

Condo Smarts

Headline: Who pays for unapproved alterations?

Topic: Alterations

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Dear Tony: We purchased a condo in Cook Street Village a number of years ago and love our community and our neighbours. Our building is aging and it is time for some significant upgrade to our building. The first priority is our aging exterior. We installed a new roof 2 years ago, and now we are planning on our exterior siding, doors, windows and balconies. Over the past 25 years, many owners have enclosed their balconies and some owners have gone as far as removing their doors, windows and walls that faced onto the balcony and have extended their living rooms on to the balcony area. Our engineer and architect have advised us that we will have to remove the balcony enclosures to repair the balconies. This is going to leave at least 6 owners who have made significant alterations to their units, without a wall. As it turns out none of the alterations have been done with either the approval of our strata council or with proper building permits. Half of the 6 owners purchased the units with the alterations completed by a previous owner. We are being told the alterations are going to have to be corrected and the enclosures cannot be reinstalled without a significant expense and building permits from the city. Who pays for the alterations? Our strata never required owners to sign agreements and the units with walls removed will be a significant cost.

Colin J.

Dear Colin: One of the common misconceptions of condo owners and councils is that when common property is altered, it suddenly becomes part of the strata lot. As a result it becomes the responsibility of the strata lot owner. The main reason for the misunderstanding results from the strata council not wanting to pay for the repairs to the common property that was altered. The *Strata Property Act* and Regulations do not permit the strata to make an owner responsible for the maintenance and repair of common

property and strata bylaws do not override the Act unless specifically permitted. The strata corporation is permitted, with the agreement of the owner, to make the owner responsible for the cost of the maintenance, repairs and the alterations to the common property.

In your situation, the balcony enclosures are part of the common property balconies that are shown on the strata plan. The removal and repair of the common property exterior is a common expense of the corporation; however, the removal of the interior wall without the consent of the strata is an expense of the owner, as a result of an unauthorized alteration. The complication that arises is the subsequent purchasers who may have received Information Certificates when they purchased, and which may or have not disclosed the alterations or agreements that made owners responsible. Likewise, the historic practices where some owners were responsible and some were not creates problems of unfairness. Tracking alterations to common property and implementing, maintaining and administering agreements and records is a daunting task for any strata council. Compound that with routinely changing council members and property managers over a number of years and it is unlikely the most organized strata council have the problem under control. To establish who is going to be responsible for the variety of alterations and owners I would recommend a legal opinion on your bylaws, how they were applied and historic activities relating to alterations. It may be the entire cost of restoration as a common expense is the best solution to ensure the proper restoration of the building exterior.