatever limitations the provinces place on them (the details of which we don't yet know).**
- **Unless the province places restrictions on the power to do so, strata corporations should be able to pass bylaws restricting or prohibiting such activities**



MARIJUANA USE

- **Bylaws restricting or prohibiting cultivation, processing and use will always be subject to a duty under the Human Rights Code to accommodate those with medical conditions.**

- **8 (1) A person must not, without a bona fide and reasonable justification,**
- **(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or**
- **(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public**
- **because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.**



MARIJUANA USE

- Requests for accommodation must be dealt in a way that takes into account the obligations of each party - *Leary v. Strata Plan VR1001*, 2016 BCHRT 139
- The duty of the strata corporation is to accommodate to the point of undue hardship – *Mahoney obo Holowaychuk v. The Owners, Strata Plan NW332 and others*, 2008 BCHRT 274
- The search for an accommodation is a shared duty - *Central Okanagan School District No. 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970.
- A person does not have the right to smoke marijuana if it can be consumed in some other manner - *The Owners, Strata Plan LMS 2900 v. Hardy* 2016 BCCRT 1



MARIJUANA USE

- At present the cultivation and processing of marijuana can be dealt with under Standard Bylaw 3(1)(d) – not use a strata lot in a way that is illegal.
- Depending on the provincial legislation (i.e. does it prohibit or restrict those activities in residential premises?) that bylaw may or may not continue to apply.
- Smoking can be dealt with under Standard Bylaw 3(1)(a) – don't create a nuisance or hazard and Standard Bylaw 3(1)(c) – unreasonable interference.
- Those bylaws will continue to apply post-legalization.
- However, those bylaws don't prohibit the act of smoking – only doing so in a way that causes a certain result. They can be difficult to enforce.



MARIJUANA USE

- **Strata corporations will want bylaws which specifically deal with all aspects of the issue: cultivation, processing and consumption.**

- **Some things to consider are:**
 - • **medical versus recreational marijuana use;**
 - • **use in strata lots versus on common property;**
 - • **smoking of marijuana versus other forms of consumption;**
 - • **cultivation of marijuana;**
 - • **alteration of marijuana from one form to another; and**
 - • **changes that may be required to the strata lot to allow for cultivation.**



MARIJUANA USE

- **Strata corporations with commercial strata lots will need to consider whether to prohibit or restrict businesses involving marijuana.**
- **A strata corporation can regulate the use to which commercial strata lots are put - Kok v. Strata Plan LMS 463 (1999), 23 RPR (3d) 296.**
- **Except where certain uses are permitted under a registered charge on title - Winchester Resorts Inc. v. Strata Plan KAS 2188 (2002), 4 BCLR (4th) 390.**
- **Any bylaw restricting commercial use must be approved by a $\frac{3}{4}$ vote of the residential strata lots as well as the commercial strata lots.**



ELECTRIC VEHICLES

- **Electric cars can be charged by either plugging them into a 110v outlet or a charging station.**
- **A problem arises when those outlets are on common property (i.e. in the parking garage). Electricity supplied to those outlets is paid for by everyone as common expense.**
- **S.110 SPA allows a fee to be charged in relation to the use of the common property. Fee must be established by a bylaw.**
- **The fee must reasonable (based on market conditions and actual costs incurred) The Owners, Strata Plan LMS383 v. DeVuyst, 2011 BCSC 1252 and Cody Watson v. The Owners, Strata Plan BCS1721, BCCRT10**
- **Bylaws should also require permission to install a charging station.**



ALTERATIONS

STANDARD BYLAWS

Obtain approval before altering a strata lot

5 (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:

Obtain approval before altering common property

6 (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.



ALTERATIONS

What constitutes an alteration?

- “alteration” means something that changes the structure - Wentworth Condominium Corporation 198 v. McMahon 2009 CarswellOnt. 1273
- Removal and replacement of door and windows is not an alteration - The Owners, Strata Plan NWS254 v. Hall 2016 BCSC 2363.
- Placing a free standing structure such as a hot tub is not an alteration - The Owners, Strata Plan LMS4255 v. Newell 2012 BCSC 1542



ALTERATIONS

- If more control is desired then different wording is required.
- Consider using words such as “change” and “improvement”
- Consider listing specific items, such as flooring, which require permission.
- Consider listing other requirements that can be imposed as part of the approval process such as:
 - Obtaining permits
 - Trades with Worksafe coverage
 - Certain materials that must be used
 - Assumption of Liability Agreement to be signed



ACCESS CONTROL/VIDEO SURVEILLANCE SYSTEMS

- Both systems collect “personal information” – meaning information about an identifiable individual
- That information includes when they enter and leave a building and their activities while on the common property.
- OPIC dictates that in order to operate either type of system, the bylaws of the strata corporation must specifically authorize doing so.
- In addition to bylaws authorizing use of such systems, the strata corporation must have a policy governing the use and disclosure of the information collected.



