

Condo Smarts

Headline: What constitutes a significant change?
Topic: Alteration / Significant Change
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Dear Condo Smarts: We have an unusual problem in our strata. We decided to repaint the exterior of our building this summer, and the owners were 100% behind the resolution and the special levy. All of our preparation work has been done, repairs, sanding, and landscaping protection, but we suddenly realized that the colour is not possible to match. Several council members have decided that we should have an entirely new colour. They want to change from beige and tan colours to dark and light green. Before anyone realized, the council members instructed the company on the colours and they ordered the paint and started painting on Thursday. One of our observant owners immediately noticed the change and started calling everyone in the building to which put a quick stop to the painting. Obviously our community is now in a bit of a pickle. If we change the paint colour we will probably end up paying for the first order, and if we don't change the paint colour, the owners are going to demand a Special General Meeting to vote on the change of colour. So what happens if we cannot get consensus from the owners on either colour? This really comes back to the council members who made this decision. According to them, they spoke with a lawyer who said it was up to council to decide on what a significant change was and whether we needed the owners approval or not. That could have easily been averted had council actually had a meeting to discuss this issue, but regardless of the council opinion, how do we establish what a significant change may be? Is it really up to council?

Bruce Mclean , President of Council

Dear Bruce: The Strata Property Act determines that a significant change is something that affects the use or appearance of common or limited common property; however, that is a subjective determination. There needs to be a much more significant test on this issue. Often times a good method of processing this decision before a dispute arises, is to test your owners on their opinion. The fact that the strata council and the owners are both divided over this issue is an indication that this may be a significant change. Obviously keeping the original colour scheme will not

require a three quarters vote of the owners, and will ensure the consistency of the project.

The recent court of appeal decision over whether a window alteration was a significant change or not, contains some helpful direction. The court of appeal identified that both the process used by the strata corporation and the outcome of the change are important considerations. A decision may affect one owner more than others, or may only affect one owner, and that may not necessarily be considered a significant change or be significantly unfair to that owner. If the strata clearly undertakes a process of consultation with the owners, and obtains consent on the proposed changes, the courts will be reluctant to intervene in the process; however, if the strata council members consider a change without properly convened council meetings, or consultation with the owners, the question whether the change is significant then becomes a much greater problem. The concept is so complicated, that even the court of appeal were not unanimous in their decision.

The message is clear. Before a strata considers a change that impacts, use, appearance, or enjoyment of common property or common assets, consult with your owners, and ensure that all decisions relating to projects are made by your strata council at properly convened council meetings. Remember, meetings are intended to facilitate discussion, debate and decision making, and to avoid the pitfalls of the problems facing Bruce's strata.

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