

Condo Smarts

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Dear condo smarts: Our strata corporation is a 54 unit apartment building in Surrey. It is 37 years old and due for some major upgrades and construction. We have not had our depreciate report done yet as we were planning on doing our major construction first. Our roof repairs and piping will cost our complex about 1.9 million dollars, and the assessments will range from \$27,000-\$45,000. After our first information meeting, it became obvious we were going to have some serious problems passing the vote. Everyone agrees the work has to be done, but we have a number of owners who have no credit left or are seniors on fixed incomes with no access to credit, and they are unwilling to vote in favour of the project which will essentially result in them defaulting on their special levies when they are due. We have looked at a few possibilities, one of which is the strata corporation borrowing the money, but those people who can pay are unwilling to pay a high rate of interest. A broker has approached us with a solution where the strata corporation borrows the funds only on behalf of those owners who need it. It seems like a great solution but we couldn't figure out how we can protect the strata corporation if those owners fail to pay the loan? Is it possible for the strata to borrow just on behalf of some owners?
Shirley Morris

Dear Shirley: The strata corporation may, after approval by a resolution passed by a three quarter's vote at an annual or special general meeting, borrow money required by it to exercise its powers and perform its duties, and may secure the repayment of money borrowed by it, and the payment of interest on that money. There are a number of limitations on how the money is borrowed, repaid, and

how default payments are collected. The strata corporation must not mortgage common property, so for security the strata corporation may have other assets, such as a caretaker's strata lot or investments, or they contractually assign the collection of the special levies as a priority to the lender. If the strata corporation borrows the money, then the cost of repaying the money and the cost of the loans, broker's fees and interest are all a common interest of the strata corporation. Each strata lot will be responsible to pay its share of the loan and fees based on unit entitlement, as a common expense. The obligation of the debt is that of the strata corporation, the obligation of the strata lot is the payment of the approved special levies either for the construction or repayment of a debt. The strata corporation is not permitted to reallocate common expenses of the strata corporation to only those units who choose to participate in the loan. If a strata corporation borrows the money from a lender, and lends to a strata lot owner, by contract the funds necessary for the special levy which form their repayment plan, a number of complications arise for the strata corporation. The most serious complication that the strata corporation will encounter will be the collection of unpaid terms of a remaining contract. If an owner contracts with the strata corporation to borrow the funds to pay their special levy, and if that owner fails to make their payments, the only priority that the strata corporation can rely upon for the collection is only the share of the special levy as originally approved by unit entitlement. The cost of the loan, interest and brokerage fees will not take a priority. The strata corporation would have no choice but to proceed with an application to BC Supreme Court for an order for the sale of the strata lot

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to collect the amounts owing. Those charges that may be liened under the Act, such as the amount of the special levy, filing costs and base legal and administrative costs, are likely to be granted first, but other charges, like a mortgage on the property will rank after the lien costs, then the remaining charges such as the contracted cost of the loan, interest or brokerage fees will rank below the registered mortgages and loans. If there are no longer funds left to accommodate the remaining

costs, the owners of the corporation could be left on the hook for the balance of the costs, including the remaining years of interest. The only way to ensure that the strata corporation has secured a first priority on the loan is when the strata corporation borrows the funds, and the owners approve a special levy or operating expense based on unit entitlement of all strata lots to repay the entire cost of the loan. Keep it simple. When the corporation borrows, everyone in the corporation pays.



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