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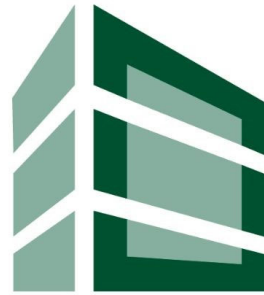
November 14, 2023 Bylaws & Hearings

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*We gratefully acknowledge the support and
partnership of BC Housing in
research and support for consumers.*

Many thanks to this week's
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Education Pilot Project

- The fall webinar series is a pilot project to develop an 8 part education series for new strata council members and owners. Your feedback is welcome throughout the sessions and at the end of the 8 as we continue to develop the on line programs and support materials.
- The information presented and discussed in the webinar is not intended as legal advice or an opinion on the merits or questions raised by a participant. It is only intended for educational purposes.
- Participants are advised to seek legal counsel independently regarding the specific nature of a bylaw, bylaw enforcement, interpretation of legislation, or matters relating to contractual relationships.

Why do we have bylaws?

- Section 119 of the Strata Property Act
- The Strata Corporation must have bylaws
- The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the Strata Corporation and for the administration of the Strata Corporation (s. 119)

Purpose of Bylaws

- Bylaws establish the standards for the community in which you live
- Bylaws can be used to address issues to prevent future disputes and problems
- Bylaws should reflect the unique needs and circumstances of the owners and the Strata Corporation
- Bylaws provide the authority to our strata to operate and regulate its activities

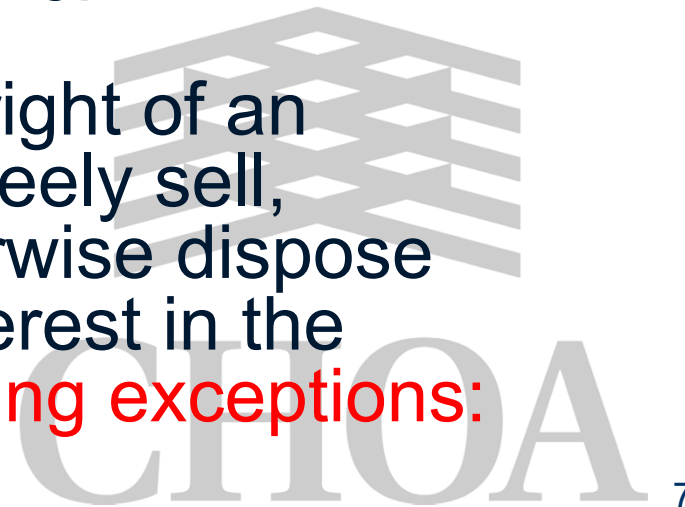
Standard Bylaws vs. Amended Bylaws

- The bylaws of the Strata Corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office (s.120)
- The bylaws of a Strata Corporation may be changed, repealed, replaced, added to or otherwise amended by complying with the requirements of this Division (s.126)

Restrictions on Bylaws

A bylaw is not enforceable to the extent that it:

- (a) contravenes this Act, the regulations, the *Human Rights Code* or any other enactment or law
- (b) destroys or modifies an easement created under section 69 or
- (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot **with the following exceptions:**



Restrictions on Bylaws

exceptions:

a) a bylaw that prohibits short term accommodations

b) a bylaw under 122 relating to the sale of a strata lot: a strata may limit or control signage and activities

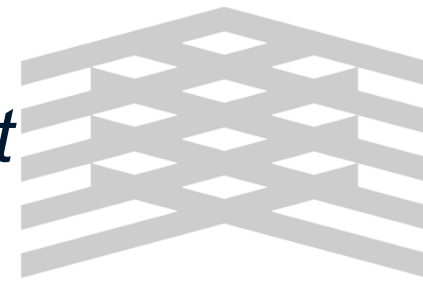
c) a bylaw restricting the age of persons who may reside in a strata lot: occupancy age restriction bylaws are permitted



