

# Board must act on clear breaches of condo rules

BY ROBERT NOCE, EDMONTON JOURNAL    FEBRUARY 28, 2011

Dear Robert: One of our condominium board members has violated our pet bylaw, which states that you cannot replace your pet when your pet dies. This board member has replaced his dog, contrary to the bylaws, and the board has been receiving e-mails from other residents wanting to replace their dogs. What should we do?

A: If the evidence is clear that an owner breached the bylaw by replacing his dead dog with a new dog, then the board has to work with the owner to find a solution to the problem, or it will have no alternative but to bring an action in court against the owner asking the court to grant an order forcing the owner to get rid of his dog. It is that simple.

You do not have the luxury of picking and choosing which bylaws you will and will not enforce. If, however, more than 75-per-cent of the owners (and unit factors) feel that the current bylaw is unjust or unfair, then the alternative would be to amend your bylaws to allow owners to replace their dead pets.

Helpful hint: A condominium corporation board does not have the discretion to pick and choose which bylaws to enforce. If there is evidence of a breach of a bylaw, then the board must act.

Dear Robert: We own a townhouse that is part of a group of 12 townhouses. When the developer built the homes in the early 1990s, it set up a homeowners' association. The developer is long gone and most of the original owners are also gone. Our bylaws are outdated. We need some help.

A: The Condominium Property Act does not apply to homeowners' associations. The agreement among the owners, which is usually protected and enforced by way of some form of registration on your title, governs the relationship among the owners.

If drafted properly, the homeowners' association agreement should set out a process by which the owners can amend its provisions. Your association would benefit from hiring a lawyer to assist you in that regard.

Helpful hint: If a homeowners' association is looking to amend their agreement and/or get information about how the association is to operate, any lawyer who practises real estate law should be able to assist.

Dear Robert: I live in an older condominium building with poor ventilation. Someone on my floor is a smoker, and second-hand smoke is coming into my unit. Is there anything I can do to deal with this issue? Can we deem our building a non-smoking building, meaning that all owners would have to smoke outdoors?

A: If ventilation is a problem within your condominium building, this may be something that the board could look at through its reserve fund study. It may be that the ventilation and related items require upgrades in the future, and it is something that should be considered when preparing your reserve fund study.

Ultimately, if it is the responsibility of the condominium corporation, then all owners will be responsible for paying for that cost through their condominium fees and/or a special assessment.

With respect to smoking, to create a smoke-free building, which would include no smoking within the individual units, an amendment to your bylaws would be required. You would need a special resolution, meaning 75-per-cent or more of the owners and unit factors would have to support the change.

The board cannot deem the building smoke-free without a bylaw amendment.

The issue of smoking in buildings is becoming more prevalent, and there is nothing under the Condominium Property Act that would prevent a condominium corporation from taking steps to amend their bylaws to make their building, including the individual units, smoke-free.

Helpful hint: If the condominium corporation changes its bylaws to prohibit smoking, you may have to consider grandfathering the existing unit owners and allow them to continue to smoke in their units until they sell them.

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