

## Condo Smarts November 2<sup>nd</sup> – 5<sup>th</sup>, 2016

### Where Does the Fine Money Go?

Dear Tony: Our Kelowna strata complex actively fine owners whenever there is a violation of bylaws. From parking in the wrong spot, to late payment of strata fees, to the slightest bit of noise that may arise from normal living. The owners are starting to get upset about the constant harassment from the bylaw officer, and we want to know how we encourage some moderation in our strata? Owners requested specific details at our annual meeting about the fine revenues and we were told by the council president the fines automatically went into the contingency fund which offset our contributions each year and this gave the council more money to spend in the annual budget. It seems to be a weird method of accounting. How are fines designated when they are received by the strata? Jill

Dear Jill: Fines and penalties may only be imposed on an owner/tenant for the violation of a bylaw once the strata complied with the basic procedures of the Strata Property Act. Before a strata imposes a fine or penalty they must give the party who is being complained about a notice of the complaint, list the particulars of the complaint, what the complaint is about, which bylaw(s)/rule is being breached, when the incident occurred and who filed the complaint. The owner or tenant is then entitled to respond in writing to dispute the claim of the breach or request a hearing. If they request a hearing, council must convene a meeting to hear the owner or tenant, and within 7 days of the hearing must provide a written notice to the owner/tenant. Fines are only allegations of a breach and not a judgement, which is the reason why you must follow this process and why a strata corporation cannot impose a lien for fines and penalties. Unless your bylaws stipulate otherwise, the decision to impose a fine and the amount is part of the strata minutes. Because council are not permitted to delegate the authority to fine a person for breach or enforcement of a bylaw, this is the best method to prove council by majority vote decided upon the penalty.

Even though councils are not permitted to delegate the enforcement of bylaws and rules, we routinely see strata council members appointed as “bylaw officers” who wander around their complexes and hand out fines like speeding tickets. No! No! No! In addition to the strata councils using the civil Resolution tribunal (CRT) to be able to collect fines and to seek a decision to order an owner or tenant to do or stop doing something, owners and tenants may also use the CRT to challenge enforcement procedures, the validity of a bylaw, whether the bylaw was passed properly, whether it was filed in the Land Title Registry correctly, and even whether a bylaw is enforceable. Revenues such as bylaw fines, damages, costs of enforcing bylaws are all part of the operating fund and financial statement of the strata. If there are surplus funds remaining at the end of the year, the owners by majority vote at the AGM can decide to either contribute the surplus to the contingency fund, carry it over as revenue to the next year’s budget, retain it in the operating fund or by 3/4 vote spend it on another project. It is important the strata corporation maintain a receivables chart of accounts to ensure the fines are collected, and the strata takes some sort of action such as Tribunal or Small Claims before the 2 year limitation period runs out.

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