

II. WHAT ARE BYLAWS AND RULES? [§ 11.3]

A. BYLAWS FOR GOVERNANCE [§ 11.4]

A strata corporation must have bylaws (s. 119(1) of the Act). In past decades, real estate strata advertisements included comments such as, “Best of all, no bylaws”. This claim is impossible, but does reflect the historical notion that bylaws were “bad”. They are not “bad”, and they are necessary, for reasons set out at “Why Have Bylaws and Rules?” in this chapter.

Section 119(2) states:

The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

The language is very similar to that in the previous legislation, except maintenance is now included. Rules didn’t really change with new legislation; s. 125(1) states, “The strata corporation may make rules governing the use, safety and condition of the common property and common assets”. Bylaws govern all property, and rules govern common property, not strata lots.

There has been case law that seeks to interpret how far a strata corporation can go when addressing use issues as part of the governance of a strata lot. For example, can a nonresidential lot be prohibited from a certain trade, by bylaw? Can the number of persons living in a residential strata lot be restricted by number? Are those use and enjoyment issues, or something else? How far can one govern, or perhaps more succinctly, how much can a person be restricted? While the courts may not have finally determined just how far a strata corporation can go, what is clear is that the bylaws and rules governing owners of strata lots can be more restrictive than municipal bylaws governing owners of non-strata businesses and single-family homes, who are unlikely to face restrictions on the basis of noise, pets, age, parking, and so on—the issues that are typically the subject of strata corporation bylaws and rules.

B. DIFFERENCES BETWEEN BYLAWS AND RULES [§ 11.5]

Bylaws govern strata lots, common property (including limited common property, which is just a form of common property; see

chapter 4 (Common Property and Common Assets)), and common assets. Rules govern only common property (including limited common property) and common assets. A bylaw takes precedence over a rule, so, if a rule is made that appears to govern common property in a manner inconsistent with a bylaw, the bylaw will govern (s. 125(5)). Further, if a rule appears to govern a strata lot, it will be invalid.

There are some similarities between bylaws and rules. Neither is enforceable to the extent that it contravenes the Act, the regulations, the *Human Rights Code*, R.S.B.C. 1996, c. 210, or any other enactment or law; destroys or modifies an easement created under s. 69 of the Act; or prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage, or otherwise dispose of the strata lot or an interest in the strata lot (with the exception of posting of realty signs and certain age restrictions) (ss. 121(1) and 125(2)).

While strata corporations must have bylaws, they need not have rules. Bylaws can be amended by addition or deletion to the Schedule of Standard Bylaws by the passage of a 3/4 vote resolution of the owners (s. 128(1)). Rules are created by the strata council, subject to majority ratification of the owners (s. 125(6)). Bylaw amendments have no effect until they are filed in the land title office. In general, rules take effect immediately and continue once ratified. There is no provision to file a rule in the land title office, but rules must be set out in a written document that is capable of being photocopied (s. 125(3)). The regulations and the Schedule of Standard Bylaws set out different maximum fines for bylaws and rules (see “Section 132 (Maximum Fines)” and “Fines” in this chapter).

C. SCHEDULE OF STANDARD BYLAWS [§ 11.6]

Section 1(1) of the Act defines “Standard Bylaws” to mean “the bylaws set out in the Schedule of Standard Bylaws”. Section 120(1) provides, “The bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office”. On deposit of the strata plan, an owner developer may file bylaws that differ from the Standard Bylaws (s. 120(2)).

The Standard Bylaws comprise a total of seven divisions and an aggregate of 30 bylaws. The seven divisions are:

- (1) Duties of Owners, Tenants, Occupants and Visitors;
- (2) Powers and Duties of Strata Corporation;