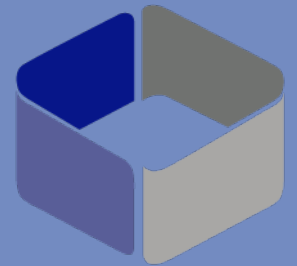




HOW TO ENFORCE BYLAWS



PRESENTED BY SHAWN M. SMITH



**Cleveland
Doan LLP**

**Strata
Lawyers**

WHO WE ARE

- We are a full service law firm with a focus on strata property law. We have been advising strata corporations since the introduction of the Strata Property Act in July 2000.
- We deal with all the issues strata corporations face, but with a particular focus on:
 - Collections;
 - Bylaw packages;
 - Bylaw enforcement;
 - Governance matters;
 - Providing strategic advice on major issues;



BYLAW BASICS

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.

BYLAW BASICS

Amendment of bylaws

126 The bylaws of a strata corporation may be changed, repealed, replaced, added to or otherwise amended by complying with the requirements of this Division.

Bylaw amendment procedures

128

- Can be amended by a $\frac{3}{4}$ vote
- Must be registered in the Land Title Office to be in effect

DUTY TO ENFORCE

SPA s. 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.

“Should a complaint be made...Council must undertake its duty to enforce the bylaw in accordance with the legislation.”

McGowan v. Strata Plan NW1018, 2002 BCSC 673

DUTY TO ENFORCE

Owners have a reasonable expectation that the bylaws will:

- Be enforced;
 - Be enforced consistently;
 - Be enforced in a manner that is not significantly unfair to either party
-
- This means there is limited discretion not to enforce.

DUTY TO ENFORCE

- not obligated to enforce a bylaw merely for the sake of doing so - *Abdoh v. Owners of Strata Plan KAS2003 2013 BCSC 817*
- “...if the effect of the breach is unimportant or trivial to the strata owners in general, it is reasonable for the strata not to enforce it,...”
Curtain v. The Owners, Strata Plan VIS4673 2018 BCCRT 100

DUTY TO ENFORCE

No ability to grant permanent exemptions except:

- If the bylaw itself allows for it (i.e. “except with the permission...”);
- where there is a duty to accommodate under the Human Rights Code - *Ottens v. The Owners, Strata Plan LMS2785 et al* 2019 BCCRT 997
- A decision to exempt must be made by the strata council, not an individual member

DUTY TO ENFORCE

- No ability to refuse to address a complaint or to take the position that it is an issue between two owners.

D.W. v. The Owners, Strata Plan BCS XXX 2017
BCCRT 107.

- Ignoring complaints can have consequences such as having to pay a penalty as compensation for failing to properly enforce a bylaw.

LeTexier v. The Owners, Strata Plan LMS284
2019 BCCRT 940

DUTY TO ENFORCE

Timely enforcement is important. A delay can result in:

- Being unable to enforce (acquiescence/estoppel) - **Carter v. Strata Plan VR380 (1991), 20 R.P.R. (2d) 214**
- Being unable to bring a claim because the limitation period has expired - **The Owners, Strata Plan KAS 510 v. Nicholson 2017 BCCRT 48**
- Being unable to collect all fines - **The Owners, Strata Plan VR 484 v. Lawtez 2017 BCCRT 59**

DUTY TO ENFORCE

Inconsistent enforcement can be equally problematic. It could lead to being unable to enforce a particular bylaw:

- **The Owners, Strata Plan NW 2522 v. Bruce, 2020 BCCRT 29**
- **Condominium Plan No. 8111679 v. Elkes 2003 ABQB 219**

A statutory duty to enforce can sometimes save the day - **Chan v. Strata Plan VR151 2010 BCSC 1725**

ENFORCEMENT - OPTIONS

The primary methods for enforcing bylaws are:

- imposing fines against the offending tenant or owner
s.130 SPA
- taking steps to remedy a contravention - s.133 SPA
or a bylaw provision (i.e. towing a vehicle);
- seeking an order that the owner comply with the
bylaws - s.189.1 SPA

ENFORCEMENT OPTIONS

Other less common methods:

- Deny access to recreation facility (in relation to use of facility) – s.134 SPA;
- Evict a tenant for repeated or continual breach which seriously interferes with another person's use and enjoyment of common property or strata lot – s. 138 SPA;
- Provide a warning – s.129(2) SPA

FINES

Who can you fine? (s.130 SPA)

- an owner if the owner, a person visiting the owner or an occupant of their strata lot contravenes a bylaw or a rule;
- a tenant if a tenant (or a person visiting them or occupying the strata lot) contravenes a bylaw or a rule;

The owner is ultimately liable for any fines assessed against a tenant – s.131 SPA

FINES

What amount?

