

# Enforcing bylaws not optional for board

BY ROBERT NOCE, EDMONTON JOURNAL    MAY 7, 2013

**Q:** You have stated that boards must enforce all bylaws. I could not find anything in the Condominium Property Act to support this. As our condo board is not enforcing all bylaws, I was wondering if I missed something.

**A:** Section 37 of the Condominium Property Act is the relevant section. I strongly urge you to advise your condominium board that they have a duty to enforce all bylaws, as they constitute a contract among the owners.

**Helpful hint:** Enforcing the bylaws is a basic rule of condominium living, irrespective of the costs involved.

**Q:** We are part of a rental pool agreement, managed by a property management company. Last summer, a new property manager withheld one month's rental revenue from all rental pool owners as security deposits. The previous property manager walked away with all of the security deposits and contingency fund. Is there anything we can do?

**A:** Contact the new property management company and ask why the previous property manager did not transfer the security deposits and contingency funds to the new property management company. The cost of pursuing this may be greater than the loss of one month's rental revenue. However, if there are more rental pool owners, there may be an opportunity to pool some of your resources to spread the cost of recovery among everyone.

**Helpful hint:** The time to ensure that security deposits and contingency funds are properly transferred from the care of one property manager to another is before the exiting property manager has left the building, not months later.

**Q:** In your March 2013 column, you mentioned a reserve fund study must be conducted every five years. I could not find anything under the Condominium Property Act that states this, nor was I able to find any guidance as to what should be included in the study. Also, there is no mention if the study must be forwarded to one of the Alberta Government departments or just provided to condominium owners. I am hopeful that you can answer these questions.

**A:** Condominium Property Regulations (168/2000) state that the reserve fund study must be conducted every five years (s. 30) and that you must retain a qualified person to carry out a study (s. 23). On completing the reserve fund study, the person who carried out the study must prepare and submit to the board a reserve fund report. The board must then approve a reserve fund plan, which must be communicated to owners before moving forward.

**Helpful hint:** Boards must be aware of their legal requirements with respect to reserve funds and other related matters.

**Q:** We bought a semi-detached home a couple of years ago, and recently discovered that it is actually a condominium. We do not have a condo board, reserve, or any other arrangements in place. We don't even know the owner of the other half of our building. What do we do now, and can we force the owner of the other half to comply with whatever the requirements are? Do we have insurance problems?

**A:** I find it unbelievable that you did not know what you were buying. I hope you were using a lawyer when you purchased your semi-detached home, and I would suspect that your lawyer would have explained to you what you were buying. As well, did you engage a realtor? If yes, did the realtor explain to you what you were buying? If you in fact live in a condominium project, then there are certain legal requirements that must be fulfilled. The preamble to your question indicates that none of those requirements are being satisfied. It is time for you to call a lawyer who understands condominium law and get some advice.

**Helpful hint:** Unless you are in the habit of buying yachts and private jets, your home will be the most significant purchase of your life. As such, it is incumbent on you, the buyer, to ask your realtor and your lawyer the important questions, so that you know exactly what you are buying.

**Q:** We live on the 17th floor of a highrise condominium building, and we have a severe water pressure problem. We asked the board to provide us with the same pressure other unit owners are enjoying, which can easily be achieved by installing a larger pressure pump. The board is giving us the runaround, claiming that no one else has a problem. Do we have any legal recourse?

**A:** If the plumbing is the responsibility of the condominium corporation, then it is required to take active steps to ensure that people are receiving the same level of service. Unfortunately, since you have not received a favourable response from the board, you may have to retain a lawyer to put some pressure on the board.

**Helpful hint:** Rather than taking the "us versus them" approach when dealing with issues from owners, the board should find a solution.

**Q:** I recently moved to Edmonton from Calgary, and opted to keep my Calgary condominium unit as an income property. My condo board has advised me that my tenants are nothing but trouble. They installed a hot tub on the rooftop patio without first seeking the board's permission (or mine) and it has apparently caused leakage into the unit below. In addition, I have been told that police were called due to a noise complaint, and as a result drug possession charges were laid against a party attendee. Can I make the tenants pay for the water damage and can I have a company remove the hot tub and give my tenants the bill for removal? Can I evict these tenants?

**A:** As the owner, you are ultimately responsible for everything that happens in your unit. How you recoup your costs is of no interest or concern to the condominium corporation. You may have a claim against your tenants. With respect to evicting them, this is a landlord/tenant matter. I would urge you to review your lease agreement and contact the Landlord and Tenant Advisory Board in the City of Edmonton for advice.

**Helpful hint:** As an owner, you are ultimately responsible for everything that happens in your unit. Properly screen your tenants to ensure that they will comply with the bylaws and your lease agreement.

**Q:** Can the bylaws be changed to restrict the number of renters in our condominium complex?

**A:** No; any bylaw that restricts the number of renters in any condominium project would be illegal.

**Helpful hint:** The Condominium Property Act is crystal clear in this regard; you cannot prevent an owner from renting out his/her unit.

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