Other Legislation - examples

It is important to remember that the bylaws of the strata corporation must comply with any other enactment of law, such as the

- BC Human Rights Code Provisions
- *Residential Tenancy Act*
- *BC Employment Standards Act*
- *Real Estate Services Act*
- *Guide Dog Service Dog Act*



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Limitations on Bylaws

- Sale of a strata lot
 - May not prohibit or unreasonably restrict the activities relating to the sale of a strata lot including:
 - posting of signs
 - times for showing property
 - holding of open houses (s. 122)

Limitations on Bylaws-Rules

- Repair of common property

A strata is **not** permitted to make an owner responsible for the repair and maintenance of common property (s.72)

- Snow removal
- Window washing
- Landscaping
- Gutter cleaning

Drafting Enforceable Bylaws

- Why do we want it
 - Do we have a problem or concern that the bylaw can address
- What will it do
 - Does the bylaw require or prohibit an activity
- Who should it apply to
 - Owners
 - Visitors
 - Spouses
- What effect will it have
 - Market value
- What else to consider
 - *Human Rights Code*
- Can it be enforced
 - Is the language clear and unambiguous
 - Bylaws that relate to waste and recycling are the most difficult to enforce unless someone is closely monitoring activity

When a new bylaw is adopted

- Age/Pets Does not apply to person or persons or pets in residence at the time the bylaw is passed (s.123)



When a new bylaw is adopted

- **Caution:** If you include a resolution that repeals previous bylaws, you may be repealing bylaws that you had not intended to repeal, grant exemptions over or bylaws for sections. Repeals will have the greatest impact on rentals, age, pets and sections bylaws.

When a new bylaw is adopted

- A resolution that is adopted for the bylaw amendment is just as critical as the bylaws
- A resolution must clearly indicate if a bylaw is being amended or repealed, or if a new bylaw is being adopted
- You must file your bylaws in the Land Title Registry to be enforceable
- To enact this decision, also file the properly passed resolution

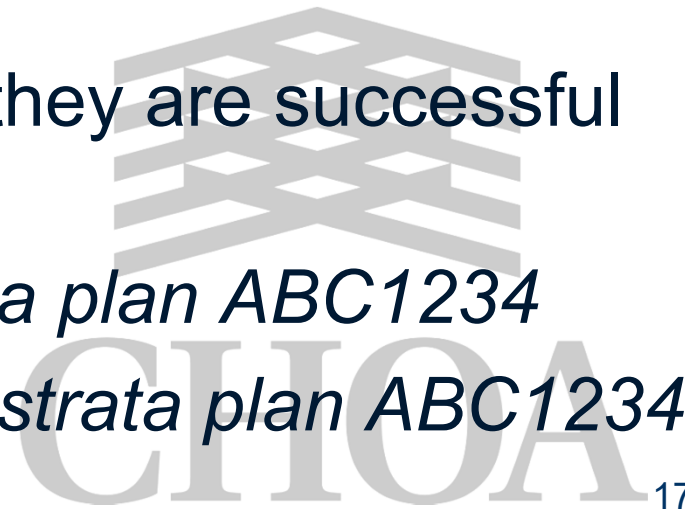
Bylaws in Mixed Use Property

- Bylaws that apply to both residential and non residential in a strata corporation must be ratified by a $\frac{3}{4}$ vote resolution separately by both the residential owners present in person or proxy and the non residential owners present in person or by proxy.
- **Best practice: Publish separate resolutions for both the residential and non residential in the notice package.**



Bylaws in Mixed Use Property

- You will require 2 separate $\frac{3}{4}$ votes, and show in the minutes the result of each separate vote. **If either votes do not pass, the resolution does not pass.** If there is no one attending from the non residential owners, then they have not voted in favour.
- Register both resolutions if they are successful with the Form I.
- *The residential owners strata plan ABC1234*
- *The non residential owners strata plan ABC1234*



