

Condominium Home Owners' Association

Serving BC's Strata Property Owners since 1976

Bulletin: 300-185

Condo Smarts

Headline: There are rules for allocating surplus funds

Topic: Refunds and surpluses

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When a major project is complete, there are often surplus funds or settlements received by the strata. A settlement from a legal dispute, rebate from a PST grant for a leaky condo, a New Home Warranty settlement, or under expensed construction may leave the strata with a substantial amount of money.

I have received over 125 letters and emails in the last month asking what happens to the refunded monies? Is it refunded to the owners? Does the owner who paid the special levy receive the refund? Who determines when the refund is actually due? What if I just sold my unit and the refund came due a few weeks later? If I have a no interest loan to I have to pay the refund to that amount? How much does the strata have to refund?

The *Strata Property Act* sets out specific legislation for refunds or settlements. If there is a refund for a special assessment that has been levied, and any owner is owed \$100 or more, then the refunds must be returned to the strata owners based on the same formula that the assessments were levied. The owner is defined as the person registered on title at the time the refund is due.

This also applies if the amount received is a settlement. Strata councils often consider passing a new levy, and allocate the funds for another purpose. One problem is the

existence of other legislation such as the Homeowner Protection Act, which requires owners to use refunds or settlements to pay down their interest free loans before spending the monies on anything else. Also, sales agreements can complicate a new levy for those funds if the seller contracted with the purchaser to receive the refund.

When writing resolutions to approve special assessments or for court actions, the strata corporation should take some care to consider the future impacts of the decision, such as consideration for refunds or additional costs. The writing of three quarter resolutions for significant levies, major repairs or court actions is technical and legally complicated, and strata corporations are advised to use a lawyer experienced in strata law and construction.

Before the strata corporation refunds the money they should consult with their lawyer and determine whether it would be prudent to have the receivers of the funds sign a waiver declaring that there are no other agreements or conditions on these funds by any other parties that may affect the delivery or receipt of the funds.

Finally, before you refund, review the original resolution that approved the levy or the court action. The method of refunding may have already been decided years before.

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