

Going to court should be a last resort

BY ROBERT NOCE, EDMONTON JOURNAL NOVEMBER 2, 2010

Dear Robert: Our condominium board is stalling on calling the annual general meeting (AGM). It has been more than 16 months since the last AGM. How do we force the board to call an AGM?

They have cancelled one already and have indicated that there are some issues they want to clear up before the AGM. This does not sound right.

A: The Condominium Property Act states that a board must schedule an annual general meeting of the owners. It must occur within 15 months of the last annual general meeting.

Based on your calculations of time, it would appear the board is in breach of the act. I would encourage you to remind the board of its legal obligations and ask it to schedule the annual general meeting immediately. If more time passes, a court application may be your only option.

Helpful hint: From time to time, boards do not follow the law. An owner is entitled to go to court and obtain an order compelling the board to comply with the law. Sometimes that step is necessary.

The cost and the level of emotion that would flow from a court application, however, may not be beneficial to any of the parties.

Dear Robert: In a previous column, you stated that the Condominium Property Act is silent with respect to the ability of condominium corporations to implement policies to govern owners. Does this mean that condominium corporations cannot make rules or regulations over and above their bylaws?

A: All condominium corporations in Alberta are governed by the Condominium Property Act, the regulations passed pursuant to the Condominium Property Act and their respective bylaws.

You are correct in that the act is silent with respect to the ability of condominium corporations to implement rules or regulations to govern owners.

This very issue came up in a 2008 Alberta Court of Appeal decision, but the court did not provide any definitive answer on the issue of whether or not a board can implement rules or regulations instead of amending bylaws.

In the 2008 decision, the court said that "(a) board is entitled to some considerable scope ... and there is nothing objectionable to (a) board setting down the rules and regulations as to how its discretion will be exercised in the normal course."

Helpful hint: Subject to your bylaws, it is safe to say that a board may implement rules or regulations to govern certain issues; however, if the policies and/or rules become substantive in nature and affect the rights of owners, or are contrary to the bylaws, the policies and/or rules may be illegal.

Dear Robert: We are a small condominium corporation, and we are considering terminating our relationship with our property management company to move toward self-management. We plan to hire a bookkeeper and seek legal advice as part of this plan. Can you provide us with contact information for any support organizations that we can use when we are self-managed?

A: I would strongly urge you to join the Canadian Condominium Institute. There is a North Alberta chapter and a South Alberta chapter. The Canadian Condominium Institute offers educational programs and advice to its members. They have lists of professionals who can assist you on issues that may come up.

Helpful hint: Before making any decision with respect to the management of your condominium corporation, the board should weigh the costs and benefits of being self-managed versus being managed by a professional property management company. If the condominium corporation is small enough and there are no significant issues to deal with, self-management may be the route to take; however, you may also want to negotiate a better deal with your property management company since there are few issues to deal with. You may get a better deal if the company knows they could be losing a client.

Robert Noce, QC is a partner with Miller Thomson LLP in Edmonton. He welcomes your questions at condos@edmontonjournal.com. Responses will be featured in his column as high volumes prevent individual responses. 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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