

Board can't say no without a reason; Owners want to have a dog in their unit

The following article is property of the Edmonton Journal.

Edmonton Journal

Sat Jun 11 2011

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Section: Condos

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Source: Edmonton Journal

Dear Robert: Our condominium corporation allows people to have a dog or cat in their unit. However, we are required to submit a request to the board and receive confirmation that we can in fact do so. We recently requested to have a dog. The board denied us, but did not say why.

What can we do?

A: In a recent decision of the Alberta Court of Queen's Bench dealing with the Knottwood Estates Condo Corp., a similar issue was raised regarding a shed that owners wished to construct in their yard.

The owners required the approval of the board of the condominium corporation. In that case, the board simply denied the request on the basis that the location of the shed would restrict the enjoyment of an adjacent owner. The court sent the matter back to the board for a re-hearing on the basis that the board failed to provide the owners with an opportunity to respond to the refusal.

The owners were successful in challenging the decision of the board. Therefore, I believe that you should ask the board of your condo corporation to provide reasons for the refusal. If they do not provide you with an opportunity to respond to the board's concerns, then you may have a legitimate claim against the board for improper conduct which would require you to make an application in court to have the issue determined.

Helpful hint: Boards are required to provide owners with information as to why they have decided a particular course of action.

Based on this recent court case, boards should consider the application of an owner and provide their decision after giving the matter proper consideration, including the opportunity for the owner to respond to other owners' or interested parties' submissions.

Dear Robert: I am a member of the board of a homeowners association. We are having difficulty collecting homeowners' dues from some members.

Are we allowed to charge interest on the outstanding dues?

If so, how do we go about establishing this policy? Are there other things we can do to effect collection of dues, like reporting to a credit bureau or, as a last resort, set up a lien against the delinquent homeowners' property?

A: Homeowners associations are not covered under the Condominium Property Act. Whether you can or cannot charge interest or take any other step will depend on the wording of your homeowners association agreement.

If the agreement does not allow you to charge interest or take any other step, you will be precluded from doing so.

You may want to consider amending your homeowners association agreement to allow for the collection of interest on overdue accounts and address other concerns.

Helpful hint: The situation that you have identified requires a lawyer to provide you with an opinion on the issues that you have raised. It would be prudent on the part of the homeowners association to retain legal counsel to help you through this process.

Dear Robert: At an annual general meeting, the board announced that they would provide themselves with an honorarium for each meeting attended. They also announced that they had increased the condo fees. I would be very interested in your view of our board's unilateral behaviour.

A: To determine whether or not board members are entitled to receive an honorarium, one would have to review your bylaws.

If your bylaws allow for the board to pass a resolution to grant board members an honorarium and, provided that they have followed the process under your bylaws, there may not be anything you can do in that regard.

With respect to the increase in condo fees, again, usually at an AGM, a budget is prepared to provide owners with an understanding as to what they can expect for the coming year in respect of their condo fees. Again, if the board is acting within the budget that was submitted at the AGM, there may not be much you can do in that regard.

Helpful hint: If you are not satisfied with the direction of the board, then your alternative is to elect people who share your particular point of view on the issues facing your condominium corporation.

If the board is acting within the law, then your only avenue to make change is at the ballot box.

Robert Noce, QC, is a partner with Miller Thomson LLP in Edmonton . He welcomes your questions at conos@edmontonjournal.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.

Edition: Final