

VISOA Webinar: How to Enforce Strata Bylaws

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Disclaimer: These answers are intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn.

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Question	Answer
You mentioned doing a general index search at land titles. Can anyone do that?	You have to have a pro account with LTSA - most notaries, lawyers have an account. You can also go in person to an LTSA office.
What is the difference between a rule and a bylaw?	Rules can only be made about the use and enjoyment of common property. Such as rules about using a gym, common laundry room, car wash, guest suite. These could include hours of use, the cost to use etc.
Is enforcement of bylaws and rules the same process?	Yes, the same process applies to both. The only real difference is the amount of the fine that can be imposed for a breach. It is lower for a breach of the rules than for bylaws.
Can Strata Act Standard Bylaws be changed or do we have to follow them and then add to them what we want specific to our strata?	The Act allows the owners to amend the Standard Bylaws by a ¾ vote of the owners at an AGM or SGM. You can add to them, delete them or do away with them entirely.
Should council members patrol for infractions or rely on other owners make complaints?	There is no obligation on the part of the strata council to patrol for bylaw violations.

Question	Answer
<p>What if there is no complaint and strata notices an infraction themselves, for example a dog is regularly not leashed. Would Council have to investigate each time, and possibly fine for each infraction?</p>	<p>Part 1 of your question: Someone has to make a complaint. A council member can make a complaint and then recuse themselves from discussion and voting on any decisions related to the complaint. Part 2 watch the rest of the webinar.</p>
<p>Please confirm that enforcement of bylaws should only happen on a complaint, not an observation by the council?</p>	<p>Someone has to make a complaint. A council member can make a complaint and then recuse themselves from discussion and voting on any decisions related to the complaint.</p>
<p>Not clear on the answer regarding stratas obligation to REPORT a complaint ...is council required?</p>	<p>It's up to an individual owner to send a complaint. A council member may file a complaint.</p>
<p>Can an owner make a bylaw complaint against the strata council for the council not following bylaws on governance e.g. notice of meetings, taking and distribution of appropriate minutes, etc.?</p>	<p>No, if the strata council fails to comply with a procedural bylaw then an owner can bring a claim at the CRT.</p>
<p>Do bylaw complaints have to be in writing, or, if oral, must a written record of the complaint be created by the strata corporation?</p>	<p>There is no requirement that a complaint be in writing. However, a strata council may wish to encourage complaints to be made in writing. (It might even introduce a bylaw requiring that). Where a complaint is made orally a written record should be made of it.</p>
<p>If it's an oral complaint, what can/should you provide if someone wants to see the letter of complaint?</p>	<p>If there is no correspondence, there is nothing to provide. (Encourage complaints in writing).</p>
<p>Can we have a bylaw that says all complaints must be in writing?</p>	<p>Yes, because section 135 of the SPA is silent on that point, a strata could introduce that requirement by way of a bylaw.</p>
<p>If council receives a complaint, is there an opportunity as a first step, for council (perhaps assigned council members) to engage in a discussion with both parties to share views (awareness sharing)? As a first step that may result in compliance which would satisfy the complaint?</p>	<p>Yes, section 129 of the SPA provides that: "Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule." Engaging in a discussion with owners in an attempt to find a resolution would be in keeping with that. However, when it is clear that is not achieving compliance or a resolution it is time to move to a more formal process.</p>

