

Condo Smarts

Headline: A History of Property Changes

Topic: Alterations

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Written by: Tony Gioventu

Dear Condo Smarts: We purchased our townhouse in the Kootenays in 2009. At the time of the purchase we read all of the minutes of the meetings for the previous 5 years, the bylaws, and asked several questions of council pertaining to the history of the development. Four of the 28 units have rather expensive skylights installed above their living rooms, one of which is ours. Our strata is planning on replacing our roofs in 2012, but we have come to an impasse over the skylights. We did request a Form B from the corporation, and on the part where it listed any agreements that the strata lot owner would be responsible for, there was nothing identified. Relying on this information, we assumed that there had never been any alterations we would be responsible for. Now we are informed by the manager that we have to make a decision on whether to pay for the new skylights or have them removed and restored to the original roofing when the roofs are done. Is it possible after all of this time for the strata corporation to make us pay for the alterations when we didn't install them in the first place and they didn't disclose any obligations to us regarding the future costs? Mary Landan.

Dear Mary: This is probably one of the most complicated situations that we encounter over alterations. Over time in many complexes, future buyers often discover they either have alterations in strata lots they were unaware of, alterations to common property they were unaware of, or agreements for use of property that they were unaware of or that have expired. It is difficult to provide a concise response without reviewing and understanding the documentation and history of your strata corporation; however, there are a few constant conditions that do not change. When a person is permitted to make an alteration to common property, the alteration area remains as common property which is repaired and maintained by the strata corporation. Through a written agreement, the owner of the strata lot is often responsible for any costs relating to the installation, maintenance, repair and future replacement of the permitted alteration. Unfortunately in many smaller strata complexes, owners and councils often take a casual approach to

alterations both on the strata lot and common property, without any written record or documentation. It is also possible that a strata corporation by three quarters vote, has decided to amend the designation of the property area to limited common property and is then permitted to make an owner(s) responsible for the maintenance and repair of the limited common property through the bylaws as well. But move forward ten years later, and what is to become of your skylights? Even though the skylights were installed before your ownership, it is not necessarily implied that the installation and use is perpetual at the cost of the strata corporation. The strata corporation could potentially be in a position where an alteration that was conducted is unsafe or does not meet building code requirements, and they have no choice but to return the area back to its original design. This is a common occurrence with roof top decks and balcony enclosures during major construction. Even in the absence of an agreement, it would not be unreasonable for the strata corporation to approach an owner with respects to their intended continuing use of an alteration and the related cost to retain the alteration. One word of caution for everyone in this situation. While the variance or exclusive feature in a strata lot or adjacent common property may appear to be an alteration that was performed by a past owner, the alterations can also be features installed by the owner developer as part of the show suites or design features and those features continue as part of the original common property of the corporation. If your strata cannot resolve the disagreement, seek a written legal opinion on the best approach.

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