- Standard Bylaws - \$50 bylaw/\$10 rule
- Can be increased by bylaw amendment – s.132 SPA
- Maximum amounts (Regulation 7.1)
 - \$200 bylaw
 - \$500 rental bylaw
 - \$1000 travel accommodation bylaw
 - \$50 rule

FINES

Continuing contravention: a single contravention which carries on without interruption (example: rental, pet, alteration)

Repeated contravention: a series of events which are identical in nature, but which each have a clear start and finish (example: noise, smoking)

Standard Bylaw 24 – can fine every 7 days for a continuing contravention (after complying with s.135 once)

REMEDYING CONTRAVENTIONS

s.133 SPA

The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including:

- (a) doing work on or to a strata lot, the common property or common assets, and
- (b) removing objects from the common property

REMEDYING CONTRAVENTIONS

What can s.133 be used for?

- Removing unauthorized alterations;
- Cleaning up a strata lot;
- Removing unauthorized items from common property;
- Repairing damage from a breach;
- Towing vehicles;
- Hiring a lawyer;

REMEDYING CONTRAVENTIONS

- Although costs can be incurred right away, they cannot be charged to the owner (i.e. put on their account) until there has been compliance with s.135 of the SPA.
- Cannot file a lien for costs incurred under s.133 of the SPA. May not be able to recover if no equity in the property.
- Consider limits on expenses – s.98 SPA

HANDLING THE COMPLAINT

General Steps:

1. Assess the complaint and ask whether, if true, it contravenes a bylaw;
2. Does it contain sufficient details (date, time, description, photos, etc.) to support the allegation?
3. If yes to 1 and 2, send a “section 135 letter”;
4. Wait until a reply is received or the deadline has passed before making a decision;

HANDLING THE COMPLAINT

5. If a reply is received, assess it against the complaint and decide whether:
 - A breach occurred;
 - More evidence is needed; or
 - An investigation is warranted;
6. Advise of the outcome in writing;
7. Take steps to achieve compliance (if necessary);

HANDLING THE COMPLAINT

When enforcing a bylaw the strata corporation must:

- comply with the principles of procedural fairness;
and
- not be significantly unfair to any person who appears before it.

Process (and optics) are important.

Avoid appearing to have prejudged the matter.

DIGGING DEEPER

- Where there is conflicting evidence it is appropriate to make further inquiries in an attempt to reconcile the same – Chorney v. The Owners, Strata Plan VIS770 2016 BCSC 148
- Can ask the complainant to provide better evidence - Mason v. The Owners, Strata Plan BCS4338 2017 BCCRT 47
- The strata corporation may need to investigate allegations of a breach before making a decision.

DIGGING DEEPER

Some examples of things to be investigated:

- An odour coming from another strata lot – *Connell v. The Owners, Strata Plan BCS3438 2018 BCCRT 784*
- Second hand smoke – *Foulds Kennedy v. The Owners, Strata Plan LMS1495 2019 BCCRT 1098*
- Noise, including that caused by hard surface flooring – *Mastroianni v. The Owners, Strata Plan EPS2878 et al 2019 BCCRT 691*; *Torok v. Amstutz et al 2019 BCCRT*

S.135 SPA

- Before a fine is imposed or the costs of remedying a contravention are charged to an owner the strata corporation must comply with s.135.
- Strict compliance is required - Terry v. The Owners, Strata Plan NW309 2016 BCCA 449
- Many a strata corporation has had its claim dismissed for not complying with s.135.

