

Condo Smarts

Headline: Collection Agencies

Topic: Collections

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Dear Condo Smarts: I work as the resident manager for a large strata corporation in the Tri Cities area. We have an on going situation with owners who do not pay strata fees, fines, special levies and insurance deductible claims. Right now we have 4 owners that each owe more than \$13,000 in unpaid fees, most of it strata fees and levies. Our strata council have decided that rather than use legal services we would assign over the collection of the fees to a collection agency. If we use a collection agency, how do we cover the cost if the service? It seems to me that we have a better chance of collections through the courts. What is your view point on strata corporations using collection agencies. Sincerely, JM

Dear JM: The strata corporation has better authority and financial gain by using the provisions set out in the Strata Property Act. For starters, special levies, strata fees and the permitted interest on those fees, are amounts that may be liened against the strata lot, thereby securing the debt as a priority over most charges on the title. The strata corporation interest will even come ahead of a mortgage or loan debt filed on the title. If the strata lot has not paid those amounts and either the amount owing or the period of time requires further action, the strata council has the authority to retain legal counsel, without the need of a 3/4 vote, to then proceed with a court action for an eventual order for sale. The strata will recover the fees and interest owing and a reasonable portion of the legal and court costs. At the same time, the owners have a reasonable period of time to attempt to resolve their financial position, without the constant harassment of a collector. Using a collection agency requires the strata corporation to assign the debt owing to that collection agency. The

strata corporation cannot assign the debt to another party unless they do so by 3/4 vote resolution. Also, once the debt is assigned, the strata corporation might not be able to charge back the cost of the collection agency's service to the defaulting owner. Further, the defaulting owner may not take the issue too seriously or pay a lesser amount. In that case, the strata corporation is stuck with an owner who might continue to default in payment simply because they think they can get away with it. Finally, there may be problems with respects to licensing requirements under the Real Estate Services Act (RESA). Some might say that the collector by collecting strata fees is acting on behalf of the strata corporation as their agent by providing strata management services. If that is the case, it could only be the licensed strata manager, a strata employee exempt from licensing that can collect the fees, or a person exempted under section 2.2 of RESA, licensed under the Business Practices & Consumer Protection Act. One of the limitations with fines and penalties is that the charge is simply an allegation of violation, or resulting claimed cost, such as an insurance deductible cost, which are claims of violation, but seldom supported by judgments, and still not considered to be items for lienable action. The best solution the strata corporation can employ are the provisions set out in the Act & Regulations. No one wants to see an owner lose their home, but that's the decision a buyer makes when they move into a strata, and owners must pay their fees and levies. Strata corporations who run their operations like a business and vigilantly collect fees, rarely have problems with owners paying. The expectations are clear, and so are the penalties.

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