

Condo Smarts

Headline: Sections

Topic: Sections

Publication date: August 7, 2011

Publication: The Province

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Dear Condo Smarts: I am the joint strata council of a strata that is separated into sections. The joint council have reached an impasse over the allocation of the recent utility invoice. As a result of a new business in the commercial section the utility has increased 35%. The joint council have decided that we just split this on our 80 to 20 % division, but the residential owners have acknowledged that the increase is entirely due to the commercial owner so why should we pay for the increase jointly? There seem to be a number of issues on our strata where there is a level of unfairness that benefits the commercial strata lots, and the residential owners appear to be powerless. Is this common in strata corporations with sections? Kelly W. Vancouver

Dear Kelly: There is a significant amount of confusion over buildings that also have created separate sections. In most city neighbourhoods across the province you will find buildings that have commercial units on the ground floor and condos upstairs, all as part of one strata and likely operating with sections as well. A strata corporation is permitted to create separate sections if they meet the conditions of the Strata Property Act. Basically the conditions would require the strata is mixed use of residential and non residential (commercial), different types(designs) of residential, such as high rise and townhouse, or the commercial units are for different purposes (offices vs pub) . Some of the terminology commonly used is part of the problem. A strata does not separate into sections. The strata corporation still remains in its entirety and sections are created, that result is the addition of the sections as separate legal entities. Also, sections are not created just because you are mixed use. The sections must be created first through a bylaw ratified by all sections and the corporation. The general purpose of creating sections is for the independent operation of those facilities and operations that are exclusive to a section. For example, the residential section 1, has an elevator, gas fire places and an on site concierge. These expenses are exclusive to the residential section and with the creation of sections in the bylaws and allocation of exclusive expenses, the residential section will budget for those items and allocate for the expense of those

items solely to the residential strata lots. All other expenses that are not exclusive are a common expense of the corporation. Sections can do basically anything a corporation can do, including, elect an executive council, approve an operating budget and contingency contributions, create additional bylaws exclusive for that section, enter into contracts, buy and sell common assets, convene general meetings, commence law suits, and pass special levies, all on behalf of those strata lots exclusive to that section. In a strata with a separate commercial and residential section, there are almost always 3 separate sets of business operations required, including operating accounts, reserve accounts, special levy accounts and separate agency(management) contracts, one for the strata corporation and one for each of the sections. Another misleading term that is used is "joint" council. The elected council of the corporation can be entirely different from the elected executive councils of each section. Each of their fiduciary duties are to the corporation or section council that they have been elected to, and each must convene meetings and produce minutes as a result of their decisions. While the council of each section may serve on the council of the corporation, they are not a joint council and may be serving multiple duties that can place them into conflicts at times. Sections are very complicated. To help readers wade through the confusion, the upcoming columns in August will address funding allocations, governance, bylaw functions and the potential pitfalls of sections .

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