

## Condo Smarts May 23, 2018

### Doors and Windows Bylaws

Dear Tony: Our strata has a bylaw that says owners are responsible to maintain doors and windows on the exterior of their strata lots. Our building is 25 years old and we are a smaller strata of 18 units. In some cases owners have changed their own doors and windows and in others nothing has been done and in these areas there are now some serious building problems. The council is refusing to hire a contractor to start assessing the damages and our unit is experiencing water damage from the unit upstairs and have simply advised the owner upstairs they are responsible to hire a contractor to fix the problem. Without having to spend thousands in the courts, is there a reasonable approach to finding a solution and resolving the confusion in our strata? Several are advising they cannot renew their mortgages because of the serious condition of our building. Caleb M. Kamloops

Dear Caleb: Whenever a strata council and owners are faced with confusion over the responsibility of maintenance and repairs to strata lots or common property, the first place to start is with a review of the *Strata Property Act (the Act)*, the registered land title documents and a review of the bylaws of the strata corporation to determine if your strata corporation is complying with the law. First we look closely at your strata plan and building design. Your registered strata plan clearly indicates the exterior of your buildings, including your doors and windows are designated as common property. This is typical for many building type strata corporations, except bare land stratas. Next we look to the *Act and Regulations* which do not permit a strata corporation to make owners responsible for the maintenance and repair of common property. Finally we look at your registered bylaws. While your strata corporation passed the current maintenance and repair bylaw in 2001, they failed to file the bylaw in the Land Title Registry. Under the *Act*, bylaws are not enforceable unless they have been filed in the Land Title Registry and bylaws adopted by a strata corporation must comply with the *Act, Regulations, The BC Human Rights Code* and any other enactment of law. In addition to failing to file the bylaws, your bylaw does not comply with the *Act*. Considering the number of legal violations, it would be prudent for your strata corporation to obtain a legal opinion on the enforceability of the bylaws, how they have been applied to the owners, and the best solutions for your strata corporation. In the event the owners ignore the legal opinion, it would at the very least summarize the non-compliant issues facing your strata corporation and could be used as evidence in a complaint with the Civil Resolution Tribunal (CRT). At the very least, owners could apply to the CRT to challenge the enforceability of the bylaws and seek an order for the strata corporation to repair and maintain the building exterior and common property.

The attempt to download the responsibility of common property exterior maintenance and repair of building exteriors is a common error for many of the thousands of smaller strata corporations across BC. While it seems like a simple solution for the strata to avoid the costs, the reality is, owners simply do not maintain and repair building exteriors on their own. It requires a coordinated effort on behalf of all owners to ensure the costs are shared as intended. One of the key benefits of living in a strata is the shared responsibility and costs of operations and maintenance. As a collective, whether we are 4 units or 40, the larger buying power gives us the ability to negotiate costs on a larger scale and ensure everyone is paying their share of the cost without having to take individual responsibility for operations. Ask many owners why they live in a strata and they usually reply, “so we don’t have to cut the grass, shovel the snow, clean the gutters, wash the windows or paint the buildings”.

Sincerely,

Tony Gioventu, Executive Director  
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