

BYLAWS Questions and Answers

The following are a few of the questions that were raised after residents reviewed the bylaws and/or attended the information session. The answers are provided by our legal counsel, Todd Shipley and provides an explanation as to why the some of the wording in these sections remain.

1. “Sole Discretion of the Board”

There was concern expressed over the use of this terminology in the Bylaws.

- Yes, decisions are left to the discretion of the Board, however, the Board has to act honestly, in good faith, and in a reasonable and prudent manner in the exercise of its discretion. These are the statutory duties set out in s.28 of the Act that must be followed. Should a Board act in draconian and unreasonable ways the Owners have recourse through the Courts (through s.67) and more practically, through the removal of the Board. Unreasonable Board members tend to get voted out at AGM’s but owners now also have the statutory authority to remove and replace specific Board members before the end of their term.

2. Section 3a i & ii – Duties of the Owners – Page 3

- RE: 3ai & ii - access to the Unit, please remember that you are a bare land condominium, therefore the “unit” is not simply the home or building. Accessing the Unit includes standing a few feet inside or even on the property line, as may be required if there is a need to repair adjacent common property. There already is the right in the Act to access a Unit should there be implied easements (ie., does your sewer system set up that everyone ties into lines located in Unit 47, or do lines cross units? – with the latter there are easements created by the CPA). The section also allows access for the purpose of determining if the bylaws are being followed. An example would of this would be for the corporation to provide an owner 24 hr notice to confirm that they are actually installing water suppression systems, or if you fear that owners are running a commercial kennel operation. If you believe this section will be a concern for owners I can assist with modifying, but I need to have a better idea of the issues or concern.

3. Section 57aii (Noise) – Use and Occupancy Restrictions – Page 29

- Yes, the Board can decide what is too much noise in these bylaws. Before the Owners move from this concept, please consider that disputes between Owners RE noise complaints can get difficult and testy very quickly. By empowering the Board to make the decision the matter is left to persons in a more objective position. Further, it is our experience that requirements in bylaws for decibel count enforcement are problematic as they result in ongoing, expensive third-party monitoring (typically after the matter has really escalated). Having advised both Owners and Corporations on noise issues, it has been our opinion that a Board is best situated to address these matters. The concern in the email is precisely what I advised the Owners during the meeting – owners have to review the bylaws carefully, however, you have to look at the bylaws from multiple perspectives. For noise issues, what do you want the bylaws to

say if you have a neighbor constantly and unreasonably complaining about noise levels at your property (those people sadly exist)? What do you want the bylaws to say if you have a neighbor who has no regard for others as to noise levels from their property (those people sadly exist)? As an Owner (but neither the complainant or the alleged perpetrator) what would you want the bylaws to say in order to ensure a dispute between your neighbours is resolved in an efficient, balanced and economical way (ie., not thousands of dollars spent on 3rd party monitoring and lawyers)?

Board note: West Bear Haven Estates Bylaws are in line with the County of Strathcona Bylaws.

4. Section 57xii – Page 30 – Use and Occupancy Restrictions

This section concerns where vehicles are permitted. We recognize it is difficult for all vehicles to be parked on the home owner's property (driveway or garage) when there are other adult members of the family that own a vehicle. It is also difficult if you are having guests over, there may not be room for everyone to park on the driveway.

A Rule as specified below will be create and shared with all home owners to address the above two issues.

- 57xii: I added this section to allow the Board to control parking on the street. If someone is having a large event at their house, they can get permission for such parking from the Board. **A further alternative is to set out the rules and conditions for such parking in the Rules.** The creation of Rules is now governed by the CPA and the Regulations. Section 32.1(1) of the Act provides:

32.1(1) Subject to the regulations, the board may, by resolution, make, amend or repeal rules respecting procedures used in the administration of the corporation or the real and personal property of the corporation, the common property and managed property.

(2) The rules must be reasonable and consistent with this Act, the regulations and the bylaws.

(3) The rules must not restrict the uses of units.

(4) Subject to the regulations, the board must inform owners and tenants of any rules made, amended or repealed.

(5) If a rule or a proposed rule is inconsistent with this Act, the regulations or the bylaws, this Act, the regulations or the bylaws, as the case may be, prevail.

Rules can be created by the Board, but have to be provided to Owners to be effective, and Rules may be amended ordinary resolution of the Owners. For provision of notice of new Rules please see s.73.6 of the Regulations.

5. Section 58 – Pets – Page 32

- 58 Pets – I have made changes to the section (see attached) which hopefully will be more palatable to some Owners. I kept the section in regarding the ability of the Board to remove a pet (58.e). Therefore, the section does not require the Board's approval of pets, but the Board has the ability to require the removal of a problem animal. I recommend that the Board retain this authority and that you do not limit the Corporation to municipal bylaws – as previously discussed, the Board needs the ability to address a nuisance or problem animal that has not yet escalated to attacking other animals or people. The issue to raise with Owners is to consider what they would want if another Owner or tenant simply does not care to control their problem animal. 58.e also imposes a reasonability standard on the Board (as opposed to sole discretion).

6. Section 59 – One Family Home – Page 32

- The Board cannot define what is a family unit is. This language exists in 90% of the bylaws in AB, except these bylaws are less restrictive than most as we did not include the common prohibition on roomer/boards. The reference to numbers refers to individuals who are not related. Specifically, if a family of 2 parents and 4 kids want to have a grandparent move in with them, these bylaws do not prevent that.