

## Condo Smarts February 10<sup>th</sup>-14<sup>th</sup>, 2016

### Automatic Strata Fee Banking (Read the contract before you sign it)

Dear Tony: I am a new council member in our complex of 165 units. We had a complaint from an owner that a number of charges that appeared to be fines were taken from her bank account without her consent. As a result her account did not have enough money to pay for her strata fees which ended up putting her in arrears. This happened over the last 3 months, and the strata council was told by our manager at last week's council meeting that she now owes us over \$1,500 in late payment of strata fees, fines and interest and that a lien has been filed against her strata lot. Council was prepared to accept the manager's report, except the owner has requested a hearing and demanded an explanation of charges, along with the fines and how she could be in arrears when she would not have been if the unauthorized fines had not been taken in the first place? The manager advised that when a person is late paying strata fees, or the bank agreement authorizes the removal of other fees, the strata does not have an obligation to notify the person as they have already consented. At my insistence council has agreed to wait to take any further action until after the hearing. The owner immediately sent in a request for the details of the charges when they showed up on her account and all she received in return was an email advising it was for fines. This doesn't seem right. Are we missing something? Edna

Dear Edna: You are correct, there are a number of decisions here that may be incorrect. Section 135 of the *Strata Property Act* requires that before a person is fined, to pay the costs of remedying a bylaw or rule contravention, or denied access to a recreational facility, the strata corporation must give the person a notice of the complaint in writing, include the particulars of the complaint and give them an opportunity to respond in writing or request a hearing of council. Your strata corporation/strata management company appears to have imposed a fine by removing the cost of a fine from her account without the prescribed period of notice and conditions. If an owner signs a preauthorized debit agreement, they have not surrendered their rights to dispute a claim under the Act. If your strata failed to meet the requirements of the Act, it was the action of the strata that put the owner into arrears, not the owner who has been requesting the details of the complaint. Your strata may be required to reverse the fines, late payment interest costs and liens that have been filed. Another common error relates to the strata management company automatically imposing fines for late payment of strata fees. Whether a bylaw fine is associated with the late payment of a strata fee or other alleged breach, the strata corporation must not fine the person until they have complied with section 135. The only exception is if this is ongoing or continued contravention of the same bylaw, where the strata is not required to give notice of the continued breach and may impose a fine once every 7 days. It is also important for the strata council to understand that they cannot delegate their bylaw enforcement authority to another party. The decision to impose fines for a breach of bylaws or rules is a matter for a vote of the council at a council meeting. Owners signing PADs should read the documents closely. The strata corporation will only be able to remove the types of the fees you have authorized. The terms of the contract fees were created by the strata management company acting for the strata, not the bank.

Sincerely,

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