



On the home front

*Before buying a house,
make the appropriate inquiries with
municipal authorities.*

by Gail H. Forsythe, LL.M.

You are new to the community and rely on a realtor to help you find the perfect home. Your vision of the ideal home includes a "room with a view," low maintenance, no yardwork and a high degree of privacy for you and your four-legged canine friends. Due to the high cost of living in the area, you decide to operate a grooming business from your new residence. All is well, and you settle in quickly. The neighbours seem pleasant and you can hardly keep up with the demands of your grooming business.

However, your world is shattered when you receive 'unfriendly' visits from: a representative of the condo association; the local municipal-bylaw-enforcement officer; and your neighbour. To top it off, the "view" you valued so much when you purchased your new home is being destroyed by a new development. Your realtor assured you there would be no new construction in this area for years and that the home would be perfect for you and your dogs. What went wrong?

Strata complex vs. private residence

One of the first decisions a prospective homeowner needs to make is whether the new residence will be a "freehold" or "strata" title – legalese for "house" or "condo," respectively. These options represent lifestyle choices. Generally, people who purchase homes enjoy the autonomy of making decisions about their property. They also assume the obligations associated with upkeep and yardwork.

On the other hand, condominium purchasers are relieved of these direct burdens. The condominium association or strata corporation assumes the responsibility for exterior and yard maintenance. The association is charged with the responsibility of ensuring that the strata owners adhere to the bylaws that govern the complex. Strata bylaws are similar to a contract with the owners of the units in the complex. They are binding and must be honoured. For example, if the bylaws prohibit pet ownership, then purchasers cannot expect to have pets while residing in their units. The condo association would have a legal duty to enforce the bylaws, demand removal of the pets – and, failing removal, commence court action.

In this case, had the prospective owner reviewed the strata bylaws, it would have been clear that pet ownership is not possible. Most jurisdictions have legislation that requires sellers of strata units to disclose the most recent strata bylaws within a specific period of time, so that the buyer can make an informed purchase. Had the purchaser paid attention to this information, it would have been evident that the strata complex was not a good match for the buyer's lifestyle. Now, the purchaser must dispose of the dogs or move elsewhere.

An issue arose in B.C. when a strata resident wanted to keep her pet for medical-therapy reasons. Under the *British Columbia Human Rights Code*, such an exemption was permitted in the case where the condo resident obtained medical evidence to document that she had a medical disability and the dog was a key part of her medically prescribed therapy. To evict the condo resident would have been to discriminate against her on the basis of failing to accommodate a medical disability.

City or county bylaws

Under provincial law, municipalities and counties can establish zoning restrictions and land-use bylaws. The local authority also has the jurisdiction to determine the number and type of animals that can be kept on a property. Some rural jurisdictions have more onerous restrictions regarding numbers of dogs than urban jurisdictions.

It is imperative that a prospective purchaser make the appropriate inquiries with the local municipal authority before agreeing to purchase property. How many dogs may be kept on the property? Do puppies count? If so, at what age? Must the dogs be licensed? Can I operate a hobby kennel or business out of my home? If so, which type of business? What are the criteria that must be met to obtain an in-home business licence? What is the cost of a licence? When must it be renewed?

It can be a considerable shock to invest in a home renovation or purchase, only to discover that you must close your in-home business or rid yourself of a number of dogs. Although a realtor may be able to provide general information, it is always prudent to do your home-

work before making significant commitments. One approach is to draft the offer to purchase as "subject to" certain bylaw and zoning requirements being satisfied by an agreed date. You or your lawyer can then make the appropriate inquiries. A lawyer's advice is an essential investment when making the most significant purchase of a lifetime.

Relying on representations

If the purchaser made it absolutely clear to the realtor that she was relying on the realtor to locate property with critical characteristics (a view), then the purchaser may have a case against the realtor in negligence. The purchaser would need to demonstrate that the realtor knew of the purchaser's criteria, that the purchaser relied on the realtor, and that the realtor should have reasonably known that the criteria could not be met. The purchaser may be able to hold the realtor accountable for any financial loss associated with finding a comparable replacement property to enjoy a "room with a view."

The neighbour

The saying that "good fences make good neighbours" is a well-known and wise statement. If a pet is permitted to roam, be destructive or noisy, a neighbour may be up in arms before too long. In the case of a home-based business, too much traffic or congestion can be an incentive for an 'anonymous call' to a bylaw officer. Assuming that one can operate contrary to a municipal bylaw, or without licences, is foolhardy.

In summation, be prudent. Engage a reputable realtor. Retain legal counsel. Above all, make the right inquiries so that you and your dogs can enjoy your dream home for years to come.

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