

Headline: **Alterations to Common Property**

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Often times owners want to make alterations that involve common property. For instance, an owner may wish to enclose a limited common property balcony or add a window. Although it is the strata council that often hears the request and makes a decision on whether or not the alteration is permissible, they must do so fairly and in a manner consistent with the bylaws. In general, judges allow owners to make alterations if they are permitted by the bylaws. Judges have also narrowly construed what the term “alteration” means. If the strata corporation wants to limit or prohibit items such as sheds and portable hot tubs from being placed on limited common property balconies and yards, they should be aware that these items will not likely be construed as “alterations” by a judge and a separate bylaw should be drafted to address these items.

Standard Bylaw Regarding Alterations

Most strata corporations are using sections 5 and 6 in the Schedule of Standard Bylaws located in the Strata Property Act as the basis for their bylaws regarding alterations. Section 5 and 6 provide as follows:

Obtain approval before altering a strata lot

5 (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:

- a. the structure of a building;
- b. the exterior of a building;
- c. chimneys, stairs, balconies or other things attached to the exterior of a building;
- d. doors, windows or skylights on the exterior of a building, or that front on the common property;
- e. fences, railings or similar structures that enclose a patio, balcony or yard;
- f. common property located within the boundaries of a strata lot;
- g. those parts of the strata lot which the strata corporation must insure under section 149 of the Act.

(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing to take responsibility for any expenses relating to the alteration.

(3) This section does not apply to a strata lot in a bare land strata plan.

Obtain approval before altering common property

6 (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

(2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

Custom Drafting a Bylaw Regarding Alterations

If alterations are an important issue for your strata corporation section 5 and 6 of the Schedule of Standard Bylaws should be amended keeping in mind the following comments.

The bylaw should set out the process under which the strata council will consider the alteration, what type of information the owner will be required to provide and what additional factors the strata council will consider. It is appropriate that the bylaw specify that the owner will be required to provide plans done by a professional, such as an architect and engineer and that the owner be prepared to address questions concerning what impact the enclosure will have on the view enjoyed by other people in the complex.

Some municipalities will not grant a building permit for the enclosure without prior approval. In any case, the bylaw should also provide that a building permit, if required by the municipality, must be obtained and a copy provided to the strata council prior to work commencing on the alteration.

The bylaw should also address whether or not the owner is responsible to repair and maintain the alteration and whether he is responsible to pay for any damage to the building that is caused in any way as a result of the alteration. The strata council may choose to repair the alteration and charge the owner for the cost of the repair, or order the removal of the alteration and charge the cost of doing so back to the owner. Also, the responsibility of future owners to repair and maintain the alteration should also be dealt with in the bylaw.

Other Items to be Regulated

As discussed earlier, judges have strictly construed what constitutes an alteration for the purpose of enforcing a bylaw. For example, in *Buchbinder v. Strata Plan VR 2096 65 B.C.L.R. (2d) 325* the Court of Appeal of British Columbia decided that an aluminum garden shed erected on a limited common property patio was not covered by the following bylaw:

No visible changes to the building's exterior are permitted. These changes include but are not limited to the following: any change which requires approval from the City of Vancouver; changes to the colouring and/or finish of the building's exterior; any additions or deletions of a permanent or semi-permanent nature; enclosures of common and/or limited common property and awnings or canopies.

The shed was not affixed to the building in any way. The Court of Appeal found that the garden shed did not fall within the specific prohibitions of the bylaw. It was found not to be a change to the building's exterior or an addition to or an enclosure of the limited common property. The Court further provided that to give such a broad interpretation to the bylaw would make matters even more difficult for condominium owners trying to interpret ambiguous and generalizing bylaws. As a result, if a strata corporation wants to be able to prohibit or limit items such as sheds or hot tubs, they should be specifically addressed in the bylaws.

Whether your strata corporation should allow alterations, hot tubs, sheds and other items depends on many factors concerning your complex. A high-rise development may make very different choices than a townhouse development. As a result, this is one example where a custom drafted bylaw may be a better option for your strata corporation than adopting the provisions of the Schedule of Standard Bylaws.

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