S.135 SPA

s.135 requires a strata corporation to:

- receive a complaint about the contravention,
- give the owner or tenant the particulars of the complaint in writing,
- provide a reasonable opportunity to answer the complaint, including a hearing if requested;
- give notice of the complaint to the landlord and the owner (in the case of a breach by a tenant);
- give notice, as soon as feasible, notice in writing of a decision to impose a fine or charge a cost

S.135 SPA

Complaints

- A complaint does not need to be in writing - The Owners, Strata Plan NW3075 v. Stevens 2018 BCPC 2
- Strata council members can make complaints - Himmelman v. The Owners, Strata Plan LMS 2064, 2018 BCCRT 426
- The complaint can even be from a strata manager - The Owners, Strata Plan VR2690 v. Simpson, 2018 BCCRT 782.

S.135 SPA

The written notice must:

- indicate possible imposition of a fine;
- identify the correct bylaw or rule alleged to have been breached;
- set out particulars (details) sufficient make the alleged bylaw violator aware of what the alleged breach is;
- provide a deadline for a response (written or to request a hearing);

S.135 SPA

- What constitutes a “reasonable opportunity” to respond must take account of the nature of the alleged contravention - Terry v. The Owners, Strata Plan NW309 2016 BCCA 449
- Two or three weeks is generally acceptable.
- Do not appear to have prejudged the matter.
- Notice is to be given pursuant to the methods set out in s.61 SPA.

S.135 SPA

- A failure to clarify allegations can amount to a failure to provide particulars - The Owners, Strata Plan LMS 3671 v. Turner et al, 2018 BCCRT 834
- Where an owner does not respond to the complaint letter it is reasonable to assume their “guilt” - The Owners, Strata Plan NW 3164 v. Wondga et al, 2018 BCCRT 145;
- If requested, a hearing must be granted - The Owners, Strata Plan NW3075 v. Stevens 2018 BCPC 2;

S.135 SPA

Hearings

- A hearing is a chance to appear in person before the council and argue one's case;
- It is an “opportunity to be heard” - SPA Regulation 7.2.
- The strata council does not present witnesses or evidence (and need not do that).
- Must be conducted fairly and not be predetermined

S.135 SPA

The Decision

- Obligation under s.135(2) to give notice in writing, as soon as feasible, of the strata council's decision.
- In the letter explain that the strata decided to impose a fine, the reason for the fine and the amount of the fine - *Figueroa v. The Owners, Strata Plan NW53*, 2020 BCCRT 40
- A failure to comply with s.135(2) could also invalidate the fines - *Tantillo v. The Owners, Strata Plan NW 317*, 2018 BCCRT 54.

S.135 SPA

- A failure to comply with s.135 can be fixed.
- Just reverse the fines and start the process over -
Cheung v. The Owners, Strata Plan VR1902, 2004 BCSC 1750, S.M. v. The Owners, Strata Plan ABC, 2017 BCCRT 23.
- Or hold the hearing before going any further -
Fortunato v. The Owners, Strata Plan EPS1232, 2020 BCCRT 87

ENFORCEMENT ORDERS

The Civil Resolution Tribunal (CRT) is the venue in which to seek such an order.

Under s.123(1) of the Civil Resolution Tribunal Act the CRT can:

- (a) order a party to do something;
- (b) order a party to refrain from doing something;
- or
- (c) order a party to pay money.

CRT cannot grant general restraining orders - *The Owners, Strata Plan NW 2275 v. Siebring*, 2018 BCCRT 734.

ENFORCEMENT ORDERS

- The CRT will not grant orders to “comply with the bylaws” as they are too general.
- Ask for specific things (i.e. stop smoking, no making noise after 10 pm, remove the hot tub, etc.)
- Be creative – in *The Owners, Strata Plan LMS XXX v. D.B.*, 2017 BCCRT 117 the CRT restricted who could visit the strata lot.

ENFORCEMENT ORDERS

- Council makes the decision to go to the CRT;
- Can have a lawyer assist - either in the background or as a representative (with permission);
- Legal cost recovery requires a bylaw;
- Decision is binding and res judicata can apply
- Remember s.112 SPA if claiming fines or costs;

ENFORCEMENT ORDERS

- An order made by the CRT can be registered in the BC Supreme Court and enforced as if it were an order of that court.
- A strata lot can be sold as a remedy for contempt - *Bea v. The Owners, Strata Plan LMS 2138*, 2014 BCSC 826 affirmed 2015 BCCA 31
- Sale is a remedy of last resort - *The Owners, Strata Plan VR812 v Yu*, 2019 BCSC 693.



QUESTIONS

QUESTIONS

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