

THE IMPORTANCE OF BEING EARNEST WITH PROCEDURE...WITH BYLAW ENFORCEMENT PROCEDURES

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Strata Alert: The importance of being earnest with procedure

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Getzlaf v. The Owners, Strata Plan VR 159, 2015 BCSC 452

The procedure for enforcing bylaws under the *Strata Property Act* is very simple and easy to follow. Section 135 of the Act is only 191 words long. If the strata follows that procedure to the letter, it becomes very difficult for an owner to challenge the strata's bylaw enforcement decisions in Court.

In this case the petitioner bought a lovely ground floor corner unit surrounded by lush gardens in 2010. These gardens were not only beautiful to behold, they also afforded a fair bit of privacy to the unit.

The gardens sat on a concrete slab overtop of a membrane. In 2013 the strata received an engineering report confirming that the slab membrane needed to be replaced. Water leaking through the slab was causing corrosion, so the engineer advised the strata to replace the slab membrane and the landscaping. It turned out that the landscaping had actually contributed to the membrane damage.

The removal of the landscaping resulted in a loss of privacy for the unit owner. As a result, he asked the strata for permission to build a fence around his patio. His request was denied. The council observed that the area was common property. The council was also concerned about the impact of the proposed alteration on the repairs and the new membrane.

The owner decided to install the fence anyway. The council followed the procedure under s. 135 of the Act, and advised the owner that if he did not remove the fence, he would be fined. The owner refused to remove the fence and responded by telling the strata that he would also be constructing a gazebo on the patio. His personal motto must have been "Go Big or Go Home".

The owner then applied to challenge the strata's actions in court, arguing that the strata's decisions with respect to the membrane repairs and his proposed alterations were significantly unfair to him under s. 164 of the Act. The petition was dismissed and the strata was given judgment for the fines, plus costs.

While the judge had sympathy for the owner, the court ruled that his personal interests had to give way to the best interests of the strata as a whole. The repairs in this case were necessary and almost unanimously supported by the ownership. The court upheld the strata's decisions largely because the strata had taken care to follow the proper procedures, not only for approving the

membrane repair, but also for enforcing its bylaws. One important fact in this case is that the owner was granted a hearing to air his concerns which he refused to attend.

This case highlights the importance of following proper procedures, especially when enforcing bylaws. The outcome of this case would likely have been different had the strata failed to follow proper procedure. I cannot tell you how many times I have come across cases where an owner has asked for a hearing and the council has denied the request because "there is nothing to discuss!". Even when there is nothing left to discuss, the council still has a legal duty to listen.