

Headline: **Repairing and Maintaining Limited Common Property**

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The *Strata Property Act* gives Strata Corporations flexibility to determine in their bylaws whether the Strata Corporation or individual owners are responsible to repair and maintain limited common property. However, further provisions in the Regulations to the *Strata Property Act* appear to complicate the issue of who has to contribute to the cost of the repair. So, using the example of a fictional Strata Corporation named Far View, I will discuss in this article how the provisions apply to their balcony repairs.

Some background on our fictional Strata Corporation is in order. Far View has balconies that are the limited common property of each adjacent strata lot. All 30 strata lots have balconies. Also, the Strata Corporation has never enacted its own bylaws and so the Schedule of Standard Bylaws under the *Strata Property Act* applies.

The members of the Strata Council know that about half of the balconies must have their membranes replaced as well as other related work and they want to know who is responsible to do the work and who is responsible to contribute to the cost of the work. All strata lots at Far View are in one building and are quite similar.

The Strata Council members of Far View reviewed section 72 of the *Strata Property Act* and found that it provides as follows:

Repair of property

- 72 (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.
- (2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of
- (a) limited common property that the owner has a right to use, or
 - (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.
- (3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

As you can see, section 72(2) (a) provides that an owner may be responsible to repair and maintain limited common property if provided for in the bylaws. So far, so good. The Strata Council members of Far View now refer to the bylaws, which are the Schedule of Standard Bylaws in the *Strata Property Act*.

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Section 2 of the Schedule of Standard Bylaws provides as follows:

Repair and maintenance of property by owner

- 2 (1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

- (2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

Section 8 (c) of the Schedule of Standard Bylaws provides that the Strata Corporation must repair and maintain:

- (c) limited common property, but the duty to repair and maintain it is restricted to
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:
 - (A) the structure of a building;
 - (B) the exterior of a building;
 - (C) chimneys, stairs, balconies and other things attached to the exterior of a building;
 - (D) doors, windows and skylights on the exterior of a building or that front on the common property;
 - (E) fences, railings and similar structures that enclose patios, balconies and yards;

Therefore, under the standard bylaw provisions, Far View has the obligation to repair and maintain balconies no matter how often the repair and maintenance ordinarily occurs. The next question that must be answered is who is responsible to contribute to the cost of replacing the membranes? Perhaps only those strata lot owners with access to the balconies that are being worked on should pay? The Regulations to the *Strata Property Act* provide guidance in this matter.

Section 6.4 of the Regulations provides as follows:

Formulas for sharing operating expenses for limited common property and types of strata lots

- 6.4** (1) For the purposes of section 99 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only limited common property, the contribution is shared only by owners of the strata lots entitled to use the limited common property, and each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 99
- (2) of the Act:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots whose owners are entitled to use the limited common property to which the contribution relates}} \times \text{contribution to operating fund}$$

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(2) For the purposes of section 99 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only one type of strata lot, and that type is identified as a type of strata lot in the bylaws of the strata corporation, the contribution is shared only by owners of strata lots of that type, and each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 99 (2) of the Act:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

(3) Subject to a resolution under section 100 or 108 (2) (b) of the Act, if a strata lot's share of a contribution to the operating fund is calculated in accordance with subsection (1) or (2), each strata lot's share of the total contribution to the contingency reserve fund or a special levy is be calculated using the following formula:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution to contingency reserve fund or special levy}$$

The *Strata Property Act* Regulations provide that the strata lots whose owners are entitled to use the limited common property to which the contributions relate should pay into the operating fund. In the case of Far View, all strata lots have balconies and so should pay into the operating fund. Operating fund expenses should be those expenses that occur on a yearly or more frequent basis, for instance, perhaps in this case a yearly balcony inspection. It is possible, but unlikely, that one balcony would require special treatment on a yearly basis.

For repair and maintenance that generally occurs less often than once a year, all strata lots contribute to the cost of the repairs by way of the contingency reserve fund or a special levy. Therefore, all of the owners of Far View will contribute to the cost of replacing the balcony membranes.

Far View does have the option of someday creating a bylaw that makes owners responsible for the repair and maintenance of limited common property. Such a bylaw would mean that the owner who is responsible for repairing and maintaining the balcony would also be responsible to pay for the repair and maintenance. However, the Far View Strata Council does not like this approach. They have considered that other than custodial maintenance they want the Strata Corporation to be responsible to do the repair and maintenance on the balconies. If each owner had the responsibility to repair and maintain his or her balcony then Far View would lose control over the quality of the repair and maintenance done. Also, some owners may then decide to delay repairs until the condition of the rest of the building was put at risk.

Our fictional Strata Corporation, Far View, had a relatively straightforward repair situation to work through. However, if the facts are changed, for instance, if not all strata lots have balconies, then the answers to some of the questions will also change. Some Strata Corporations will have additional considerations when answering such a question, including unique bylaws to consider.

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