

Condo Smarts February 21-24, 2018 Marijuana Laws to Change

Dear Tony: Our strata council is getting a lot of pressure from our owners to adopt a bylaw that prohibits the use of marijuana and growing of plants. Owners are concerned this is just going to make our property the local grower and the value of our properties is going to fall. Several owners have already complained about the smell of marijuana in the building from several smokers and we had to eradicate a grow op back in 2004 costing our strata over \$75,000 in damages that we never recovered. What our council is struggling with is the how far can we go with our bylaws? Do the federal and provincial laws over ride our ability to control what happens in our building? Denise M.

Dear Denise: The federal legislation determines what substance may be possessed and consumed, the quantity of what may be possessed by individuals and if permitted, how it is grown, managed, regulated and taxed. Each province then has the jurisdiction to determine how the distribution will be managed, who will manage the distribution and the controls placed on distribution. We may also find there are local government bylaws that will set apart specific zoning or regulations for the facilities that will grow marijuana and how local businesses market and distribute the products. Strata corporations are essentially private property. You cannot prohibit anyone from consuming marijuana as it comes in many forms that pose no nuisance to the community; however, in most strata corporations the main issue is smoking. Smoke is a serious nuisance in many multifamily buildings as the smoke often migrates to other strata lots or common property and may contaminate those areas. While each strata lot is within its own climate or space, multifamily buildings such as apartment, connected townhouse or high-rise style buildings are rarely air tight. Any neighbouring smoking or consumption that requires some sort of combustion will migrate to other strata lots. Your strata corporation is permitted to adopt a bylaw that regulates nuisance, such as smoking or noise. The Schedule of Standard Bylaws already has a nuisance bylaw which can be enforced and your strata may adopt a bylaw that simply prohibits all smoking of any substance within strata lots and on any common property. Those bylaws will continue to be enforceable. Your strata corporation is not permitted to prohibit or restrict the use of substances or plants that fall under the classification of medical purposes. If an owner or occupant requires the medical use of marijuana, the strata corporation are permitted to request valid documentation to grant the exemption. This is both for the protection of the strata corporation and the related strata lot.

The nature of bylaws for strata corporations raises an ongoing question for strata councils to consider. Is your smoking or nuisance bylaw enforceable? Strata corporations and managers are constantly borrowing bylaws from each other and tweaking them to apply to their own needs, but the limitations or changes they are adding to make them acceptable to their owners often render them unenforceable. Even with enforceable bylaws, strata councils are still failing to follow the basic steps of bylaw enforcement resulting in long costly battles between owners and their neighbours. Spring seminars and workshops are an excellent opportunity for your strata council to refresh their knowledge of bylaw enforcement and application. Go to www.choa.bc.ca for a scheduled session in your area of BC.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
website: www.choa.bc.ca