

Condo Smarts

Headline: Resolving Disputes between Sections

Topic: Sections

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Dear Condo Smarts: Thank you for the recent series on "sections" in condo smarts. Your previous article on allocating expenses has already led to a satisfactory solution in our rather complicated strata on a security expense; however, we still have an unresolved issue regarding the use of the parking and waste management. The property in the BC Interior consists of an older residential condo units known as section 1, retail commercial units known as section 2, and the restaurant/pub known as section 3. There is an elected council of the corporation, and separately each of those people are elected or represent their respective executive councils on their sections. The real problem is a dispute between the restaurant, retail and the residential sections. As the council members of each section also serve on the council of the strata corporation, we find ourselves in an ongoing conflict as to whose interests we are acting on behalf, especially when the parking issues also include the strata corporation collectively. Our manager has tried to find a solution, but we find he has taken the side of the residential section, leaving the retail and restaurant owners at a disadvantage. There is an unfair allocation of parking spaces that leads to constant confrontations between all the parties and it's only a matter of time before we end up in the courts. What are the options for strata owners to pre-empt a lengthy and costly court battle? JB Ferris

Dear JBF: If a strata corporation has a genuine interest in resolving a dispute, there are certainly options. The parties can enter into a mediation process that could eventually determine the use and administration of the parking. Likewise it could be a mediation/arbitration whereby if the parties cannot agree, the appointed arbitrator can impose a ruling. At the outcome of the mediation, if the agreement is within the prescriptions of the legislation, each of the sections and the strata corporation are in a position to ratify the terms and conditions of the agreement. The parties in the mediation will come to a proposed agreement that results in a memorandum of understanding created by the mediator. If there are monetary, property, or liability concessions, the strata corporation and each of the sections may be required

to ratify the agreement by a three quarters resolution. A likely solution is that a proposed bylaw amendment would address the terms and conditions of the agreement. The bylaw, is then ratified by the corporation and each of the affected sections by three quarters resolution. As in all disputes, before you proceed, collect and investigate the facts and evidence. In JBF's strata it will be necessary to collect and review all of the registered documents including the strata plan, bylaw amendments, and changes in allocation of property that were undertaken by the developer or the strata. Their strata plan does not delineate a different allocation of use for residential or non residential for parking and it is all shown as common property. Over the years, the strata corporation has divided parking areas into secure residential and unsecured non residential areas where the residential section has a significant number of parking spaces that are not in use, and the commercial sections have a serious shortage of parking. When the division was created by the strata corporation, the parking allocations were appropriate, but the strata corporation's needs have since changed, legislation has changed, and the neighbourhood has changed significantly. Before the strata corporation and separate sections vote on a proposed agreement or bylaw for administration of the parking, it would be important for each section to have separate legal advice on the proposed agreement. Remember, sections are separate legal entities and should seek independent legal advice. Register now for a public survey on dispute resolution for strata corporations at: <http://www.bcstrata2011.malatest.net/> being conducted by Housing Policy Office of Housing and Construction Standards.

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