

Condo Smarts March 23rd-26th, 2016

Bylaw violations: Hearings and Responses

Dear Tony: Our strata council has gotten themselves into quite a bit of trouble. We have a fairly routine schedule for our council meetings where we start with the meeting open to owners, and then when we get to the meeting, we declare the meeting adjourned and address any confidential issues. Last month we had two owners who refused to leave the meeting. They claimed our bylaws did not permit the strata corporation to meet without observers and we had no choice. One of the two owners told us we had to have open hearings otherwise the owners would not know what was going on? They insisted that the council didn't have the right to make decisions about bylaw complaints behind closed doors. Council decided at that point to leave it to the next meeting, but we have some issues requiring immediate attention. What is the right way to deal with hearings? Muriel

Dear Muriel: There are many different reasons why a strata corporation would conduct a hearing. Owners may request a hearing over issues that relate to the business of the strata corporation, or they may wish to have a hearing over a bylaw complaint. Owners may also request a hearing for a hardship exemption from a rental bylaw. According to Elaine McCormack, A strata lawyer in New Westminster, "The council are solely responsible for the enforcement of bylaws. The owners in a strata are not permitted to interfere with the council's discretion to enforce the bylaws. Owners can request a hearing and may also want a family member, a friend or a lawyer to attend with them. Under the Standard Bylaws, observers are not permitted for bylaw enforcement hearings, rental hardship hearings and any other time that the council considers the presence of observers would unreasonably interfere with an individual's privacy. "Before a strata corporation fines a person or imposes a penalty for bylaw violations, they must first notify the owner, landlord, or tenant. The notice must be in writing and identify the particulars of the complaint that include: what happened, when it occurred, including any information or witnesses. In response, the owner/tenant is entitled to respond in writing or request a hearing. If an owner or tenant requests a hearing with council, the council must hold the hearing within 4 weeks after the request. The council must also act reasonably in scheduling the time for the hearing. For example, booking a hearing time for 11 a.m. on a week day for a working owner is not likely an option. The purpose of the hearing is for the party to have the opportunity to present information to address the claim and challenge any of the claims made. The role of the council is to conduct the hearing without observers to protect the privacy and personal information of the party. The council may request additional information, ask questions and discuss the matter with the owner/tenant. Within 1 week after the hearing, the council must give their decision in writing.

Hearings and bylaw enforcement will be one of the functions of strata corporations that owners will be able to challenge under the Civil Resolution Tribunal later this year. Brush up on your hearing and bylaw enforcement knowledge. CHOA seminars this spring include a course on bylaws and hearings across the province, including Kwantlen University in Richmond on April 9th. To register call 877-353-2462 ext 2.

Sincerely,

Tony Gioventu, Executive Director
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