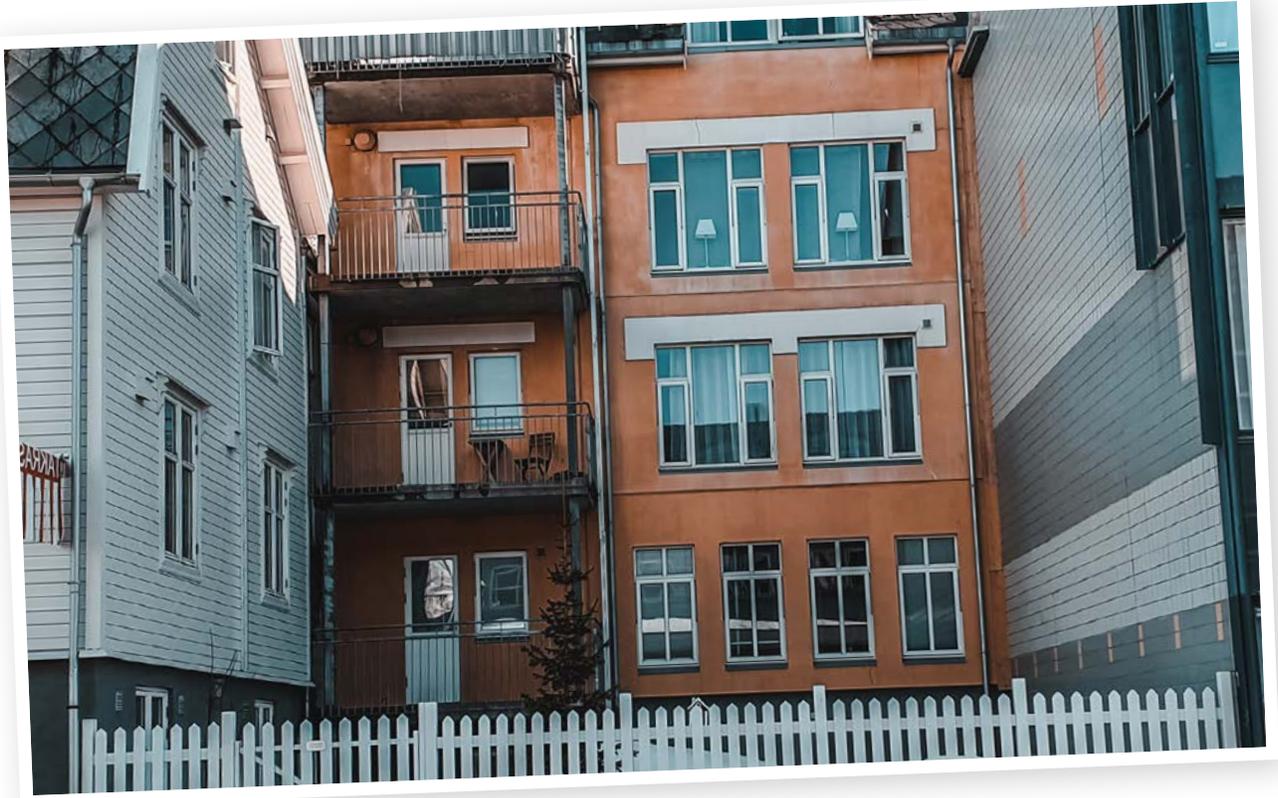


CONDO LAW FOR ALBERTANS

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What a Condo Board can do if bylaws are not followed

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This project was made possible through a grant from Alberta Real Estate Foundation.



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What a Condo Board can do if bylaws are not followed

Bylaws are rules governing the condominium corporation. Every condominium corporation is required to operate according to its bylaws. Bylaws have a broad reach – applying to unit owners, tenants, and occupants. As part of their duties under the *Condominium Property Act*, condo board members have the power to enforce the condominium corporation's bylaws.

Here are some steps that a condo board can take if an owner, tenant or occupant is not following bylaws.

Step 1: Address the matter right away

If a board is aware of a bylaw breach, the board cannot ignore it. Boards have a legal responsibility to enforce the bylaws and meet their obligations under the *Condominium Property Act*.

If a condo board suspects that an owner, tenant, or occupant is not following a bylaw, it should take the matter seriously and address it right away. For example, board members may want to discuss incidents at regular board meetings and agree on a plan to deal with the problem.



TIP

The board should involve legal counsel early to ensure that it is acting according to legislation and condominium bylaws.

Step 2: Gather information

The condo board should record as much information as possible about alleged bylaw breaches. If a condo board needs to take enforcement proceedings in Court, evidence is critical.

Information a board may want to take note of includes:

- How did the board become aware of the breach?
- Who did not follow the bylaw?
- Which unit is involved?
- Was there a single incident or multiple incidents?
- What bylaw was breached?
- When did the breach occur?
- Where did the breach occur?
- How did the breach occur?
- Is there any physical or photographic evidence of the breach?
- Are there any witnesses to the breach?



TIP

If an expert is required to investigate an incident, the board should determine who is responsible for expenses beforehand and consult with a lawyer regarding right of entry.



TIP

If the board receives a complaint about a bylaw violation from other people, it should take note of the person making the complaint. The board must ensure that any collection, use, and disclosure of personal information related to who made the complaint, who is the subject of the complaint or witnesses follows privacy laws.

Step 3: Consider your sanction options

When gathering information on an alleged bylaw breach, the board should determine if its bylaws are legally enforceable and whether it can impose a sanction related to the bylaw breach. To be legally enforceable, a bylaw must be properly registered and filed with the Land Titles Office.



