Get some sound advice

Self-managed townhouse board sometimes needs a lawyer's expertise

BY ROBERT NOCE, EDMONTON JOURNAL JULY 11, 2011

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Dear Robert: I am the president of a condominium complex consisting of 23 townhouses. We are self-managed. I have lived in the complex for 11 years and have been on the board for a long time. I have a number of questions that require answers to assist us: 1. Our bylaws are from the 1970s.

They need to be updated. How do we do this? Can only certain parts be amended? Does this have to be voted on at an annual general meeting?

Who comes up with the changes, and what is acceptable?

2. Can we state in the bylaws that we only want five units rented at a time?

3. How are bylaws enforced and who enforces them?

4. What are the roles of president, vice-president, treasurer and secretary?

5. We have one AGM a year plus monthly meetings with just board members. Do all meetings have to follow parliamentary rules?

6. If there is a crack in the foundation of a unit, who is responsible for fixing it?

7. We all had our windows replaced over a period of time, and it was done by two companies. The first windows do not meet code in the bedrooms and we have asked the company to replace them but they refused. What do I do? They told me it wouldn't be worth getting a lawyer and the condo should pay half.

Should we get a lawyer?

A: In answer to your first question, generally condominium corporations will put together a bylaw review committee, or simply use the board, to put forward proposed bylaw amendments for owners to review. You can amend a section or amend all of the sections in your bylaws; it is up to you. Have the proposed changes been identified by the board?

You may want to consider retaining a lawyer to assist you in the wording of the proposed amendments.

Any amendment to the bylaws will require the approval of 75 per cent of the owners and unit factors. If you cannot obtain the 75-per-cent support, the amendments will not be made to your bylaws.

2. You cannot restrict the number of units that can or cannot be rented in your complex. Any owner can rent his or her unit to a third party. Any attempt to restrict the rights of an owner to rent his or her unit to a third party will not be enforced by the courts.

3. Bylaws are enforced by the condominium corporation through its board. The board is the controlling mind of the operation of the condominium corporation.

The board must balance the rights of all of the owners in terms of dealing with bylaw infractions. The board will usually take the active step of enforcing the bylaws either through a demand letter or through the courts.

4. The roles of the president, vicepresident, treasurer and secretary should be set out in your bylaws. If the roles are not set out, then this would be something that you may want to consider in terms of your proposed amendments.

5. Generally, the AGM and board meetings do follow some form of parliamentary process. Again, your bylaws should provide you with some guidance in this regard.

6. With respect to a crack in the foundation of a unit, the responsibility of who picks up the cost to repair the crack will depend on whether or not it is the responsibility of the condominium corporation or the owner. I cannot provide you with an answer without a review of the condominium plan.

7. It would be in your best interest to seek the opinion of a lawyer to determine whether or not you have a claim against the window supplier. The initial consultation and review should be relatively inexpensive.

Given the number of issues you have raised, it would be prudent on your part to retain a lawyer to assist you in the drafting of bylaws, determining responsibility for repairs and other issues.

Helpful hint: The fact that you are self-managed means you do not have a property manager to assist you in some of these issues. There is no legal requirement in Alberta for a condominium corporation to have a property manager. However, if you choose not to have a property manager, then it would be in your interest to have a resource person, like a lawyer, to provide further assistance.

Robert Noce, Q.C. is a partner with Miller Thomson LLP in Edmonton . He welcomes your questions at conos@edmontonjournal.com. Answers are not in tended 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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