

Condo Smarts

Headline: Who owns trees?

Topic: Landscaping

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Dear Condo Smarts: We have an ongoing dispute in our Okanagan strata over trees -- who controls the trees and who can plant trees. Our community is terraced with each lot sold with the understanding there is a direct view to the lake. So some are lakeside lots and others are lakefront lots. Over the past ten years, the trees planted by the developer and trees planted by owners have all grown to the point where many of the homes now have their views obstructed. While everyone is pleased with the privacy and shaded protection the trees provide, they are now in disagreement over the size of the trees and what happened to their views. How does a strata corporation control trees and plantings to permit reasonable use of property, while at the same time not permitting unreasonable obstruction of property use? Mrs. M. Cook

Dear Mrs Cook: Each strata community is unique in its own design, allocation of use of property, designation of property, bylaws, local government restrictions, and even limitations placed by restrictive covenants or building schemes. To answer this question it is first necessary to produce the documents that are filed in the Land Title Registry that pertain to the strata corporation and the strata lots. Then you can begin to understand the limitations or restrictions that exist for each property, if any. In Mrs. Cook's strata, they are a bare land strata with large greenways between each of the terraces that are common property. So it is also going to be important to understand where the trees are actually located. Interestingly, because the bare land lots are quite small, virtually all of the trees are located in this plan on common property, and owners have planted trees randomly around the common property without the consent of the strata corporation. Planting of a tree on common property may be no different

than any other type of alteration that requires the written approval of council. While the impact may not be immediate, Mrs. Cook's strata is a perfect illustration of the impact of alterations over a protracted period of time, which is why it is important for strata corporations to closely control what occurs with planting materials on strata property. The Schedule of Standard Bylaws in the Strata Property Act set out requirements for alterations to common property; however, strata corporations with extensive landscaping or limitations on land use may also want to consider adopting additional bylaws that set out the limitations of planting materials, the mature size of plant materials, location, maintenance requirements, pruning cycles, obstruction limitations, and the procedures for planting or replacing new or existing trees. The same bylaws can apply to strata lots including a bare land strata, and this could also contemplate the impact of plantings on strata lots that would prevent them from becoming a nuisance to other strata lots. Trees are an enormous benefit to the environment and our communities, but over time they can become a hazard to properties if not properly maintained, and a potential nuisance to other strata lot owners. I would recommend that a strata consult with a certified arborist before they take any further steps. Set up a tree management and maintenance plan for your community that will help your community with future budgeting requirements, bylaw amendments that may be necessary, and a long term schedule that contributes to the harmony and sustainability of your community.

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