
The Difficulty in Enforcing Alteration Agreements: A Case Study of a 53 Unit Townhouse Complex

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Strata corporations routinely assume an alteration agreement or waiver of liability will automatically protect the owners in the event something goes wrong. An owner submits a request to install a skylight over their dining room and the strata corporation incorrectly assumes that by entering into an alteration agreement the owner or any future owners will automatically be responsible for any repairs or maintenance to the skylight.

What we fail to recognize is the alteration to common property, does not change the designation of the property. It is still common property and the strata corporation is only permitted as a condition of the agreement to make the owner responsible for any costs that are relating to the alteration as defined in the agreement. The ability to make an owner pay for the costs associated with an alteration to common property relies upon enforceable agreements, fair and consistent administration of the bylaws, impeccable record keeping, and disclosure of information to subsequent buyers where they assume the liability for the costs.

To put this into perspective we can look closely at a 53 unit townhouse complex in Langley that is well managed and fully funded for future repairs and renewals.

The first annual general meeting was held in September 1998. The strata corporation completed their first depreciation report in 2011 and have a planned renewal project for roofing scheduled for 2020. From the beginning there have been 18 strata lots identified with alterations to common property. The Standard Bylaw regarding alterations applies and has never been amended. The strata corporation has maintained all

minutes and records since 1998 and have had 3 different strata management companies between 1999 and 2017.

The alterations include

- 5 skylights,
- 6 entry door alterations to accommodate screens and wider access,
- 3 solarium enclosures, 2 car port conversions into garages, and
- 2 units with bay window installations.

Of the 18 alterations, there is only evidence or documentation showing the approval relating to only 12 of the strata lots.

Only 6 of those 12 strata lots were required to enter into alteration agreements as a condition of the approval, and of these only 4 were required to pay for future costs associated with the alterations.

These 4 agreements occurred prior to 2006, and the units have been subsequently sold, the Form B Information Certificates were signed by strata council members, and no agreements were attached to or disclosed as part of the Form B.

Of the 18 strata lots with alterations to common property, 13 units have been sold after the alterations with no disclosure to subsequent purchasers of the 6 strata lots with agreements, or the 4 strata lots required to pay related costs.

In planning for the roof renewal the strata corporation anticipated replacing the 5 skylights as part of the construction and recovering the cost (\$18,500) from

the skylight owners; however, they have been opposed by the owners of these properties who were not a party to any alteration agreements, no such agreements were disclosed on the Form B when they purchased, none of the agreements that have been identified required the owner to pay for the costs of the alterations or future costs, and they claim that skylights are still common property which is the responsibility of the strata corporation to maintain and repair.

Does all of this sound familiar to your strata corporation? So how does your strata corporation solve/prevent these problems?

Bylaw enforcement applies to all owners, regardless of status on council. If a council member makes an application they must comply with the provisions of the Act that require they remove themselves from the discussion and decision regarding bylaw enforcement. In a nut shell they are obliged to temporarily give up their "council hat" and act like any other owner. Owners have little tolerance for council members who get a break on bylaws and agreements. Everyone has the expectation we will all be treated fairly and equally.

Record keeping is critical. Start by setting up suite files, either online, with a web based service provider or hard copies in a binder will also work. When you establish a requirement for an alteration agreement take the time to have your agreement reviewed by legal counsel. It is not what happens today that may be the critical problem but, as many strata corporations are now finding, what happens in 10 years. The strata corporation is permitted to require an owner to pay for the legal costs of an agreement as a condition of approving the request. Confirm that your agreement not only clearly identifies the scope of work and the liability of costs, but also the obligation of the owner to disclose the agreement to potential buyers. Maintain copies of any Form B Information Certificates that are issued and to which strata lots they relate. The Form B is an integral part of the records and may be included in the suite files.

Council minutes also play a significant role in record keeping. Council minutes are a record of what happened. If the council voted to approve an alteration and any conditions that would apply, detail the motion and the conditions in the minutes of the council

meeting and identify the request by strata lot number. It may provide a valuable reference for future strata councils, managers and owners.

Disclosure of information is essential. In the event of a dispute, a buyer may find their knowledge or expectation of knowledge at the time of purchase is material evidence. It is up to the discretion of buyers whether they request a Form B information certificate or not; however, if they choose not to request the form, minutes of council meetings or the bylaws of the strata corporation, they may have little cause for a claim.

Insurance Coverage is also a consideration for betterments and improvements. Strata corporations frequently assume an alteration or betterment associated with a strata lot is the responsibility of the strata lot owner to insure. While that may be true for betterments to a strata lot, unless the bylaws indicate otherwise, it is not necessarily the case for the installation of skylights, balcony enclosures, or other types of alterations. It is helpful to identify betterments to common property to enable your strata corporation to confirm the cost of additional insurance and whether any additional coverage is required especially if you have an alteration agreement where an owner agrees to pay the costs and those costs for additional insurance are identified.

Whenever a strata is ready to replace their roofing, doors, windows and/or cladding the subject of alterations to common property may ultimately affect everyone, whether they personally have an alteration or not. Following the case history of one strata corporation in detail still leaves us with one key question: "Who is responsible for the skylights?" The strata failed to disclose the agreements plus the agreements relating to the skylights did not impose any financial obligations. The underlying principle to remember is the skylights did form part of the common property when they were installed as the alteration was made to the common property. If the strata corporation is planning on replacing the skylights they will simply form part of the common cost; however, the strata corporation may also wish to speak with their lawyer about the obligation of the strata to replace the alteration, who pays, and whether the strata has the ability to negotiate the cost of the replacement of the skylights if the affected owners are prepared to pay for the upgrade.