ACCESS CONTROL/VIDEO SURVEILLANCE SYSTEMS

- **Video surveillance systems cannot be used to monitor the activities of residents in order to catch them violating the bylaws - Shoal Point Strata Council [2009] B.C.I.P.C.D. No. 34**
- **The same rule applies to access control systems.**
- **However, if the bylaws and privacy policy permit, the information collected by the systems can be used in relation to a serious breach of the bylaws.**
- **What constitutes a “serious” breach of the bylaws can be defined in the bylaw and/or the policy.**



HOME BASED BUSINESS

The City of Nanaimo Zoning Bylaw defines a home based business as:

“an occupation, business or professional practice which is carried on for remuneration or financial gain, and which is clearly ancillary to the residential use of the property and which generates little or no traffic, of which the proprietor is also a resident of the dwelling where the home occupation occurs and which does not employ more than one person who is not also a resident of the dwelling where the home occupation occurs”.



HOME BASED BUSINESS

Home based business are of concern to strata corporations because of issues related to:

- increased traffic within the complex;
- potential for injury on the common property;
- Taking up the limited number of visitor parking spaces;
- Dangers arising from the type of products used;
- Coverage issues related to the strata corporation's insurance.



HOME BASED BUSINESS

- If zoning bylaws prohibit the use of the strata lot for a home based business then the strata corporation can rely on Standard Bylaw 3(1)(d) to enforce that restriction.
- If the zoning bylaws allows certain home based businesses then the strata corporation may wish to pass a bylaw which sets some restrictions on the manner in which the business is operated.



HOME BASED BUSINESS

Issues to be addressed include:

- **clients or customers of the business attending the strata lot;**
- **routine deliveries of products and goods to the strata lot (other than the occasional courier);**
- **the use of hazardous or dangerous materials;**
- **the use of machinery;**
- **the creation of an unreasonable level of noise or odours;**
- **the type of business (haircuts, massages, craft sales)**



LIVING ARRANGEMENTS

Strata corporations can regulate a number of things related to who can live in a strata lot. It can:

- **Prohibit rentals (s.141 SPA)**
- **Restrict the age of who can live in a strata lot (s.123(1.1) of the SPA)**
- **Require the occupants to all be part of one family unit - Nipissing Condominium Corp. No. 4 v. Kilfoyl [2009] O.J. No. 3718**



LIVING ARRANGEMENTS

However, careful thought needs to go into those restrictions.

- Will there be exceptions to an age bylaw? (i.e. can a spouse be under 55? What about a live-in caregiver)
- What about visitors under the specified age who stay for several days (i.e. grandchildren)
- What constitutes a “single family”? How far does the circle extend?
- What about roommates? - Wong v. Section 1 of The Owners Strata Plan NW 2320 2017 BCCRT 25.



SMOKING

- No longer an accepted vice (at least not when done around others)
- Strata corporations can restrict smoking both inside and outside of a strata lot – s.119(2) SPA; *The Owners, Strata Plan NW 1815 v. Aradi* 2016 BCSC 105
- In fact, strata corporations are obligated to restrict smoking (at least on the common and limited common property) under:
 - The Tobacco and Vapour Products Control Act
 - Municipal bylaws (in some places)
 - Human Rights Code



SMOKING

The Tobacco and Vapour Products Control Act

- applies to tobacco and vapourized products (e-cigarettes)
- Prohibits smoking on “common areas” and within 6 meters of a door, window, or air intake leading into the interior of the building
- Requires signage to be posted noting the restrictions
- Requires the manager and owner to take “reasonable care and diligence to prevent the contravention”
- Creates an exemption for the use of vapourized products for medical reasons – including reducing nicotine dependence



SMOKING

- Municipalities often impose additional restrictions such as:
 - increasing the 6m distance from a window to 7m.
 - restricting smoking on commercial patios
- Municipal bylaws impose similar responsibilities re signage and enforcement as TVPCA
- “responsible person” means “the person who controls, governs or directs the activity carried on within the building, place or premises... and includes the person actually in charge thereof” – Capital Regional District Bylaw No. 3962
- This definition clearly includes the strata corporation, the strata council and perhaps even the strata manager
- Could face fines for failure to comply.



SMOKING

Strata corporations have an obligation under the Human Rights Code to accommodate owners, tenants and occupants who have health problems which are exacerbated by second hand smoke

- **Leary v. Strata Plan VR 1001 2016 BCHRT 139**
- **Kabatoff v. Strata Corp Plan NW2767 2009 BCHRT 344**

In order to meet that obligation, the strata corporation will need to have bylaws in place which prohibit smoking in certain areas – i.e. patios and balconies.



SMOKING

Strata corporations do not necessarily need specific bylaws to address smoking complaints (although they may helpful).

The Standard Bylaws apply:

3(1)(a) - nuisance or a hazard to someone else

Bylaw 3(1)(c) - unreasonably interferes with another person's use and enjoyment of their strata lot or the common property.

