

Condo Smarts

Headline: Phased Developments

Topic: Phased Stratas

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Dear Tony: In March we bought a townhouse on Vancouver Island in a new development. We requested the normal documents and forms that are recommended by the realtors, but we overlooked one significant issue. The strata is a phased development. There are actually 8 phases to our development, and we purchased in the 7th phase which had already been sold by the developer in 2014. Our strata had a town hall meeting last week to talk about major construction that is coming up for the first phase of the development. The first phase is 8 years old and requires a new roof. Turns out there was a design/installation defect to the original roof, and it needs to be replaced before winter at a cost of \$126,000. The construction doesn't bother us, but we're embarrassed that we didn't realize this was a phased strata plan, nor did we understand the impact of buying into a phased plan and how that could impact us financially. We are both retired professionals and did everything right and still managed to be exposed. Is there any way of easily finding out if a strata is a phased plan?

Mark & Gilliam C.

Dear Mark & Gillian: The best way to find out if a strata is a phased development is to obtain an official copy of the registered strata plan from the Land Title Registry (LTR). The first page of the plan, or each subsequent phase will identify which phase you are viewing. Request the complete plan as usually filed, not just your phase to ensure you have all of the information. The Strata Plan General Index at the LTR will also list the phases and when they were deposited. Developers will often consider developing in phases so they manage the construction and sale of units over an extended period of time. Phases may be necessary for financing or to control the rate of development and sales. It is not always feasible or economical from a development perspective to complete all the construction when a

development may exceed several hundred units, and incorporate items such as golf courses and club houses.

The *Strata Property Act & Regulations* treat phased developments much in the same manner as a new strata. There are minimum requirements for disclosure by the developer of what they are selling the first purchaser, budget information, property conditions and easements, allocation and use of common property and the development of common facilities, such as swimming pools and recreation and centers, and the disclosure of the phased development, the intended number of units or phases to be built and a phasing schedule.

Unlike a new strata developed in a single project, phases also have some limitations around bylaws. For example, until the last phase of a development is complete, if the developer has chosen not to proceed or has missed their phasing schedule, a strata is not permitted to adopt bylaws that apply to developer marketing, rental, pet or age restrictions, without the written consent of the owner developer. Phased developments are an eye opener to most strata buyers.

Once a phase is filed in the Land Title Registry it is part of the strata corporation. If you buy into a phased development and there is an assessment against an earlier portion of the phased development, it becomes an assessment of the strata corporation. There may be rare circumstances where a phase is possibly a separate legal section as designated in the bylaws because it was solely a commercial entity, but that still makes it part of the strata, with some limited liabilities.

You may also have the situation such as yours where a new phase is still covered under the 5 year portion of the warranty, but the warranty for the previous phase expired and now owners are paying for the costs.

As each phase is filed, and either 6 months have passed or 50% of the units have been sold, the developer is required to hold an Annual General Meeting (AGM) of that phase to elect 2 additional council members and for the strata corporation to approve an amended budget for the balance of the fiscal year to include the operating costs and contingency contributions. This is specifically referred to as the Annual General Meeting of the phase as a strata is only permitted to amend their annual budget at an AGM, and the developer is required to provide records and documents regarding the phase at the AGM of the phase to the strata; however, this does not change the fiscal year of the strata corporation without a 3 / 4 vote resolution of the owners at a general meeting.

When in doubt about the status of a phased development, read the disclosure statement and all amendments filed with the Superintendent of Real Estate for BC, and review all bylaws, and the strata plan of the strata corporation filed in the Land Title Registry.

