

## Condo Smarts September 19-26, 2020

### Human Rights and Access

**Dear Tony:** To what extent does a strata corporation have to go to accommodate an owner who has an accessibility issue in an older building? We have an owner who moved into our building five years ago knowing there are 5 stairs at our front entry and 3 stairs to walk up into our games room. Since her residency, her health condition has changed, and she can no longer easily manage stairs and requires assistance every time she enters or exits our building. While the strata council and owners are sympathetic to her condition, is it the obligation of our community to make alterations to our common property for owners whose life conditions have changed? We were all aware of the stairs before we moved in. DBR

**Dear DBR:** Whether an owner was aware of a barrier or not, and whether your building is new or was constructed in a period before building codes addressed access and accommodation is not material in determining whether a strata corporation has to accommodate owners, tenants or their families. Both the right to accommodate or intent to accommodate must be respected. The following test applied from the BC Human Rights Tribunal, (HRTC) Decision 139 of Leary v. Strata Plan VR1001, regarding second hand smoke, is a valuable method of assessing requests for alterations or accommodation that require consideration and may be applied to accessibility. **The person seeking accommodation must:** Advise the strata council of their disability. The person must provide enough information for the strata council to understand that the person has a disability that is negatively affected by second-hand smoke in the strata *or in the case of accessibility a barrier*. Co-operate with the strata to provide sufficient medical information to meet these goals. This may include a medical report. Co-operate with the strata to discuss possible solutions. The person seeking the accommodation is not entitled to a *perfect* accommodation, but to one that reasonably addresses their needs and upholds their dignity in their housing. Co-operate with professionals or other parties who may have to be involved to explore accommodation solutions. A person may have to facilitate access to their unit and ongoing requests for information. **The strata council must:** Address requests for accommodation promptly and take them seriously. A strata council should consider how it will process accommodation requests on a timely basis, including between council meetings. For example, the strata council should ensure that someone is responsible for receiving such requests and promptly beginning the accommodation process. Gather enough information to understand the nature and extent of the need for accommodation. The strata is entitled to request medical information that is related to the request for accommodation. It is not entitled to any more information than is strictly necessary for this purpose. If the strata requests further medical reports, it should be at the strata's expense. Restrict access to a person's medical information to only those individuals who are involved in the accommodation process and who need to understand the underlying medical condition. The strata council should keep medical information confidential from the general membership of the strata. Obtain expert opinions or advice where needed. Take the lead role in investigating possible solutions. Co-operate with the person seeking accommodation to constructively explore those solutions. Rigorously assess whether the strata can implement an appropriate accommodation solution. In doing so, the strata may have to consider the financial cost and competing needs of other strata members with disabilities. In some circumstances, a solution may not be possible without the strata suffering an undue hardship. In that case, the strata council should document the hardship and test its conclusion to ensure there is no other possible solution. Recognize that the strata cannot, through its membership, contract out of the [\*Human Rights Code\*](#). This means that a strata corporation cannot rely on a vote of its membership to deny an accommodation. Ensure that the strata representatives working on the accommodation are able to approach the issue with an attitude of respect. Members of a strata council whose behavior risks undermining genuine efforts at co-operation and conciliation may need to be removed from the process.

In a recent HRTC decision of Jacobsen VS Strata Plan 1773 in Nanaimo, the strata corporation has been ordered to provide accessibility to an owner in similar circumstances to enable access to the building and to the strata lot that may include the installation of a lift or an external elevator. The consequences for not responding respectfully, timely, or appropriately have also resulted in an award for \$35,000 for injury to the applications dignity, feelings and self-respect. Take the application and request seriously. Respond in a timely manner, seek legal advice on the appropriate actions and make your buildings accessible for everyone. We may all need accommodation at some point.

Tony Gioventu, Executive Director CHOA

**Covid-19 Notice:** As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

**Tuesday Lunch & Learn Live with CHOA:** CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at: <https://www.choa.bc.ca/seminars/>