

Condo Smarts July 6th – July 9th, 2016

Bylaws Never Filed

Dear Tony: As the newly elected president of our strata council, one of my tasks was to get a handle on our bylaws so everyone could understand what was in effect and what no longer applied. Our strata has filed 14 different bylaw amendments since 1989. At no time were the resolutions that we voted on ever filed, and when I reviewed the minutes of our Annual General Meeting from 2014, I discovered that we passed a new pet bylaw that reduced the number of dogs to 1 per strata lot, but it was never filed and we have more than 1 dog in several suites belonging to new owners. Does this mean, all of our bylaws may still be in effect, even though some of them are conflicting, or do only the current filings apply? We're getting conflicting information from our property manager, past council members and a retired lawyer who lives in the building. Gordon

Dear Gordon: There are a few methods to determine which bylaws are in effect and which bylaws are enforceable. One option strata corporations consider is to develop a new template of bylaws, including the previous bylaws that have been in effect, and proposing those as an updated set to be voted on at your next general meeting. This helps to reduce the uncertainty of which bylaws apply. The resolution that you vote on to amend the bylaws is just as important as the bylaws. The resolution will determine what happens to your previously registered bylaws and this could potentially affect bylaws that limit rentals, age restrictions and pet restrictions. The resolution should also be included in any new bylaws that are approved and filed in the Land Title Registry as it was part of the bylaw amendment process, and informs future owners, tenants, councils and managers, what was done. It is important to seek legal advice on bylaw amendments because your bylaws must not only comply with the Strata Property Act, they must also comply with the BC Human Rights Code and any other enactment of law.

The strata may also compile all of the amendments that have ever been filed and identify which of those are in effect or have been amended or repealed. This is more problematic as the risk of omitting or incorrectly identifying a bylaw is much higher, which could expose the strata to unenforceable or improperly filed bylaws. The issue you raise with the pets is a common problem. Under the Act, if a new bylaw that limits the age of occupants or the number of pets is adopted, the bylaw comes into effect when it is passed to ensure the current non-compliant parties are exempted, but that the new bylaw applies to all new parties. A unit with 2 dogs at the time of passing would be permitted to keep their 2 dogs, and when 1 dog died, the bylaw would limit them to 1 dog. In principle this works if the strata corporation files the bylaw and discloses it to buyers; however, new bylaws often sit on the books for months or years without being filed, are often forgotten, not disclosed to buyers, or filed incorrectly. At this point, it may be best for the strata to seek legal advice. Remember, bylaws are only enforceable if they have been filed in the Land Title Registry.

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