

## A Legal Perspective



### Overview

- The issues concerning aging in our co-op communities generally begin in the community.
- Likewise, the primary issues are not “legal” in nature.
- Rather, the primary issues are set by the co-op’s attitudes, beliefs and goals which are then translated into policies.
- Those policies must of course comply with law and contractual obligations of the co-op (typically being operating and/or loan agreements with government agencies) but so long as that is the case, it is entirely up to the co-op to determine the policies.
- Those policies then determine the co-op’s course of conduct.
- The legal system then provides a variety of tools to ensure that there is reasonable compliance with the policies that the co-op members have agreed to live by.

### **Co-operative Association Act and the rules, occupancy agreement and policies of a co-op**

- Under the *Co-operative Association Act*, co-ops adopt rules and an occupancy agreement, which are then filed with the Registrar in Victoria.
- The rules establish the overall legal framework of the co-op as an organization. The occupancy agreement establishes the legal rights and obligations of the member as a tenant of that organization.
- Under the rules, the co-op adopts policies which deal with specific issues that that the co-op wants to address.
- Under the occupancy agreement, all members are obliged to comply with the policies.
- The legal system can then be used to assist in the enforcement of the rules, occupancy agreement and policies.
- The most common issues under those legal documents for aging members are over housing and safety concerns.

## **Over housing policies**

- Most operating agreements and loan workout agreements require the co-op to have an over housing policy.
- Even if those agreements have now expired, most co-ops still want to address the issue of making the best use of their resources and will want an over housing policy.
- The law is only as good as the policy itself is. An unworkable, uncertain or poorly structured policy is difficult to enforce.
- A good policy is enforceable at law.

## **Safety concerns**

- These are usually the result of an incident, often involving cooking or smoking.
- Rules – Rule 5.2[b] – Conduct detrimental – Includes causing or permitting damage to the unit or worse.
- Occupancy Agreement – Section 10.03, Liability for Damage – The member is liable to the co-op for all such damage.
- In almost every case, there is no desire to have the member removed but rather a desire to help protect the member and the rest of the co-op.
- The issue is then often exacerbated by governmental and/or family indifference.

## **What to do at that point?**

- Communication and formulation of a strategy is first and foremost. The legal tools, as discussed, are secondary.
- If unsuccessful with that strategy, the last resort is the threat, and if necessary the implementation, of a termination procedure under rule 5 of the rules for conduct detrimental or for breach of the occupancy agreement or policies.
- That may even trigger a solution from government agencies or family.
- The procedure under rule 5 is detailed and requires due notice to the member to cure a breach, failing which there is a formal board meeting and appeal to the general membership.
- That process has been designed to be fair and to prompt effective and reasonable solutions at any point along the way.

## Human Rights Code

- Section 10(1)(a) of the *Human Rights Code* of British Columbia provides:

*Discrimination in tenancy premises:*

*A person must not*

*(a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant.....*

*because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or lawful source of income of that person.....*

- In the cases that have been heard by the Human Rights Tribunal, they have expanded upon the wording of this section by saying that there is a “duty to accommodate” a person with a “disability” unless that causes “undue hardship” to the co-op.
- Likewise, if an aging member is seen as having a disability, then the co-op will have a duty to reasonably accommodate that member.

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