Question	Answer
<p>What if you can't PROVE it was a specific owner, but you know that it was the specific owner? For example, dog poo left on common property.</p>	<p>The strata corporation bears the burden, on a balance of probabilities, to prove the breach. A suspicion is not sufficient.</p>
<p>Are the council decisions or the hearings held in camera?</p>	<p>Check your bylaws (or the standard bylaw 17(4) if your bylaws have not replaced them). See a list of the situations where a topic should go in-camera. https://www.bclaws.ca/civix/document/id/complete/statreg/98043_18#ScheduleofStandardBylaws</p>
<p>Our strata has a bylaw which prohibits an owner from using a strata lot for illegal activities (e.g. illegal under criminal or civil law). Can the strata corporation proceed with bylaw enforcement on an owner who has alleged illegal conduct, without there having been a finding of illegal behaviour by a court of competent jurisdiction?</p>	<p>If the illegal activity relates to a civil matter (i.e. a zoning regulation) then the standard for a breach is the same for both (balance of probabilities). However, if the breach relates to criminal activity the same test may not apply. The strata may have to prove (using the beyond a reasonable doubt standard) that a crime occurred. That may require waiting for a conviction. On the other hand, this is bylaw matter and a lesser standard could be applied as the consequences are different. There do not appear to be any cases that have yet considered that issue.</p>
<p>He just said a complaint is to be released un-redacted, if the owner asks for it. if it was submitted via email, would we at least be able to remove the email address of who submitted the complaint as their name would still be at the end of the email?</p>	<p>Removing the email address would be redacting the document. It would be better for owners to email letters of complaint as an attached document. Then this is not an issue as long as they have not put their email address in the letter.</p>
<p>How should complaint and follow-up be recorded in minutes given to owner. Do you need to state complaints have been received at start of process or only the decision after the complaint process?</p>	<p>The only thing that is required to be in the minutes is a record of the decisions of council. There is no need to record the receipt of a letter of complaint. It may be best to leave it until a decision is made.</p>
<p>Clarification - How do we inform other owners of the complaints - Just record in the minutes given to all owners after the process is complete?</p>	<p>The only thing that is required to be in the minutes is a record of the decisions of council. There is no need to record the receipt of a letter of complaint. It may be best to leave it until a decision is made.</p>

Question	Answer
<p>We have been told by an owner to stop quoting bylaws when we communicate issues. It seems that this is a good way to approach an issue. Would you agree with this approach, or does it sound heavy handed in communication and should be quoted only as a last resort?</p>	<p>If taking steps to enforce a bylaw you must refer by number (at a minimum) to the bylaw alleged to have been breached.</p>
<p>Have any stratas passed a bylaw requiring people to wear masks in their common spaces?</p>	<p>So far VISOA has heard of many which have strongly suggested masks - i.e. appealing to owners to participate willingly for the health and safety of all.</p>
<p>We have a occupancy limit of 2 persons. An owner is citing medical reasons to exempt. What authority does the strata have to require proof of exemption without wandering into human rights? How can the exemption be granted without an abuse of the clause?</p>	<p>Since the exemption is being requested for medical reasons, the strata corporation is entitled to ask for medical evidence to support the requested exemption. The only basis on which to exempt the owner is under the Human Rights Code, therefore it is not a breach of the code to request medical information. Any time a strata corporation is faced with such a request, it should obtain legal advice as exemption/accommodation request under the Human Rights Code can be difficult to navigate.</p>
<p>Owners signed a building scheme upon purchase and did not follow rules however it was enforced by council. It's been between 2-5 yrs now . Can the council enforce it now? Or is it too late?</p>	<p>Enforcement of a building scheme is not covered by the Strata Property Act. It may be the municipality's jurisdiction to enforce a building scheme. Also check your bylaws to see if there are any bylaws about compliance with the building scheme. There are some CRT decisions about this but every strata is different - so legal advice may be a good idea for you.</p>
<p>Our bylaws have just been filed. Can a contravention that occurred prior to the bylaws coming into effect be enforced?</p>	<p>Bylaws are not enforceable until they are registered in the Land Title Office. They also do not have retroactive effect (i.e. you cannot impose a requirement which did not exist the time an owner did something). However, if the bylaws now prohibit an activity which was not prohibited before (i.e. smoking) the owners have to come into compliance with that bylaw. If you did not have your own bylaws, the Standard Bylaws would have been your bylaws. So there may have been a similar bylaw in place regarding this matter.</p>
<p>Written Notice</p>	
<p>Why is providing a warning a less common way to enforce?</p>	<p>It is often viewed as not satisfying the complaining owner.</p>

