

Headline: **Alteration & Indemnity Agreements**

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Written by: Cora Wilson, Strata Lawyer

Alterations are becoming more complex and fraught with liability concerns resulting in many strata corporations opting to amend their bylaws to adopt a system for addressing these important issues.

A simple example highlights the importance of having properly drafted alteration bylaws. An owner may wish to enclose his or her balcony to increase their habitable living area. This may seem like a reasonable and straightforward request. However, none of us need to be reminded of the severe impact the "Leaky Condo" crisis has had on owners. If the building envelope balcony enclosure is not done properly, water penetration into the building substrate could result in severe rot and damage to the common property and contribute to a premature building envelope failure. The remedial costs are gigantic. Such costs would be typically paid by all owners, unless the strata corporation has a properly worded alteration and indemnity agreement that requires costs to be paid by the owner performing the alteration.

The basic rule of thumb is that an alteration by an owner requires the prior written approval of the strata council (See Standard Bylaws 5 and 6). However, there are some alterations that may not be caught by these bylaws, such as flooring replacements (other than flooring installed by the owner developer), hot tub installations and the installation of window air conditioners, to name a few. Specific bylaws may be required to ensure that alterations may be governed by the strata corporation.

The strata corporation should review its bylaws to ensure that its concerns are adequately addressed to cover matters such as noise, vibration, nuisance, interference with views and privacy, fire and other hazards and building envelope alterations.

The following is a checklist of issues and conditions that a strata corporation may wish to impose on an owner by way of an alteration agreement:

1. determine the types of alterations that require approval given the unique character of the particular strata corporation;
2. require written approval from the council to ensure that the proposed alteration complies with the aesthetic needs of the complex including the location, color, size and appearance;
3. require the owner to provide valid permits from the authority having jurisdiction before commencing work on the alteration;
4. require the owner to employ proper professionals and contractors to design, inspect and certify that the work complies with applicable building codes and other laws (this is particularly important if there are water penetration concerns);
5. require the owner to provide evidence that the contractors and others are covered by WCB and are licensed to perform the work;
6. impose appropriate standards on the quality of the work as a condition to the grant of approval;

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7. require the owner to perform the work within a certain period of time and to rectify deficiencies, if any;
8. authorize the strata corporation to perform the outstanding work or correct the deficiencies if the owner fails to do so after notice to that effect;
9. require compliance with bylaws dealing with noise, nuisance, access, permitted hours for the work, etc.;
10. require compliance section 70(4) of the *Strata Property Act* dealing with changes in habitable area and section 71 of the *Strata Property Act* dealing with significant changes in the use or appearance of common property – (both of these provisions are often overlooked and both require owner approval at a general meeting before proceeding with the alterations);
11. obtain a satisfactory indemnity agreement for the benefit of the strata corporation and its council members, authorized agents and employees against any claims, losses, damages or actions related to the alteration, including payment of any legal costs of the strata corporation on a full indemnity basis;
12. require the owner to pay all of the expenses related to the alteration – including past present and future expenses for repair, maintenance, replacement, insurance, professionals, contractors and legal costs;
13. require the owner to inform a subsequent purchaser of the strata lot of the terms of the alteration agreement and to obtain the subsequent purchaser's agreement to be bound by the alteration agreement, failing which, the alteration would have to be removed by the owner before closing;
14. require the owner to remove any Builder's Lien claims which may be filed against the common property as a result of the alteration;
15. address the increased costs of fire and liability insurance payable by the strata corporation, if applicable;
16. address what happens in the event of a claim against the strata corporation related to the alteration;
17. address whether or not to require an owner to obtain an homeowner's insurance policy; and,
18. consider incorporating the alteration agreement into a bylaw amendment to provide notice to the public when the bylaw is registered in the applicable land title office.

These agreements are complex. Strata corporations are advised to seek legal advice when preparing these agreements to ensure that all relevant issues are properly addressed.

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