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# Common Element Rules – A Corporation’s Superpower

**T**he world can change quickly, as we have all realized first-hand over the last two years. The governing documents of a condominium, however, are not always as quick to respond to change.

Each condominium corporation is governed by the *Condominium Act*, Declaration, Bylaws and Common Element Rules (Schedule “A” of the Bylaws).

The *Condominium Act* relies on legislative change in order to change how condominiums operate.

Many of the important provisions which govern how a unit owner lives in their unit are dictated by the Declaration. A Declaration requires unit owners owing 80% of the common elements to vote in favour of a change to amend the declaration, and this is a high bar to clear.

The Bylaws contain provisions in respect of the management of the condominium property and the Board. As such, the Bylaws can impact how a condominium corporation is run. Unit owners owing 66 2/3% of the common elements must vote in favour of a change to the Bylaws in order to amend the Bylaws.

Due to the difficulties that can arise from trying to amend a corporation’s Declaration and Bylaws, condominium Boards at times can feel frustrated that they cannot address issues that arise in their condominium or feel that they lack the ability to make changes that are enforceable.

**This is where the Common Element Rules may be able to help. Common Element Rules are the provisions which govern the use of the common elements, i.e., everything outside of a condominium unit.**

Often in a condominium when there are issues, it involves the common spaces shares with other owners and tenants.

Section 24 of the *Condominium Act* defines what the common element rules are and sets out the method to change them. Section 24 provides the following:

24 (1) The by-laws may provide for the making of rules by the owners respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

(1A) The board of directors may propose new rules or amend or repeal existing rules respecting the use of the common elements to promote safety and security of the members and property or

to prevent unreasonable interference with the use and enjoyment of the units and common elements.

(1B) A rule proposed to be made, amended or repealed by the board of directors is not effective until such time as the board provides the members of the corporation with notice of the proposed rule in the prescribed form, which notice must include a form to allow the unit member to object to the rule.

(1C) Where the board does not receive a notice of objection within ten days of delivery of the notice of rule, the rule is in force until it is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(1D) Where a board receives a notice of objection from an owner, the proposed rule has no force and effect unless the rule is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(1E) A rule that is not ratified at a meeting pursuant to subsection (1C) is of no further force or effect.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

(3) The rules shall be complied with and enforced in the same manner as the by-laws.

As per Section 24(1C), unless a proposed common element rule is objected to within 10 days of owners being provided with notice of the proposed rule, it is in effect until ratified at the next meeting of owners. This allows a rule to be proposed, and in effect quickly.

While limited in scope, the Common Element Rules can allow a Board to respond to concerns and issues in their condominium. They can be used to address public health concerns, such as requiring masking in the hallways. Further, they can be used to clarify existing rules and expand on the scope of common element rules, perhaps addressing visitor parking rules, or balcony rules.

Where a unit owner is breaching the Common Element Rules, the matter can proceed to a Condominium Dispute Officer for adjudication, as opposed to through an Arbitrator. Being able to seek enforcement through the Condominium Dispute Officer can be faster and more cost effective when compared to arbitration, again making Common Element Rules an appealing way to address appropriate concerns in a condominium.

It is always recommended that before making a change to any of the condominium corporation documents, including the common element rules, legal counsel is consulted. That said, as there are no registration requirements, a Board might consider getting drafting advice from legal counsel and then proceeding with the notice to owners themselves, in order to keep costs down.

Changing Common Element Rules can be a superpower for a Board, to allow them to make changes to the way owners and tenants interact and use the common elements, while keeping costs to the corporation low and engagement with the owners high. ■



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