

Courts a last resort for settling condo disputes

To find solutions, compromises must be made

BY ROBERT NOCE, FREELANCE SEPTEMBER 18, 2010

Dear Robert: Please explain what people mean when they say "legal recourse" or "apply to the courts to resolve this problem." Is this my only option if the condominium board does not follow through with their obligations? If it means suing them, then suing for what?

A: Legal recourse, or applying to the courts, simply means starting a legal action in court whereby you would ask the court to compel the condominium corporation to do certain things. The Condominium Property Act allows an owner to start an action in court if the condominium corporation is not enforcing the bylaws of the corporation or fails to deal with a specific issue of concern.

You are not necessarily seeking damages, but rather asking the court to order the condominium corporation to do certain things. If you were successful in your court application, you would be entitled to recoup some (or all) of your legal fees.

Helpful hint: Before considering a court application, you should attempt to resolve the issue with the board of the condominium corporation in an amicable fashion. Compromises must be made by both parties in order to find solutions to problems. The court system should be viewed as the last resort.

Dear Robert: Our condominium corporation has always had a bylaw in place which prevents pets from being within a unit or on the common property unless the owner receives written permission from the board. This bylaw is backed up by a sign at our front door which reads: "No pets." We now have new owners who say that this bylaw does not apply to visitors. We beg to differ. What is your take on this?

A: It would appear that the drafters of your bylaws wanted to make it abundantly clear that animals were not permitted within the units or the common property of the condominium corporation. The bylaws also apply to visitors. Therefore, it is my opinion that visitors would not be permitted to bring their pets into a unit or the common property of the condominium project.

Helpful hint: The rationale of having a no-pet policy is a legitimate consideration. Allowing pets within the complex increases maintenance costs (replacing flooring, cleaning, etc.), and this increases costs for all owners. Whether or not owners agree with the no-pets-without-written-permission rule, all owners and their visitors must adhere to the bylaws.

Dear Robert: We have a very poor resident manager who does very little within the condominium project. Our building is slowly deteriorating in maintenance with sloppy, shoddy work being done. We have complained, but our board is reluctant to fire him.

The situation is so bad that some of the owners are now volunteering to look after our gardens and other maintenance problems. Who is responsible for the resident manager's daily supervision? Whose employee is he? As owners, how do we get him to do his job?

A: Based on the information that you have provided, it would appear that the resident manager is in fact an employee of the condominium corporation. However, you may want to also confirm that he is not an employee of your property management company.

The employer, whether it is your condominium corporation or the property management company, is responsible for his daily supervision. Does the condominium corporation have a signed employment agreement with the resident manager?

What are the terms and conditions of his employment? Has the condominium corporation ever done a performance review?

If you are paying for the services of a resident manager through your condominium fees, the board should react to owners' concerns.

Finally, since this is an employment issue, care should be taken so that this issue is kept private.

Helpful hint: When a condominium corporation hires an employee to perform certain tasks, it is worthwhile to have a lawyer draft an employment agreement. As well, the condominium corporation should be conducting annual performance reviews on all of its employees.

Robert Noce, QC is a partner with Miller Thomson LLP in Edmonton. He welcomes your questions at condos@edmontonjournal.com. Answers are not intended as legal opinions; readers are cautioned

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