

Condo Smarts

Headline: Fraud

Topic: Fraud

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Dear Condo Smarts: An owner brought the recent condo fraud in Ontario to our attention and wanted to know if our money was safe, and if the strata corporation had our funds protected. Just to give you a bit of profile, our 327 unit strata holds almost one million in reserve funds and our annual budget is just under two million dollars. Five years ago, our special levies were an additional eight million for major repairs, so the amount of money that is controlled by our strata corporation is quite significant. Our strata council did have some questions relating to the report and hope you could provide us with some advice on protecting our risks. We certainly do not want to end up with the same type of losses. The Strata Council of Canterbury Court

Dear owners and councils across BC. Vigilance is by far the most valuable service you can provide to your strata owners. In the Ontario case, the president of a property management company is alleged to have executed a sophisticated criminal fraud. The actions vary from fraudulent filing of bylaws permitting the manager to take out unauthorized loans against the property, construction fraud, bid fixing by company owned contractors and fraudulent documentation all for the alleged purpose of a substantial theft of funds. The losses may exceed \$20 million. So has this happened here? Yes, there have been some significant losses prior to the Strata Property Act and Strata Management Licensing requirements under the Real Estate Services Act. The risks were just as high with some substantial losses and frauds exceeding \$1 million in values.

So what's different? The legislation plays a significant role in the protection of our property and assets. Under the Strata Property Act we cannot borrow funds against common property of the corporation, therefore, we are not permitted to secure or mortgage the common property. A simple bylaw is also not sufficient for a strata corporation to borrow funds. To borrow funds the strata corporation must first pass a ¾ vote at an annual or special general meeting. Generally the strata corporation secures the loans on an assignment of unpaid strata fees or special levies. But how does that money get handled once the loan is

approved? For many lenders, neither the strata corporation or the manager ever handles the funds. The loan is approved for a specific scope of contracted work and the lender issues the approved funding directly to the agreed contractor as the work progresses. This limits the costs to the strata as they only draw the loan funds as the work proceeds, and the lender controls the funds to ensure they are applied only to the agreed and approved scope of construction. If there is any other type of agreement on the distribution of loan funds, your strata council should seriously review the conditions of the loan, who has access to those funds, and why.

So what if you have a \$5 million special levy and handle your own funds? This is where a strata council must be vigilant, whether you are self managed or retain a strata manager. It is crucial that financial statements, bank statements and loan statements are issued and reviewed by the strata council each month. The licensing requirements for strata managers has added another layer of scrutiny over our industry, and regulation over the activity of managers, but if your funds disappear, the insurance, limited to \$100,000 per strata in the event of a loss of trust funds held by a strata manager, is little comfort. Even with all of the checks and balances there is always a possibility of fraud. If someone intends to defraud your community they will go to any end. Once large sums of money are involved, we need to question everything and double check that our cash assets are protected. If your council does not receive financial statements and bank statements from your strata manager, you should directly contact the Real Estate Council and file a complaint. Trust funds at risk are probably the highest priority for any regulator. If there is a complaint, the regulator can intervene quickly if necessary.

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