Writing or drafting new bylaws

- Remember that bylaws must comply with the Strata Property, Regulations, the BC Human Rights Code and any other enactment of law.
- Before you try to re-invent a new bylaw, talk to your lawyer about bylaws already drafted for strata use to save time and \$ such as:
 - Privacy
 - Short Term Accommodations
 - Insurance & damages
 - Business operations
 - Age Restrictions
 - Alterations

Steps in Amending Bylaws

1. A new bylaw or proposed set of bylaws is drafted.
2. Review the existing bylaws to determine if any bylaws have to be repealed or amended
3. Consult with the owners in advance for feedback
4. Engage a lawyer to review the final draft of proposed bylaws before they are issued with a notice for consideration
5. Issue notice of a general meeting:
AGM/SGM
6. Include with the notice the exact wording of the proposed bylaw amendments and the resolution that determines what is being done with the bylaws
7. Vote on the proposed amendments by $\frac{3}{4}$ vote resolution
8. Calculate and record the votes in the minutes
9. If passed, register the proposed bylaw amendments in the Land Title Registry – Form I
10. Inform owners, tenants and occupants

Bylaw Enforcement

Strata Property Act

Enforcement options

129 (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

- (a) impose a fine under section 130;
- (b) remedy a contravention under section 133;
- (c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

*If a bylaw is not enforced properly, an owner or tenant may file a complaint with the CRT.

Bylaw Enforcement - section 135

The Strata Corporation must not:

- impose a fine against a person,
- require a person to pay the costs of remedying a contravention, or
- deny a person the use of a recreational facility

unless the Strata Corporation has done the following:



Procedure

- received a complaint about the contravention,
- given the owner or tenant the particulars of the complaint, in writing,
- given the owner a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
- if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

Fines

The Strata Corporation may fine an owner if a bylaw or rule is contravened by

- (a) the owner,
- (b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not rented by the owner to a tenant.

Fines

The Strata Corporation may fine a tenant if a bylaw or rule is contravened by

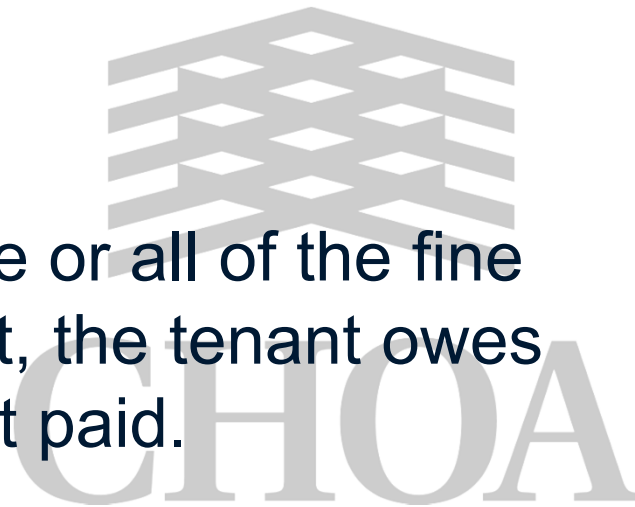
- (a) the tenant,
- (b) a person who is visiting the tenant or was admitted to the premises by the tenant for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not sublet by the tenant to a subtenant.

Landlord's Responsibilities

If the Strata Corporation fines a tenant, or requires a tenant to pay the cost of remedying a contravention, the Strata Corporation may collect the fine

- from the tenant,
- from the tenant's landlord,
- from the owner.

If the landlord or owner pay some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.



What are the maximum fines?

The Schedule of Standard Bylaws:

1. A bylaw \$50.00
2. A rule \$10.00

The strata is permitted to amend bylaws up to following maximum limits:

1. A bylaw \$ 200.00
2. A rule \$ 50.00
3. Short Term Accommodation \$1,000.00

(fine may be imposed for each day of violations)

*If the bylaws permit a strata corporation may impose a fine every 7 days for a continuing contravention.

Does the punishment fit the crime?

