

**Condo Smarts**

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**Dear Condo Smarts:** Our strata building underwent major renovations over the past three years, and the project is just coming to an end. I am moving back east, and selling my unit, but I have a problem with the sale. The strata council has told everyone we have about a 7% refund coming, because of interest earned on our money during construction, rebates, and coming under budget. My closing date is in mid April, but the refunds and accounts won't be settled until June 1. I advised council that I would be selling and notified them to send the refund to my new address. They have advised that they do not have the authority to refund me the money once I have sold the unit. So how do I get the refund for the reserves that I have paid? Mark, Saanich

**Dear Mark:** When a refund becomes due, that refund is payable to the owner of the strata lot. The owner is defined as the person who is on title at the time the refund is due. Similar to the payment of a special levy, if your sale is completed before the refund from a special levy becomes due, the obligation or benefit is transferred to the owner at the time of the due date. The resolution that first approved the special levy three years ago, may have identified the owners, or the process differently, so it would be important to review the original resolution as well; however, this is more common with a lawsuit where the individual parties may be named as opposed to the strata corporation. Vendors who are wanting to secure their rights to a refund need to

seek legal advice on the contractual agreement for sale and the enforceability of such an agreement. The buyer may agree to sign a waiver as a condition of the sale that releases the refund directly to the seller from the strata corporation, but what happens if the buyer sells the unit before the refund becomes due? There is likely nothing binding on a subsequent future owner and now you have a battle with your purchaser or the strata corporation. The strata corporation does not have any contractual relationship in the sale of the strata lot, so they are not bound by terms or agreements within the sales agreement. The strata corporation's obligation under the legislation is to refund the surplus to the owner of the strata, whoever that may be at the time the refund is due. The Strata Property Act does not establish any reference to how dates are established for refunds, so that decision is left to council. If the strata corporation withholds the refund for no plausible reason, then you may have a claim against the strata corporation at a later date. An interesting change in the legislation for access to records, now means that a past owner or tenant, has the right to access and viewing of copies of records set out in the Act, for the period they resided in or owned the unit. Even if you have sold your unit, you can still go back and request copies of the prescribed records and documents of the strata corporation for the period you were an owner.

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