Question	Answer
What is a reasonable deadline for responding to written notice?	2-3 weeks is generally reasonable. But the Strata Property Act does not specify.
Can you give notices of an infraction stating that if the contravention happens again, Council will impose a fine?	The letter can certainly provide a warning of that nature, but section 135 must still be complied with in relation to each future contravention. The CRT template letter for a Notice of Complaint mentions this. See the CRT's Solution Explorer. Select Strata Council or Section Executive: https://civilresolutionbc.ca/how-the-crt-works/getting-started/strata-solution-explorer/
Should you offer that they have the right to have a hearing, in all contravention correspondence?	Yes, but it is not required. The CRT has template letters for sending a Notice of Complaint and another one for sending a final decision. See the CRT's Solution Explorer. Select Strata Council or Section Executive: https://civilresolutionbc.ca/how-the-crt-works/getting-started/strata-solution-explorer/
Can a written notice of a contravention be an email? Or have to be mailed?	If the owner has expressly given permission to receive official notices by email (such as notices of AGMs) then you could send it by email. A good practice is to also deliver a paper copy under their door and/or mail a copy.
Is there a std complaint info collection form from VISOA or Shawn?	No, but some strata corporations develop their own based on how they want to handle the complaint process. The CRT has template letters for sending a Notice of Complaint and another one for sending a final decision. See the CRT's Solution Explorer. Select Strata Council or Section Executive: https://civilresolutionbc.ca/how-the-crt-works/getting-started/strata-solution-explorer/
Is it obligatory to give an accused owner the identify of a complainant if requested?	No, but if they request the correspondence that discloses the name of the complainant that must be provided unredacted per section 36 of the Strata Property Act.
Does the complainant need to be identified in details of the complaint when given to complainant.	Not unless it is integral to the owner's ability to answer the complaint. Such cases are extremely rare however. If the source of the complaint needs to be disclosed in the particulars, it should be done by reference to the strata lot or unit number (as those are not "personal information").

Question	Answer
Miscellaneous	
What was the case name referenced 128 c) please?	The Owners v. Grabarczyk, 2006 BCSC 1960
Please tell us how we can look up decisions made by the BC CRT.	2 ways: CRT website and Canlii (which also shows court cases and other tribunals): https://decisions.civilresolutionbc.ca/crt/en/nav.do , https://www.canlii.org/en/
Who decides if a CRT order should be registered in Supreme Court? And why would or wouldn't it be?	An order against an owner regarding bylaw compliance is typically registered only if the owner has not complied with it and it needs to be enforced. S.58.2 of the Civil Resolution Tribunal Act allows an owner to enforce in order should the strata corporation failed to do so.
Where is this 2 year limitation period defined?	BC's Limitation Act: https://www.bclaws.ca/civix/document/id/complete/statreg/12013_01
Please define an "occupant" of a unit.	Not an owner and not a tenant. So it could be a spouse or a child etc if they are not on title.
How do we differentiate between an occupant and a visitor?	It essentially depends on how often the person is there. Visitors attend a strata lot infrequently. At some point a visitor can become an occupant. However, it is not a "bright line" test.
Can short-term renters (i.e. those with license to occupy, rather than renters under the Residential Tenancies Act) be fined for bylaw violations?	The Act allows fines against owners or tenants. A person occupying a strata lot under a license to use is not a tenant. However if the owner allegedly violated a bylaw (such as short-term rentals prohibited) then a complaint could potentially be made against the owner.
What is the role of the strata property manager in enforcing bylaws?	Council must make decisions but may delegate writing of letter to the property manager.
In what situations can council tell an owner who can visit the strata lot?	If the visitor is the one who is breaching the bylaws, then it would be appropriate for the council to prohibit that person from coming on to the common property. It might even need to obtain an order to that effect. However, before doing so legal advice should be sought.

Question	Answer
Remedying a Contravention	
Can you provide an example of taking steps to remedy a contravention?	An owner leaves possessions on the common property. After following the steps in s135, council could potentially remove and dispose of the items. Or an owner removes a supporting wall in their suite. The strata could replace it. If the process is followed correctly, the strata could potentially recover the cost to do so.
What I didn't see as an enforcement option was passing on costs to an owner who was at fault for the breach of the strata bylaw. So, we've had advice from our property manager that instead of fining the owner, the cost to repair the infraction can be passed on to the owner instead. Is that under reparations or some other similar thing, and not enforcement per se?	The ability to pass costs onto an owner in relation to a breach of a bylaw arises from either (a) Section 133 of the Strata Property Act - remedying bylaw contraventions or (b) a bylaw which allows those costs to be charged back to an owner. If relying on section 133, then there must be compliance with section 135.
Continuing Contravention	
Is non-payment of strata fees could be both continuing (non payment for several weeks) and repeated (non-payment multiple months) - how would this be handled?	A continuing contravention. And a new, separate, violation if the next month not paid etc.
We have an owner who is consistently late paying strata fees/or the cheque bounces. Can we immediately fine them in accordance with bylaws or do we need to go through the process every time? I think this would fall under repeated contravention.	Must go through steps in s135 before levying a fine. If failure to pay the first overdue amount continues for a long while, it could potentially be considered a continuing contravention. Another month is a new contravention - follow s135 process all over again for that one. And so on.
Could a continuing contravention be an owner who denied access to common property and who has not yet granted access to the common property. Access was requested so that insulation in the crawl space could be replaced.	Yes. The contravention continues so long as the owner denies access.

