

Condo Smarts

Headline: Is an air space parcel agreement the same as a strata with sections?

Topic: Annual General Meeting; First AGM

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Dear Tony: Our strata is a combination of condos, a hotel and businesses on the ground floor. We share a number of common expenses for maintenance and repairs, on site staff and insurance. The expenses are based on a formula included in our bylaws provided by the developer back in 2007. The condos pay 62%, the hotel pays 30%, and the commercial units pay 8%. No one has ever questioned how these costs have been allocated, but recent increases in operations have encouraged the council to start looking at better efficiency in costs, bringing up the issue of the cost formulas. When we started looking into the efficiency of our common costs we discovered that while the cost sharing formula is in the bylaws, no one can confirm how these formulas were created. The bylaws refer to our strata as sections, but our strata condo is a separate Air Space Parcel. Is an Air Space Parcel the same as a strata with sections?

SVR, Vancouver

Dear SVR: A strata corporation with properly created sections is completely different from separate properties within Air Space Parcel (ASP) agreements. A strata corporation with different types of units, or different uses such as residential and non residential units, is permitted to define and create sections. These are additional legal entities, basically mini stratas within a strata. Expenses by section may only be allocated if they are exclusive to that section, otherwise they are a common expense of the strata corporation. Formulas that change percentage of allocation of common expenses are not permitted in the bylaws. Formulas that change allocation of common expenses require a unanimous vote of the strata corporation, and must be filed in the Land Title Registry in the correct form. Air Space Parcels are essentially side by side separate properties, but just think of them vertically on top of each other with geometric/horizontal boundaries. The

registered strata plan for your condo will show only the property boundaries of your strata corporation and refer to the ASP. In your strata there are 4 separate properties: the strata plan of residential condos, the property of the hotel, the property of the commercial mall, and the parking garage.

To confirm the percentages of expenses shared between the ASP's, who is responsible to maintain, repair and insure certain areas, the right of access and use of certain areas, and the passage of services such as utilities and mechanical equipment and the share of expenses, review the complete Air Space Parcel agreement filed in the Land Title Registry. The agreements are frequently several hundred pages and the formulas are captured in complicated language, so it is essential that whoever reviews the ASP's can competently read and interpret the document. Usually an experienced real estate or strata lawyer. Cost sharing of an ASP are not formulas that are created through a strata corporation's bylaws. Once the share of costs has been confirmed compare it to the formulas that have been applied. It is quite possible that your share of costs created by the easements and covenants may be lower or higher, especially if they were included in a disclosure statement used for marketing well in advance of the ASP agreements being created.

I encourage every strata in an Air Space Parcel to conduct an audit of the ASP agreements and utilities to confirm the formulas and allocations of services are being administered correctly.