

Condo Smarts

Headline: Negotiating as a strata corporation

Topic: Special Levies, Repair & Maintenance

Publication / Date: The Province, Dec 14, 2017

Written by: Tony Gioventu

Dear Tony: Our strata consists of 4 different strata corporations in Richmond that share a club house, recreational facilities, parking & landscaping areas. Since our community was constructed all 4 strata corporations have equally shared all the costs; however, we require some major upgrades to retaining walls, landscaping, the pool and parking lot, the total of which is going to cost almost 5 million dollars. Our community association has been managing the joint facilities and has given each strata 90 days to pass a special levy of \$1.25 million dollars due in March of 2018, but some of our strata corporations are half the size of the others and owners are questioning how we came to this number. What happens if one of our strata corporations does not pass the special levy or we cannot agree on the formula that is used for the shared costs? Everyone wants what is fair but we cannot agree on how to fairly divide cost.

MJR

Dear MJR: There are many strata corporations and property owners across BC who have shared use of facilities either jointly owned or where some interest has been created through an easement, covenant or by contractual agreement. The *Strata Property Act* permits a strata corporation to either enter into an easement or covenant or the creation of easements at the time the corporation is created. These easements - which may also be referred to as covenants, air space parcel agreements, land use agreements, or community agreements - are registered as easements on each of the strata corporations and property owners who share use of property, access rights or obligations to each other. The easements are filed in the land title registry and each strata corporation will have the easements registered on their common property index or occasionally shown on the general index. Since writing

about easements a few weeks ago I have received over 250 emails for all types and variations of strata corporations and adjoining property owners where no single answer is possible without first producing and reviewing the agreements. I was also surprised to find out how many strata corporations are relying on "hand me down" documents and not registered agreements.

In MJR's strata corporation there is a land use agreement registered as an easement and it defines the shared properties, the obligations of each strata corporation, how funds are paid and managed and how much each share is paid by the four strata corporations. They are not four equal payments. The allocation of all costs is shared by the 4 strata corporations based on the number of units in each strata corporation, so two of the strata corporations each pay 15% of the cost and the balance is split 40% for the third strata and 30% for the fourth. A significant difference from what has been applied to the annual operations costs. Because the community has operated with a different formula from the easement for over 15 years, I would recommend each strata corporation retain an independent lawyer to review the easements, the history of payment allocations, and how the facilities are being managed.

The most common excuses I have heard for mismanagement are: "we've always done it this way" or "we were told as a community we could set up a different formula" or "we can't change after all these years". While you may be sharing facilities or services remember you are still independent property owners and entitled to your own rights of representation and negotiation. Always rely upon the registered agreements to determine your liabilities and rights.