

Condo Smarts

Headline: Who pays the damage?
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Dear Condo Smarts: I recently sold my unit but ran into a serious load of troubles over an allegation by a council member that we damaged the parking membrane. The council claimed that we had planted bamboo in the gardens next to our townhouse, and the bamboo roots penetrated the landscaping membrane, resulting in leaking in the parkade and a claim by council that this is going to cost over \$50,000 to repair. When our lawyer requested a Form F the strata council refused to provide a copy of the form until they received an undertaking that indicated we would put \$50,000 into their trust until the damages were complete. We have agreed to place the funds into our lawyer's trust until December 31 this year or if the matter is resolved earlier, but how can a strata council come out at the last minute and file such a claim? We had no notice, and no indication of any such problems. Other owners tell me our parkade has leaked for over five years. Everyone knows about this. Ms. EH. Howard, Pt. Moody

Dear Ms. Howard: When a strata lot is conveyed (sold), the seller must provide a Form F, Certificate of Payment, provided by the strata corporation. In most circumstances the strata lot conveyance cannot be complete without the form. The payment certificate has to stipulate whether an owner does not owe money, does owe money but the amount has been paid into court, or in trust to the strata corporation relating to a disputed debt, or satisfactory arrangements have been made to pay the

money owing. In a nutshell these deal with strata fees in arrears, bylaw fines relating to violations that have been properly enforced, works orders issued by an authority, and special levies. Generally the lawyer or notary completing the conveyance will provide an undertaking to ensure the debt is satisfied as the sale is completed. An alternative for an owner who is disputing a fee is that they can pay the amount into court pending a hearing on the dispute. Under section 115, a Certificate of Payment must not include claims of damages against an owner which have not been determined by a court or by arbitration. If there is a claim that an owner has acted in some manner that has resulted in damages to the strata corporation, they need to seek legal counsel and commence a court action as soon as possible to protect the interests of the strata. The minutes of Ms. Howard's strata corporation clearly indicate that the leaking was first documented in 2003 and has grown to include most of the parkade areas, not only the area under her entry. In addition, Ms. Howard moved into her unit in 2005, long after the leaking had started. If you are completing forms for a strata corporation, read the sections of the Act that create the form. For example, Form F is actually Section 115 of the Act, Form B is Section 59 of the Act. Each of these sections contain information and instructions that are not published on the forms. Check out the fall lineup of Strata Seminars on the CHOA website: www.choa.bc.ca.

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