When amending fines, or applying fines, consider the penalty and is it proportional to the violation?

Example: A bylaw sets out the maximum number of pets in a strata lot as 1 cat and 1 dog. An owner has 2 cats.

A complaint is filed, the council gives notice, the owner argues in a hearing that it is still just 2 pets, and her 2 cats are indoors and there are no complaints about noise or control.

Council enforces the bylaw and applies a penalty of \$200/week for 6 months totaling \$2,600.

Does the punishment fit the crime?

The owner in violation of the pet bylaw has requested a hearing to challenge the fines imposed by the strata.

Before the hearing review:

- Did we properly pass this bylaw amendment?
- Was it filed in the Land Title Registry?
- Have we enforced it the same way for everyone?
- Did we follow the proper enforcement procedures?

What is a hearing?

- An opportunity for owners and tenants to be heard in person regarding a matter.
- An opportunity for the strata council who will have to make a decision to gather information.
- An opportunity for the strata council to ask questions and determine if any additional information is required before a decision can be made.

What is a hearing?

- A hearing occurs at a properly convened strata council meeting.
- The *Strata Property Act* (SPA) sets out specific requirements for the holding of the hearing and the delivery of a decision which vary depending on the type of hearing.



What is a hearing?

“The rationale for affording a person an opportunity to be heard is the idea that people will listen with an open mind to that which is said and reach a considered decision.”

***McLachlan v. Burrard Yacht Club,
BC Court of Appeal***



What is a hearing?

There are 2 specific references in the SPA that relate to hearings:

SPA 34.1 - Demand of a hearing on a specific matter

SPA 135 – Bylaw/Rule enforcement, hearing request



What types of issues may require a hearing?

A hearing may occur for a variety of reasons. Below is a list of the most common examples however there are many other matters that may be appropriate for a hearing.

- Application for alteration to a strata lot, common or limited common property or to appeal a rejected permission for an alteration.
- Application for special accommodation of an alteration
- Application for special accommodation of a pet with a pet restriction bylaw.
- Dispute over the validity of claims relating to a notice of bylaw violation complaint.
- Dispute over charges to a strata lot that relate to an insurance deductible or damages.

Hearing Procedures

Consider giving advance notice of the hearing procedures.

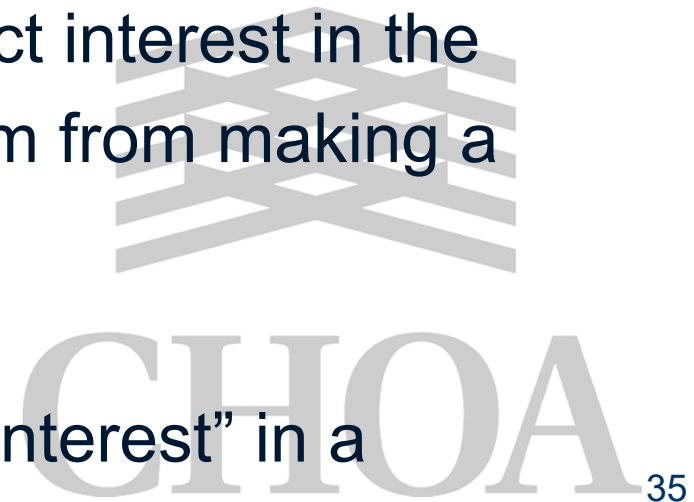
- Location,
- Room set up,
- Timing and convenience.
- Electronic Hearings are also permitted



Hearing procedures

Things to consider:

- How can you ensure this is a fair and comfortable process?
- Is everyone in a non conflict position?
- Council members need to consider whether they have any direct or indirect interest in the matter that could prevent them from making a fair decision.
- What is a conflict of interest?
- What does “direct or indirect interest” in a matter mean?



Who participates in the hearing?

