

# Condominium Home Owners' Association

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Bulletin: 300-282

## Condo Smarts

Headline: Making sure unit entitlement is correct

Topic: Unit entitlement/common expenses

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**Dear Condo Smarts:** We live in a 68-unit townhouse complex in Mission, BC. All of our units are close to the same size so we have generally paid the same amount in strata fees each month. We're now faced with major construction and the cost is going to be about 1.1 million dollars. We have several owners that have come to council and advised they will not pay the same as everyone else as their units are substantially smaller and in future want a reduction in their strata fees. Considering we have generally always done it this way, wouldn't it apply anyhow? Council is aware we have not been using the registered formulas, but it seemed to work ok. In addition, one owner who's been here 10 years also wants everything corrected and she expects a refund for over paying. This is getting ugly and we're wondering what to do next?  
Carol Hewitson

**Dear Carol:** All strata corporations must comply with the schedule of unit entitlement filed in the Land Title Registry or any other formulas that they have properly amended and filed in the Land Title Registry. It is possible for strata corporations to amend their schedule of common expenses but it requires that the amendment be passed by a unanimous vote, that means every strata lot must vote in favour, and, the new formula must be filed in the Land Title Registry in the proper form. The filing is just as important because the change must be available and

disclosed to any potential or new purchasers or mortgage lenders. A recent court decision regarding unfair application of strata fees and costs is very important for every strata that is not complying with their unit entitlement or filed and ratified amendments. In the decision of *BPYA 1163 Holdings vs The Owners, Strata Plan VR2192*, the court awarded not only the correction of how fees are calculated in the future, but also ordered damages calculated from 1996 relating to the overcharging of strata fees that were identified as user fees, and court costs. If the decision is not appealed successfully, the strata corporation will be facing the incorrect charge back to 1996 of \$78,850 plus court costs. The Counsel for the Plaintiff, Elaine McCormack, advises, "this is a wakeup call for strata corporations all over the province who are not allocating strata fees, common expenses and special levies as required by the Strata Property Act." She advises, "every strata must have a copy of the registered strata plan, schedule of unit entitlement and any filed amendments. If your strata corporation is not using a registered formula and you have a history of different allocations for different costs, seek legal advice." If you're in a new development check the registered unit entitlement. It won't likely be the same as what was in your disclosure because the proposed unit entitlements on new developments are based on measured area which is unknown until the building is complete and surveyed.

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