TIP

Condominium corporations cannot delegate the decision to issue a sanction but may delegate other steps involved in issuing a sanction. For example, a condominium corporation can delegate the task of serving notices of sanctions to a condominium manager. But the corporation cannot delegate the decision to issue a sanction to a condominium manager.

If a board is thinking of imposing a sanction for a bylaw breach, it should consider the following:

- What does the bylaw say about imposing sanctions for non-compliance?
- Does the bylaw say that a sanction can be imposed?
- If so, what is the sanction?
- If there is a monetary sanction, does the bylaw state the exact amount of money or the range of money that can be charged for breaching the bylaw? Is the amount lower than the restrictions set out in the *Condominium Property Regulation*?



TIP

You can check whether the bylaws are properly registered and filed on the Condominium Additional Plan Sheet (CAD). The CAD will note any additions or changes to the bylaws. You can obtain a copy of the CAD at your local registry agent or through the Alberta Land Titles Spatial Information System (SPIN 2) (<https://alta.registries.gov.ab.ca/spinii/logon.aspx>).

Monetary sanction restrictions

Monetary sanctions cannot exceed the restrictions set out in the *Condominium Property Regulation*:

- If a person breaches a bylaw for the first time, then the condominium corporation can impose a sanction of up to \$500 (or a lower amount set out in the condominium's bylaws).
- For the second and following instances of non-compliance, the condominium corporation can impose a sanction of up to \$1000 (or a lower amount set out in the condominium's bylaws).



EXAMPLE

A condominium's bylaws states that cannabis smoking is not allowed in units. A condo owner breaches the bylaw for the first time by smoking cannabis in their unit. The condominium corporation can impose a sanction of up to \$500 for breaching that bylaw for the first time. If the condo owner continues to breach the bylaw by smoking cannabis in their unit, the condominium corporation can impose a sanction of up to \$1000.



Step 4: Communicate with the parties

Sometimes a prompt, friendly reminder is enough to stop someone from breaching a bylaw. If a tenant or occupant is breaching a bylaw, the condo board or its condo manager may want to send a written letter directly to the person and provide a copy to the unit owner. If an owner is breaching a bylaw, the condo board or condo manager can send the written letter directly to them. In the letter, the condo board or condo manager may want to:

- Include specific details of any incidents
- Refer to the bylaw that is being breached
- Give a specific, reasonable time period to solve the problem



TIP

With bylaw breaches, keep a paper trail of all communication and warning notices in case a dispute ever goes to Court.

Step 5: Send a Notice of Proposed Sanction and/or Notice of Sanction

Notice of Proposed Sanction

If the problem is not resolved, the board may follow up with a Notice of Proposed Sanction before it imposes a sanction for breaching a bylaw. The notice should be professional in tone. The notice must contain information such as:

- Unit number associated with the bylaw breach
- Name of person subject to the proposed sanction
- Bylaw provision not complied with
- The rule that has not been complied with (if there is a sanction in the bylaws for not complying with the rule)
- Date and time of non-compliance, if applicable
- The rule that has not been complied with (if there is a sanction in the bylaws for not complying the rule)
- Relevant information on the failure to comply
- Maximum monetary sanction for non-compliance (if applicable)
- Description of corrective or other action, if any, that must be taken
- Deadline for taking the required actions or providing a written response to the notification. This deadline must be at least three days (not including holidays) after the service of the notification.

Notice of Sanction

If the deadline to reply to the notice of proposed sanction has passed and the corporation is not satisfied with the response or actions (if any), then they can impose a sanction. The notice of sanction must contain the following information::

- The amount, instructions and deadline for payment (for monetary penalties)
- The description, date and time at which the penalty comes into effect (for non-monetary penalties)
- Reasons for issuing the sanction
- Date of the board resolution approving the sanction



TIP

When imposing a sanction on a tenant, the corporation must provide notice of the proposed sanction and notice of sanction to the unit owner.

Service of a notice of sanction is effective:

- when the receipt of recorded mail is signed
- seven days after the document is sent by ordinary mail or
- 24 hours after the document is sent electronically

The board may want to see if any notices are acknowledged by the owner, tenant or occupant before taking any further action. If the owner, tenant or occupant has failed to abide by the bylaw and/or failed to pay the monetary sanction, then the board has the option to take enforcement proceedings under the *Condominium Property Act*.



TIP

Even if a problem is resolved without any further action, the board should keep details of bylaw incidents including information such as:

- incident dates
- who was involved
- who was contacted to resolve the problem
- how the problem was resolved



Step 6: Consider court action

As a last resort, a condo board can consider proceedings in Provincial Court or the Court of King's Bench to recover damages and/or unpaid monetary sanctions. At a hearing, the corporation must satisfy the Court that all bylaws relating to the problem were properly enacted and that the bylaw was breached. The Court can do one or more of the following:

- Give judgment for the amount being sued for or another appropriate amount in the circumstances.
- Grant an injunction or other relief (King's Bench only).
- Dismiss the action.
- Make a cost award.



CAUTION

The board should seek advice of a lawyer who is familiar with condominium law. The board should have all of the background information and correspondence ready. The board will help their lawyer do their job by being well organized regarding the facts of the matter.



Resources

Condo Law for Albertans
www.condolawalberta.ca

Lawyer Referral Service
www.lawsociety.ab.ca/public/lawyer_referral.aspx
1-800-661-1095

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This booklet was produced for the Condo Law for Albertans project by the Centre for Public Legal Education Alberta. For further information about condominium law in Alberta, visit www.CondoLawAlberta.ca.

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