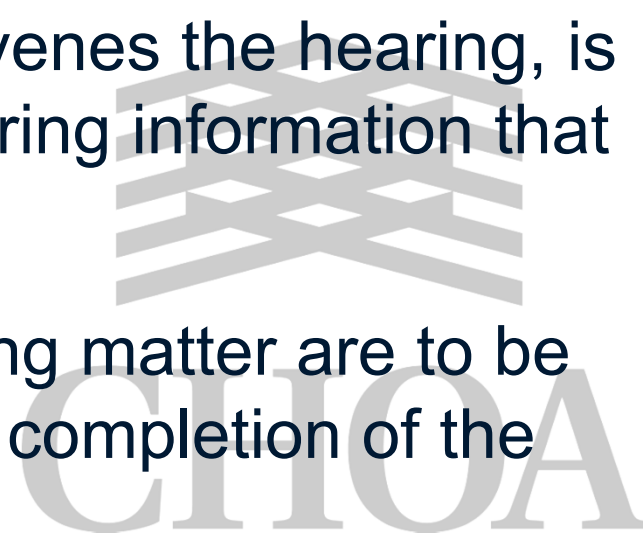
- The person who requested or demand the hearing.
- The strata council.
- Other persons who are material to the hearing, if agreed by the requestor and the strata council.
- Legal representation

Who chairs the hearing?

- The strata council is not permitted to delegate the enforcement of bylaws, matters of a personal nature or hardship exemptions. (SPA SB 20)
- It is the strata council that must render the decision following the holding of the hearing.
- The Standard Bylaws do not contemplate that the hearing will be chaired by someone other than an elected council member, chairing the council meeting.

What are the roles?

- The person who has requested or demanded the hearing will deliver specific information, evidence or requests to the strata council regarding a specified agenda item, a bylaw or claim of cost in dispute or hardship application appeal.
- The strata council, which convenes the hearing, is there for the purpose of gathering information that relates to the hearing request.
- Decisions regarding the hearing matter are to be made by council following the completion of the hearing.



Hearings – SPA section 34.1 and Regulation 4.01

Strata Property Act

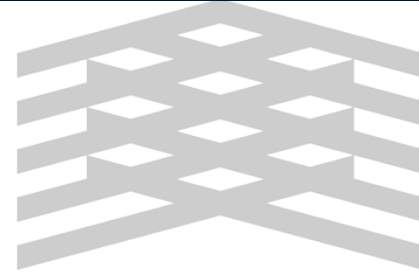
Request for council hearing

- 34.1 (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
- (2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.
- (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

Strata Property Regulation

Definition for section 34.1 of the Act

4.01 For the purposes of section 34.1 of the Act, "hearing" means an opportunity to be heard in person at a council meeting.



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Hearings – section 135 re Bylaws

Strata Property Act

Complaint, right to answer and notice of decision

Section 135 (1) The strata corporation must not

- (a) impose a fine against a person,
 - (b) require a person to pay the costs of remedying a contravention, or
 - (c) deny a person the use of a recreational facility
- for a contravention of a bylaw or rule unless the strata corporation has
- (d) received a complaint about the contravention,
 - (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
 - (f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

Hearings – section 135 re Bylaws

- A letter sent to owner or tenant pursuant to section 135(1)(e) must not predetermine or prejudge the infraction.
- The letter sets out the particulars of the alleged infraction (i.e. date(s), time(s) and nature of conduct) and identifies applicable bylaw or rule.
- For example: “appears that a breach” may have occurred and before the council makes a decision, the owner or tenant must be permitted to respond to the allegations, including in person at a hearing.

Observers at hearings?

