

Condo Smarts January 11th-15th, 2017

Strata Fee Diversion Bylaws Deemed Unenforceable

Dear Tony: I have owned my strata lot for 22 years in East Vancouver. In September I received a notice from my strata council that I had altered my balcony without written permission, and unless I was prepared to have the alteration removed I would be fined \$200 a week. I responded that it has always been this way and if it was altered, the construction was done before I ever purchased. Council responded that it didn't matter as it was my balcony and started fining me. To make matters worse, our strata has a bylaw that authorizes the council to receive monies paid for any item to be first applied to outstanding fines and penalties and within 2 months they had forced me into arrears, filed a lien against my strata lot and I have just received a notice of order for sale if I don't pay the back fees, fines, lien costs, legal fees and the balcony corrections. How is this even enforceable? Nothing has changed in 22 years and out of the blue they start attacking owners for changes they never made! Elizabeth

Dear Elizabeth: The funds collected for strata fees or special levies must be applied to strata fees and special levies. In a recent court decision, strata BCS 3648 vs Podwinski and the Royal Bank, the judge determined such a by-law is invalid because it would prevent an owner from stipulating that fees are being paid and that fines are not. This type of bylaw denies the owner the right to challenge the bylaw enforcement decision, which includes an application to the Supreme Court of BC, Arbitration or an application to the Civil Resolution Tribunal. Because the owner had paid the strata fees within the terms of a pre-authorized payment form, which is now common for most strata fee payments, the strata corporation accepted the monies on that basis and only that basis. The judge rejected the strata corporation's argument that the terms of the by-law override the terms of the pre-authorized payment form. Strata corporations who have adopted payment diversion bylaws will be faced with similar challenges and should seek legal advice on enforcement or amending them as owners can now use the Civil Resolution Tribunal (www.civilresolutionbc.ca) to quickly file a claim to challenge the bylaw. Under the CRT, owners and tenants can challenge whether a bylaw is: legally enforceable, whether it was passed or filed correctly and whether it has been enforced fairly. The application process is on line, inexpensive and the matter is resolved in a few months with a binding decision or settlement. If you would like to learn more about the CRT: CHOA is hosting CRT information forums open to the public in Victoria and Nanaimo on Tuesday January 17th and Vancouver, Thursday January 19th.

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