



There's no place like home: Obligations of Strata Corporations to accommodate aging residents

It is estimated that by 2031, one in four Canadians will be over 65 years of age. Not surprisingly, Canada's changing demographics are generating new considerations for the housing market. According to recent statistics, approximately 93% of adults aged 65 years and older reside in private households, and the proportion of older adults living in their own homes is on the rise. For Strata Corporations, this trend raises important issues respecting an older resident's ability to modify her surroundings to meet her changing needs, and in turn, a Strata Corporation's obligation to accommodate that change – particularly when the change involves modifying the common property. Consider the following scenario:

Mary is 91 years old and has lived in her apartment-style strata complex for over thirty years. Over the past five years, Mary has encountered mobility challenges and she now uses a walker most of the time. Although her building has an elevator that she uses to access her suite, the elevator is located up a small flight of stairs from the lobby. Mary has repeatedly asked her Strata Council to install a ramp that would provide additional access between the lobby and the elevators. At a Special General Meeting of the Strata Corporation, a ¾ vote resolution approving the proposed ramp installation and requisite funding was defeated. Can the Strata Council deny Mary's requests?

This scenario was considered by the British Columbia Human Rights Tribunal in the case of *Mahoney obo Holowaychuk v. The Owners, Strata Plan NW 332*, 2008 BCHRT 274. In this case, a human rights complaint was filed against a Strata Corporation for discrimination with respect to a service customarily available to the public on the basis of physical disability under section 8 of the *Human Rights Code*. At the hearing, evidence was presented that the complainant's congestive heart failure, degenerative disc disease and osteoarthritis precluded her from using the lobby stairs without serious difficulty and safety risks. The Strata Corporation argued that the evidence

presented only established that the complainant owner was "subject to the normal aches, pains, and limitations of old age," and in any event, constructing the ramp would cause undue hardship due to its prohibitive construction costs. The Tribunal disagreed. According to the Tribunal, the complainant had a disability for the purposes of the *Code* and the stairs between the lobby and the elevators adversely affected her ability to enter and leave her suite. The Tribunal also found that although the estimated costs involved with constructing the ramp were significant, the Strata Corporation did not establish that it could not accommodate the complainant without incurring undue hardship on a balance of probabilities. In the end, the Tribunal ordered the Strata Corporation to cease contravening section 8 of the *Code* and to take steps to install the ramp sought within six months of the Order. The Tribunal also made an Alternative Order requiring the parties to attend a Tribunal-assisted mediation if the steps ordered to install the ramp could not be fulfilled.

As recognized by the Tribunal in the above case, cost is one factor that the Tribunal may consider when assessing undue hardship and a Strata Corporation's obligation to accommodate the alteration request. Although not evidenced in this case, specific factors that may be considered in establishing undue hardship may include: insufficiencies in the Strata Corporation's budget or contingency reserve to fund the proposed alteration; owners' inability to afford a special levy (e.g. fixed income); adverse impacts of the alteration on other owners or occupants; or the proposed alteration's failure to meet city building requirements.

Whether or not a Strata Corporation will be expected to accommodate a resident's proposed alteration to common property depends on the unique facts of each case. However, in light of the increasing trend towards living at home longer, Strata Corporations can expect to receive more of these requests in the coming years.

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