However, to enforce there must be evidence of interference with the ability of the owner to enjoy their strata lot and limited common property – Andrushko v. The Owners Strata Plan KAS 1041 2015 BCSC 2245



SMOKING

Bylaws which restrict smoking should:

- **Refer to more than just tobacco (i.e. marijuana, e-cigarettes, etc.)**
- **Meet the restrictions under the TVPCA and municipal bylaws (i.e. not within 7 meters of a door or window)**
- **Prohibit smoking in areas over which the strata corporation exercises control; parking garages, common rooms, clubhouses, etc.**
- **Either prohibit smoking within a strata lot or the escape of any vapors.**



DRONES

- The operation of drones is governed by the *Aeronautics Act*.
- Drones weighing less than 25 kg are exempt from need for a licence to operate them.
- The operator must be 18 years of age or older, meet certain conditions and only operate it in certain areas.
- Drones can:
 - pose a danger if they crash
 - invade privacy (particularly if they can film)
- Consider the delivery of packages by drone. Will that be permitted? Only during certain hours?



BYLAW ENFORCEMENT

- **The strata corporation is obligated to enforce its bylaws – s. 26 SPA**
- **Enforcement should not be undertaken for enforcement sake. There should be a practical reasons for doing so - Abdoh v. Owners of Strata Plan KAS 2003 2013 BCSC 817 affirmed 2014 BCCA 270.**
- **The owners within a strata corporation have a reasonable expectation that bylaws will be consistently enforced - Strata Plan LMS 3259 v. Sze Hang Holdings Inc. 2016 BCSC 32.**



BYLAW ENFORCEMENT

- **Bylaws need to be enforced in a timely manner.**
- **A two year limitation period applies within which to bring proceedings before the CRT or a court - The Owners, Strata Plan KAS 510 v. Nicholson 2017 BC CRT 48**
- **However, it has been held that a strata corporation can never be prevented from enforcing bylaws due to delay since it has a statutory duty to do so - Chan v. Strata Plan VR 151 2010 BCSC 1725**
- **Continuing fines for a lengthy period of time is not enforcement - Wilson v. Highlands Strata Corp (1999), 29 R.P.R. (3d) 280 and The Owners, Strata Plan VR 484 v. Lawtez 2017 BCCRT 59**



BYLAW ENFORCEMENT

The primary methods for enforcing the bylaws of the strata corporation are:

- imposing fines against the offending tenant or owner;
- taking steps to remedy a contravention pursuant to s.133 of the SPA;
- seeking an order of the CRT that the owner comply with the bylaws.



BYLAW ENFORCEMENT

Effective bylaw enforcement depends on compliance with s. 135 of the SPA. Before a fine can be imposed or the costs to remedy a breach charged back to an owner:

- The strata corporation must have received a complaint
- Given the particulars of the complaint (date, time, etc.) to the owner (and the tenant if there is one)
- Given a reasonable opportunity for the person to respond (either in writing or at a hearing)
- Given notice in writing to the person of its decision



BYLAW ENFORCEMENT

- Proper particulars are important.
- Complaints provide the basis for the particulars to be provided under s.135. Complaints which lack detail as to the dates and times of events should not be acted upon - *Mason v. The Owners, Strata Plan BCS4338 2017 BCCRT 47*
- The details must be sufficient to call to the attention of the owner or tenant the contravention at issue - *Terry v. The Owners, Strata Plan NW309 2016 BCCA*
- Letters to accused owners should include:
 - The bylaw(s) alleged to have been breached
 - A description of the breach
 - Date, time and location



BYLAW ENFORCEMENT

- **The response from the accused owner should be carefully and objectively reviewed as council's decision must be rational and reasoned.**
- **Council must investigate further if there is conflicting evidence - Chorney v. The Owners, Strata Plan VIS770 2016 BCSC 148**
- **The complainant should be asked for further details such as photos and witness statements where the owner denies the allegations and it is not clear there was a breach - Mason v. The Owners, Strata Plan BCS4338 2017 BCCRT 47**



BYLAW ENFORCEMENT

- **Strata councils which make decisions such as whether to impose fines must provide reasons for their decision - Condominium Corp. No. 072 9313 v. Schultz 2016 ABQB 338**
- **In Doig v. The Owners, Strata Plan VR 1712 2017 BCCRT 36 the CRT set out exactly what must be in the decision:**
 - **a list of who is present at the meeting;**
 - **who voted on its outcome;**
 - **the process followed at the hearing;**
 - **the facts the Council relied upon in reaching its conclusion;**
 - **the reason why it reached its decision; and**
 - **the outcome of the hearing (i.e. the decision reached).**



BYLAW ENFORCEMENT

- The criteria from Doig applies to:
 - Decisions under s.135 of the SPA (whether or not a hearing was held)
 - Hearings under s.34.1 of the SPA
 - Decisions under s.144 of the SPA
- It is a double edged sword; a failure to give reasons will provide an easy reason to attack a decision and providing reasons will show the basis on which the decision was reached (providing grounds for claims of bias and significant unfairness)



BYLAWS FOR OUR TIMES

QUESTIONS