

Condo Smarts

Headline: Removing Objects From Property
Topic: Bylaws
Publication date: June 20, 2010
Publication: The Province
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Dear Condo Smarts: We're stuck with an old bus on our property. Our apartment strata has an underground parking lot and a back lot for the 2nd car of each unit and visitor parking. The bylaws permit only domestic cars and light trucks, and short term parking of motor homes for up to 14 days in any calendar year. Last year, an owner was given written permission to park a motor home in the back lot for a period of 9 months, with the condition that the bus had to be licensed, operable, and not pose a safety risk to the owners. Now we're in the 10th month, the license has expired, the motor home turned out to be a bus, it smells of gas and weeds are starting to grow from the roof. We've given the owner 14 days notice to remove the bus, or strata have advised that the bus will be removed at the owners' cost. The owner claims we have no authority to remove his personal property from the complex and that he uses it as a motor home, therefore we can't tow it? The owners are concerned for the safety of their personal property and the risk it poses to the building. Surely we must be able to have the bus towed and enforce our bylaws? Strata Council of Nelson Court

Dear Council: The Strata Property Act does give strata corporations assistance in the enforcement of bylaws that strata councils frequently use. Section 133 of the Act is in addition to your bylaws and acts as an enforcement tool. Strata corporation may remedy a contravention:
133 (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including (a) doing work on or to a strata lot, the common property or common assets, and,

(b) removing objects from the common property or common assets.
(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

Section 133 can be used in a number of applications. For example, townhouse or bare land complexes may have single vehicle roadways or lanes. Those roadways and lanes also serve as the emergency access and fire lanes and may not be blocked. As a result strata corporations have bylaws prohibiting parking in the fire lanes, but because the fire lane is on strata property, the enforcement of the bylaw and removal of parked vehicles from the fire lanes must be undertaken by the strata corporation.

Another example that is not as imminent, is where a strata owner installs a satellite dish on the roof top of a townhouse or a highrise wall, and the bylaws prohibit any alterations to the exterior of the building or attachments to the building.

The strata corporation must still comply with the requirements of enforcing bylaws by giving notice of a complaint and providing the alleged strata lot owner or tenant the opportunity to respond to the complaint, either in writing or to request a hearing before they proceed with imposing fines or penalties. If after the notice of allegation is provided to that strata lot they still fail to comply, the next step may be the strata corporation removing the objects from the common property and remedying the damages to the cost of the offending strata

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lot. Because no two sets of bylaws or strata corporations are the same, strata councils need to closely review their bylaws before they consider what action they are taking. If they are considering removing personal property that may be damaged or risk of loss, the strata council needs to ensure they have taken every reasonable step to enforce the bylaw, provide notice to the tenant/owner of the strata lot, and a reasonable period to remedy the violation. The result may still be fines or penalties, but the procedures are still mandatory.

There is a wrinkle in this scenario. The strata council have also potentially violated the bylaws. The bylaws did not give council the authority to grant an exemption to the bylaw. The bylaws only permit domestic cars, light trucks, and RV's for a period of 14 days. At least council had taken a prudent step to establish a written agreement with the owner of the bus. Strata council does have permission to grant exclusive use of common property for a period of up to one year; however, that also has to be within the compliance of the bylaws. Bylaws may grant strata councils some level of authority to accommodate special circumstances; however, caution should be exercised in considering conditional or subjective bylaws. They can easily diminish your strata ability to effectively enforce bylaws. In this strata the council was granted no such authority under the bylaws.

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