

Condo Smarts

Headline: Disclosure of lawsuits

Topic: Lawsuits

Publication / Date: The Province, April 5, 2018

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Dear Tony: We purchased a Victoria condo in December and we thought did all of the right things. We requested copies of 3 years of minutes, the strata bylaws, an information certificate, a copy of the strata insurance, and we read all of the documents including the depreciation report. We have just been informed of an order for repairs to 4th floor balconies that was not disclosed. There was nothing in the minutes and the court decision was not disclosed on the information certificate. The seller, who was a council member, clearly knew and did not inform us. There is now a notice for a special general meeting with each strata lot having to vote on a special levy that will cost us \$7,800. Can we sue anyone to cover this cost?

JP Pritchard

Dear JP: Record keeping and disclosure of information is a growing problem for strata corporations in BC. Many owners and strata councils forget that most properties from duplexes to the largest of strata corporations over 1,000 units are covered by the same the same legislation: *The Strata Property Act & Regulations*. I recently assisted a strata corporation in a small interior city where the council and owners claimed the *Act* only applied to strata corporations in the lower mainland. There are also many small strata corporations who claim they are “non-conforming” strata corporations and have never had meetings and have no records so the law doesn’t apply to them. Not true. There is no such condition as regional exemptions or non-conforming strata corporations. The laws apply equally to every strata corporation in BC.

Strata corporations have two obligations to the owners when it comes to court/dispute actions. First the strata corporation must inform the owners as soon as feasible if the strata corporation is being sued or responding to

a claim in: Provincial Court, the Supreme Court of BC, The Civil Resolution Tribunal, through Arbitration or a claim through the Human Rights Tribunal. Informing the owners is a written exercise which is easily accomplished by including the notice in the minutes of council meetings and making them available to owners. Any decisions against the strata corporation, as a result of an action, must be disclosed on any Form B Information Certificate request. There are numerous complaints where strata corporations are not disclosing orders or decisions that are issued by the Civil Resolution Tribunal and Arbitration. These decisions or orders are no different than court decisions and must be disclosed.

As a buyer, you rely upon the information provided by the strata corporation before you make your decision. As a council member the seller was aware of the decision as she participated in the arbitration and the strata corporation received a copy of the decision ordering the repairs so they had the same obligation to identify the decision in the strata documents. When a strata corporation or a seller fails to disclose information required by the *Act*, affected parties are in a position to commence an action to recover their losses or costs against either or both parties. The real estate agent of the seller may also be exposed if they were aware of the order. As an owner you may consider an application to the Civil Resolution Tribunal to address the dispute with the strata corporation, and a claim may be filed in the Provincial Court against the seller and their agent. If there is evidence of non-disclosure by the agent a complaint may also be filed with the Real Estate Council of BC.

Strata corporations, councils and strata managers must remember that any decisions against the strata corporation must be retained permanently and must be

identified on any request of a Form B Information Certificate. Buyers may want to search the strata plan number through the court registry, the Civil Resolution Tribunal, the Human Rights Tribunal or by going to www.canlii.org which is a national registry of decisions. While not all decisions, such as arbitrations, are necessarily registered it is a public registry where you can download copies of the decisions.