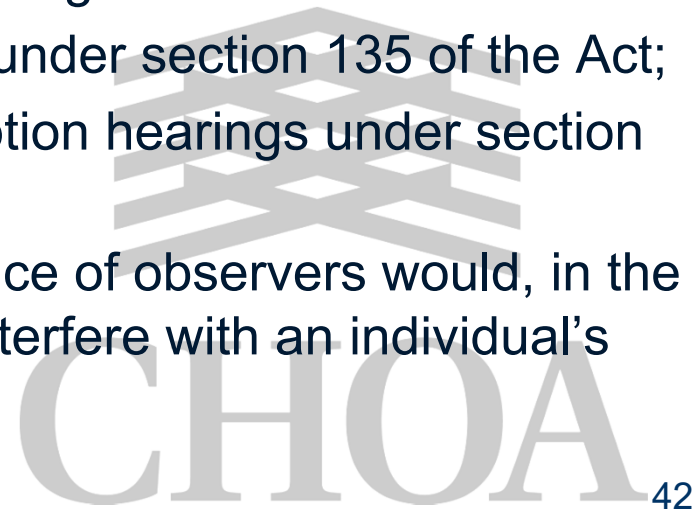
Who is entitled to attend a hearing?

Strata Property Act - Standard Bylaw 17(4)

Council meetings

(4) Despite subsection (3), “owners may attend council meetings as observers”, no observers may attend those portions of council meetings that deal with any of the following:

- (a) Bylaw contravention hearings under section 135 of the Act;
- (b) Rental restriction bylaw exemption hearings under section 144 of the Act;
- (c) Any other matters if the presence of observers would, in the council’s opinion, unreasonably interfere with an individual’s privacy.



Witness', representation, duration of hearing and location

Is a person requesting a hearing entitled to bring a witness or their lawyer/agent to a meeting?

- Consider the provisions of the Standard Bylaws or amended bylaws of your strata corporation.
- Act reasonably to provide the opportunity for the applicant to provide their information and evidence for consideration.

Are there time periods?

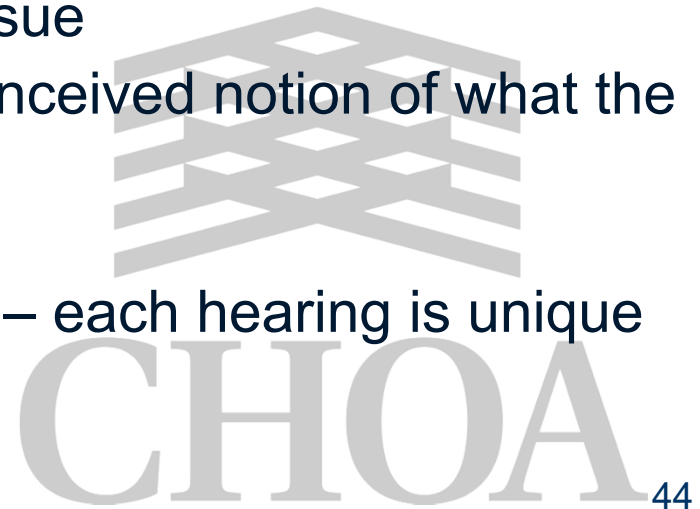
- Duration of the hearing?
- Can strata council limit the length of time given to person requesting the hearing?



Dos and Don'ts

- Do have an open mind and a willingness to listen.
- Do explain the process and how the hearing will proceed.
- Do ask questions, such as details needed for clarity or requesting supporting documentation.
- Do respond to the applicant within the required SPA timeframe.
- Don't restrict the time period for a hearing that may deny the applicant the ability to resolve the issue
- Don't enter the hearing with a preconceived notion of what the outcome should be.

Note: There are no typical hearings – each hearing is unique depending on the specific scenario.



**“a properly convened strata council meeting”
The mechanics of a hearing**

The decision of the council should be reflected in the minutes of the applicable council meeting.
(Cheung v. Strata Plan VR 1902)

If an owner requests a hearing and seeks a decision, the council must make a decision and respond.



**“a properly convened strata council meeting”
The mechanics of a hearing**

- ***A properly convened council meeting requires a quorum, and requires minutes***
- ***Remember a majority vote of council is defined differently in the bylaws than it is for general meetings***
- ***Decisions must be made by a majority of council members present in person at the meeting.***

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