

Board must enforce all its bylaws

Courts usually support decisions if rules applied to every owner



ROBERT NOCE

Q: Our condominium board allows pets “with permission from the board,” but there are no set criteria as to what type of pets are allowed.

We have brought a small dog into our condominium unit, and one board member told us not to bother asking for permission, because it would be denied. Should there be rules for what pets are allowed? Also, we have noticed that there are various bylaws being broken, but no action is taken by the board, except for trying to enforce the unclear pet clause. Shouldn't the board be treating all bylaw enforcement the same and not targeting one in particular?

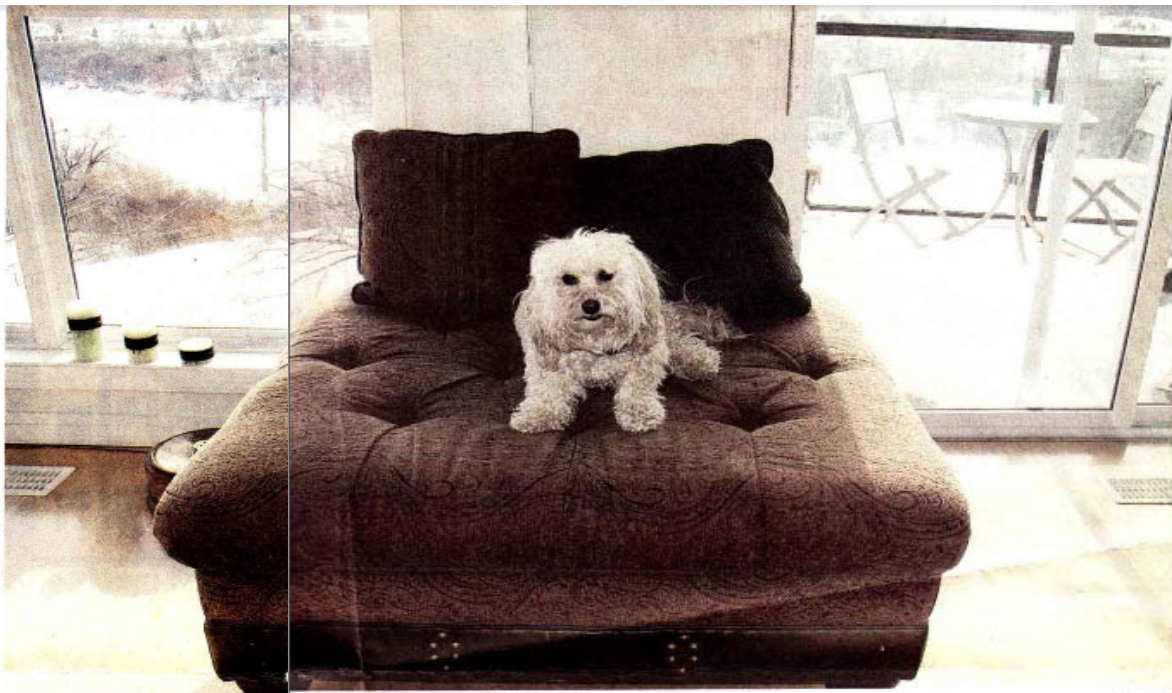
A: There is no legal requirement for the board of the condominium corporation to have a “set criteria as to what type of pets are allowed.” The bylaws are the key document on this issue. However, there is a recent Alberta Court of Queen's Bench decision which suggests that the board must ensure that due process is followed when an owner seeks permission from the board on an issue. Still, Alberta courts generally give condominium

boards a great deal of deference. With respect to your other question, boards do not have any discretion as to which bylaws they will or will not enforce. If the board is aware of a breach, it must act to enforce the relevant bylaw.

Helpful Hint: As long as boards are following the law and due process, and applying the same rules to all owners in line with the bylaws, the courts will generally support a board's decisions.

Q: I have been on my condo board for one year. It is a small board with only three members. What happens when there is no elected board? I have heard that a trustee would take over.

A: Every condominium corporation is required to have a board. The board is the controlling mind of the condominium corporation. If none of the owners and/or tenants (depending on your bylaws) want to sit on the board, then you have a real problem. There are certain provisions under the Condominium Property Act that would allow the condominium corporation to apply to court and have an administrator appointed to run the condominium corporation. I would view the administrator as the last resort and not as an alternative to a board. The cost of getting a court order and hiring an administrator would be significant, causing owners to face increases in



Your pooch may be king of your castle, but you'll have to get approval if you move to a condo that has bylaws restricting pets.

SUPPLIED

their monthly condo fees.

Helpful Hint: All owners have a responsibility to ensure the viability of their condominium corporation. It is incumbent on all owners and/or tenants (depending on your bylaws) to become active in some form within their community.

Q: Who is responsible for repairing a faulty drainage pipe, the owner or the condominium corporation? This is a bareland condominium with 58 duplexes and one single family home.

A: The answer depends on where the drainage pipe is situated. If the repair is made below property owned by the condominium corporation, then that is who will have to cover repair costs. The same would be true if the faulty pipe were located under lands owned by an owner. A review of your condominium plan should assist you in answering this question. You may need to consult a lawyer on this issue.

Helpful Hint: The condominium plan is an important document

for helping parties understand the boundaries of what is common property and what is the responsibility of individual owners. For example, the condominium plan will indicate whether doors and windows are part of the units or are common property.

Q: When I bought my condominium unit, I noticed that the reserve fund was quite low. I called the management company to see why no funds were being allocated to the reserve fund annually. They stated that the owners prefer to keep condo fees low, and are willing to accept a large special assessment for future needs as they come due.

Doesn't the condo board have to ensure that funds are contributed to the reserve fund every year? Can the board members be held personally liable for not making decisions responsibly?

A: First, if the reserve fund is insufficient to meet the future repair and/or maintenance obligations of the condominium corporation, then the

owners will be called upon to pay for those additional costs. The condominium corporation could issue a special assessment or take steps to borrow the money, usually at higher interest rates than individuals are able to obtain from banks. Every condominium corporation is required to conduct a reserve fund study, and I believe that a board that ignores the reserve fund study is not fulfilling its duties to the corporation or the owners.

To answer the second part of your question, board members must exercise their powers and discharge their duties of office honestly and in good faith. If a board member does something, in their capacity as board member, that directly costs the corporation money, then that person can be held liable. It sounds like, in your case, it has been many years of a board simply not being brave enough (or smart enough) to increase condo fees to where they need to be in order to ensure that future maintenance and repair costs will be covered.

Helpful Hint: Anyone planning to purchase a condominium unit should determine the value of the reserve fund. If the fund is low and the building is old, requiring significant repairs and/or maintenance in the future, then you should be prepared to face a special assessment to provide the condominium corporation with sufficient funds to undertake the repairs and/or maintenance obligations.

In my view, it is bad management on the part of the board to keep condominium fees artificially low and not address future obligations of the condominium corporation.

Robert Noce, Q.C. is a partner with Miller Thomson LLP in Edmonton. He welcomes your questions at condos@edmontonjournal.com. Answers are not intended as legal opinions; readers are cautioned not to act on the information provided without seeking legal advice on their unique circumstances.