

Consulting police a wise call

But condo owner with troublemaking tenants can't be forced to sell

BY ROBERT NOCE, FREELANCE MAY 29, 2010

Thank you to everyone who took the time to send in such a variety of interesting questions. Since there are space limitations for this column, it will take some time to answer all of your questions, but I do intend to answer them all.

Dear Robert: We are a small condominium building in downtown Edmonton. One unit in our building was purchased by the current owner, who turned it into a rental property, about five years ago. The tenants have been involved in criminal activities. With the assistance of the Edmonton Police Service and other authorities, the tenants have been evicted and/ or arrested in relatively short order. We would like to force the owner to sell the unit. We have been told that it is a long and expensive process with no guarantee of success. What can we do?

A: Congratulations for working with EPS and other authorities to deal with tenants who were allegedly carrying on criminal activities within the unit. This was a cost-effective way of dealing with the problem.

With respect to the owner, there is nothing in Alberta that would allow a condominium corporation to force an owner to sell his or her unit. There have been several cases in Alberta where the courts have evicted an owner from the unit, but the court did not go so far as to compel the owner to sell the unit.

This is a complicated issue, and each case that I have reviewed depends on the facts. I would first look at implementing fines and/or penalties against the owner -- providing that your bylaws allow for this -- to start sending the message to the owner that this kind of conduct will no longer be tolerated by the condominium corporation. The owner may decide that she or he does not need the hassle, and decide to sell the unit.

Helpful hint: When a condominium corporation is faced with allegations that one of its units is being used for criminal activity, engage the local police service and/or other authorities (bylaw services) to assist you in dealing with the issue.

Dear Robert: Our condominium corporation's bylaws stipulate that tenants must be 45 years of age or older. Is this particular bylaw enforceable?

A: The Condominium Property Act of Alberta states that all owners and tenants are bound by the bylaws. Whether you have read the bylaws or not, you as an owner or tenant are required to comply with all of them. There have been several cases in Alberta in which the courts have upheld the age limitation in bylaws of condominium corporations.

Therefore, subject to the wording of the bylaw, if the corporation wants to remove an owner and/or tenant under the age of 45 from the condo project, then the corporation would be required to make an application in court compelling the owner and/or tenant to comply with the bylaws. Ultimately, it would mean the removal of any owner and/or tenant under the age of 45.

The wording of that particular age-limitation bylaw is extremely important. If the wording is unclear, the court may not grant you the order you are looking for to have the owner and/or tenant removed from the unit.

Another issue is when this bylaw came into force. If the age bylaw has always been in place, then all units would be required to comply. If, however, the age bylaw was recently added, then the issue becomes whether any of the units have been grandfathered as a result, which would mean that any current occupants not meeting the age bylaw can stay.

Generally, Alberta courts will uphold an age limitation bylaw. You should seek legal advice to determine whether or not the wording of your bylaws is clear and certain and provides sufficient direction to the courts.

Helpful hint: Before you buy a condo, review the bylaws to ensure that there are no age limitations within the project. Otherwise, you may be prevented from allowing your grandchildren to stay with you for an extended period of time.

Dear Robert: One of the board members on our condominium corporation board also is an employee for the management company hired by the condominium corporation. The board member receives a salary from our management company. Does this constitute a conflict of interest?

A: The limited facts that you have provided suggest that there is a conflict. Does this board member participate in any of the discussions and/or votes relating to the management company? If the answer is yes, there is a problem.

Since so many issues involve the management company, there may be an ongoing issue with respect to conflict. This is not a particularly good situation, given the fact that the board member is also an employee of the management company.

If the board has a private discussion about the management company's performance, for instance, this board member may be faced with a situation where he or she owes a fiduciary duty to the board and at the same time to the management company.

This issue appears to be one of conflict, and is worth looking into more closely.

Helpful hint: It can be a challenge to find people to sit on a condo board. However, if you're in a situation where your loyalties may be affected because you have a relationship with a supplier to the

condominium corporation, you may not want to sit on the board. It may pose more problems than benefits. You cannot play on both sides of the net.

Dear Robert: What is the difference between a co-op membership association and a typical condominium association?

A: Co-operatives and condominium associations are governed by two separate pieces of legislation. The Condominium Property Act has no application to a cooperative, which is governed by the Cooperatives Act. There are advantages and disadvantages to both models; however, the model you choose will depend on your particular needs and objectives.

For example, if choosing your neighbours is important to you, then you may prefer the co-operative model, for there is an ability to control who will be members and, ultimately, who will be your neighbours. A condominium corporation cannot prevent a person from buying into the project.

There are several such distinctions, and if you are actively considering purchasing one or the other, then perhaps you should consult a lawyer in advance to flesh out the details that are most important to you. Personally, I prefer the condominium association model, as the legislation is easy to understand.

Helpful hint: Purchasing a condominium unit (or buying into a co-operative), either for residential or commercial purposes, is a major undertaking. Before you buy, take the time to read and understand the bylaws to ensure that you will be able to enjoy and use your property as you envision.

Robert Noce, QC, is a partner with Miller Thomson LLP in Edmonton. He welcomes your questions at condos@thejournal.canwest.com. Answers are not intended as legal opinions; readers are cautioned not to act on the information provided without seeking legal advice on their unique circumstances.

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