Question	Answer
<p>For repeated contraventions, do you need a complaint for every instance?</p>	<p>Yes, each incident is a new contravention for which particulars must be provided. However, you do not need to do separate letters for each. A series of repeated contraventions (i.e. smoking incidents) can be dealt with in a single letter.</p>
<p>Fines</p>	
<p>Re fines: can our bylaws just say that the amount of the fine is per the regulations so that we don't have to set an amount?</p>	<p>The bylaw must set out the amounts. if they don't, the default would be the amount set out in the standard bylaws.</p>
<p>Does the council need a majority vote to fine an owner?</p>	<p>Yes a majority vote at a council meeting. All decisions of council must be recorded in the minutes.</p>
<p>Other</p>	
<p>An owner has died and a family member is the executor, living in the unit. They are heavy smokers and smoke has permeated neighbouring units which is against Strata Bylaws. The occupants say they are no longer smoking but smoke smells on the walls and ceiling continues to penetrate other units. The occupants claim they have cleaned the smoking room. They have had other people tell them there is no more smell but in fact there is. And neighbours continue to smell smoke in their unit coming through their floor. The smoker claims that she is in compliance now that she has stopped smoking. There is evident damage of smoke in the space between the units. We have obtained a professional assessment which says cleaning will cost \$15,000. Owners, including the smoker refuse to pay. How to proceed?</p>	<p>Your question is very specific to your situation. We give general information in webinars. As this is quite an expensive undertaking you may want to seek legal advice. If you don't follow the bylaw enforcement process perfectly, the strata may not be able to recover the costs from the owner.</p>

Question	Answer
<p>I'm president of our strata. When we have to move on projects, one council member (vice-president) over and over again doesn't respond in a reasonable amount of time, or doesn't respond at all. What's our strata council to do? Is the silence to be taken as agreement. Is 3/4 agreement for a decision from council okay?</p>	<p>Decisions should be made at a council meeting. As long as you have met quorum, the council members in attendance can make decisions by majority vote (a 3/4 vote does not apply to council meetings). Your bylaws (such as Standard Bylaw 12) may state "If a council member resigns or is unwilling or unable to act for a period of 2 or more months, the remaining members of the council may appoint a replacement council member for the remainder of the term"</p>
<p>An owner has unilaterally removed his HRV, builder-installed ventilation system in his townhouse. Is this a contravention of Standard Bylaw 2. 1) g ? The townhouse is base-board heated and bylaws require a ventilation system. Charles Ayers</p>	<p>Your question is very specific to your situation. We give general information in webinars. A strata lawyer could review the strata plan and relevant bylaws and provide an opinion.</p>
<p>What if no one on your strata council is capable of handling these requirements (ie, is not intelligent enough)?</p>	<p>You should get some legal advice to guide you through the process.</p>
<p>A bare land strata owner will not allow council or a maintenance contractor on the property to service the septic system. Repeat visits were denied after proper notice and attempts to accommodate the owner. Can council just give notice and bring a locksmith to gain entry to yard?</p>	<p>it is best to obtain an order from the CRT for entry. That way the strata is protected from any allegations of wrongful entry.</p>
<p>We are a 4 unit strataApproximately how much would it cost to have our bylaws reviewed and consolidated?</p>	<p>If you contact my office we can send you the pricing information.</p>

Question	Answer
<p>I received a letter from Strata saying there has been a complaint that I am doing short term rentals. The apartment is a second residence and is used by family and 2 friends very infrequently. I asked for the evidence, said I was not doing this and asked for a hearing. The Strata manager said, twice, that a hearing would be arranged and then in the next minutes, said since they hadn't heard from me, the matter was closed. They suggested the person complaining should be asked if the problem was still occurring. All has been quiet because I gave up.</p>	<p>As an owner you may make a new request for a hearing at any time.</p>
<p>To add on, it is quiet because I am afraid to let my family members stay there. However, my adult granddaughter has been, in the past, one of the family members staying there but I guess she should not have been doing so --she usually stays 1 to 2 days</p>	<p>Your question is very specific to your situation. You may wish to seek legal advice.</p>