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Condominium Law Update

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Condominium Bylaw Enforcement

Condominium Law Update

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OVERVIEW

Enforcement of Bylaws is always tricky as it involves a member of the community. Case law in Alberta has mandated that the only way to proceed with Bylaw enforcement is with a step by step increase in the discipline to the Owner/Tenant breaching the Bylaws. In *Condominium Plan No. 822 2909 v. 837023 Alberta Ltd.*, 2010 ABQB 111 (“837023 Alberta Ltd.”) the Honorable Madam Justice Veit wrote:

“I am of the view that the *Condominium Property Act* proposes an incremental approach to improper conduct. Eviction ... is not an incremental remedy. Some opportunity should be given to the ... owner to remedy the breaches before the most serious relief possible should be invoked.”

Therefore, a step by step process must be utilized when dealing with Bylaw breaches:

1. Check the Bylaws: do they have the "sanction" (fining) provisions required by the CPA (s. 35-36)? Do they have mandated fines or a process? Are there rules or regulations that the condominium Board has passed with the Bylaws that define what sanctions can be levied? Whatever process there is contained in the Bylaws or Rules/Regulations must be followed.
2. Warning Letter: always start with a warning letter outlining the Bylaw breach in detail and request for such breach to cease. Not only is a warning letter proper and courteous, but will be helpful with the evidence before the court if an Application becomes necessary.
3. Fine Owner/Tenant: provided the Bylaws allow for the fining for Bylaw breaches, if the Owner/Tenant has not responded to one or two warning letters and continues to breach the Bylaws, then the next step is to fine the Owner/Tenant with a letter. It is important to note that a Board Resolution must be passed in order to fine, and the Resolution to do so should be properly documented. The Property Manager/Board then usually sends the letter levying the fine upon the Owner/Tenant seeking payment.
4. Increasing fines: if the conduct or Bylaw breaches continue then the fines should increase (again, provided the Bylaws allow for fines/sanctions). However, it is important to remember (and remind Boards/Property Managers) that \$10,000 is the most that can be levied for a fine under the *Condominium Property Act* (“CPA”) (s. 36(1)(b)). It is important to be careful with the language of "each day of a continuing breach shall be deemed a contravention of a bylaw", as \$100 day can reach \$10,000 very quickly.

Justice Viet held in *837023 Alberta Ltd.* that “a series of minor breaches remains a series of minor breaches. A fine would be an appropriate way to deal with such breaches.”

However, at some point, levying fines that go unpaid is not a solution. It is often uneconomical to go to Court to collect several hundred dollars in fines (caveat and foreclosure NOT an option) and the fines are obviously not curing the inappropriate conduct of the Owner/Tenant. Accordingly, a court application by way of Originating Application is the next step.

Originating Application

The ultimate remedy for Bylaw breach is eviction, of either the tenant or the Owner. It is an easier process to evict a tenant for breach of Bylaws than it is to evict the Owner.

The Alberta Court of Appeal in *Condominium Corporation No. 8110264 v. Farkas*, 2010 ABCA 294 (“*Farkas*”) held that “the power of eviction against an owner is an extraordinary one, and one which undoubtedly should only be exercised in exceptional cases, and when other incremental remedies have failed”.

The first step we have utilized is to apply for declaration that the Owner/Tenant is, in fact, breaching the Bylaws and that they must cease and desist in doing so or return to Court at a later date to show cause why they should not be evicted. Justice Veit in *837023 Alberta Ltd* held that:

Even though this condominium’s by-laws do not anticipate the eviction of owners, and even though the legislation does not expressly authorize the eviction of owners, there may well be situations in which the extreme sanction of eviction would be appropriate. For example, if, an owner allowed dangerous substances to escape from his unit and, after an appropriate warning, refused to stop the offending conduct, eviction may be the only safe and reasonable option. A breach of a by-law that caused structural damage to condominium property may justify eviction. Indeed, even a serious breach that was not dangerous might, if repeated despite warnings were unavailing, justify eviction.

This ... owner has been a nuisance to the other owners, but there is no evidence that his breaches were dangerous either to the other owners or to their tenants or to the structure of the condominium itself. Just as, in criminal law, the most serious sentence available is not reserved only for the most serious offence committed by the most serious offender, it is not necessary to reserve eviction for the most serious breach by the most culpable condo owner.

Once an Order to cease and desist is obtained, filed and served, the Condominium Corporation must wait for any further conduct breaching the Court Order. The further breaches must be of the same or similar conduct. If the breaches begin again, but for a completely different issue, then the Condominium Corporation must go through the same sequence of steps outlined above. If the