

**Condo Smarts**

Headline: What constitutes an emergency?

Topic: Spending Authority, Repair & Maintenance; Emergencies

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**Dear Condo Smarts:** What happens when strata council spends all of the contingency funds on an unauthorized project, and then defend themselves by calling it an emergency? Our strata council decided that our fences needed to be replaced. In a 66 unit townhouse complex that ended up being over \$100,000 dollars worth of fencing gates, dividers and painting and wiped out our reserves. The owners were aware that our fencing had reached its life expectancy, but we assumed council would set up some basic specs, tender out the contract, and at least get 3 or 4 bids for a fixed price, and then the owners would be able to vote on the approval of the problem at a Special General Meeting. You will be surprised to find out that not only did they not take any precautions, they just issued instructions to a company to go ahead with the fence replacement without any fixed pricing or written agreement for the construction. A group of owners have set up a construction committee and estimate that so far we have paid more than double what the cost should be on materials alone. Council's reply to the owners was that this was an emergency to protect the safety of our children, and that under the Act they could just go ahead. Four months had passed by the time we had a petition and meeting to remove council, where most of the work was done, the bills were paid, and there wasn't even any money held back for deficiencies or other problems. Council said their lawyer told them it was up to them to decide what an emergency was. Can the council really do this?  
*Barbara F, Surrey*

**Dear Barbara:** A strata corporation is a business that is of significant value with

operating budgets and reserves that match many mid sized companies in Canada. As a result, it is critical that we apply basic standards to our business practices to protect the interest of our owners and to comply with the legislation. Your complaint is sadly not uncommon. Strata council members frequently take misdirected advice or misunderstand the advice and get themselves into serious trouble. We have to acknowledge that strata councils are volunteers, and often have little experience in business or administration of a corporation. Owners within strata corporations also need to play a role in the operations of their strata corporations and not simply dump the load on the reluctant elected council each year. There are many strata corporations who have adopted very clear business bylaws to ensure reasonable administration of the strata. The bylaws include limits on expenses, the requirement for technical specifications of all projects over a certain value, along with a fair tendering process and mandatory written contracts to confirm material costs, labour costs, and the terms and conditions of the contracts. In addition to fudged emergencies, cost over runs for lack of administration or uncontrolled change orders are just as much a problem. An emergency should not be determined just because you do or do not have the money available in the contingency fund. Would your council have contracted the service if you only had \$5,000 left in your reserve funds? Probably not, as they would have needed owners to approve a special levy. Just because the money is in the reserve does not mean the council has the right to spend it. Genuine emergencies should not be over looked. The Strata property Act defines an emergency as

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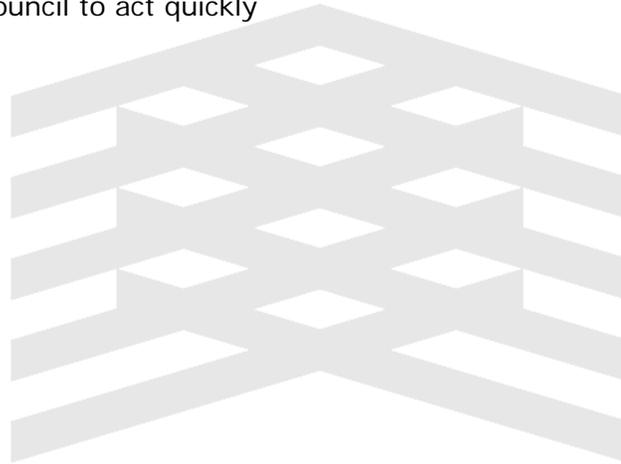
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follows: " (98) if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise". For example, a pipe burst, boiler failure, a limited deadline for a court response or filing deadline, broken windows, storm damage, elevator failure, or sudden incident that requires the strata council to act quickly

to protect your investment and safety, may all be necessary emergencies. When four months pass from the order for the work and the installation, the test of "immediate" is almost an impossible argument to make, especially when council had the opportunity to seek the owners approval and perhaps obtain their direction on the project.



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