

Condo Smarts

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Dear Condo Smarts: We have a short question and would appreciate your response in the paper. Our townhouse complex is 14 years old. The first buyers moved in during 1998/99. From the beginning, the owners always paid the same strata fees for monthly expenses, and the same fees for special levies. The original documents provided by the developer indicate that each strata lot pays 1/48th of the total fees, indicating that all our expenses for the strata corporation would be shared equally. We have come to the time where our roofing now needs some major upgrades and even possibly replacement. The quality that was installed by the contractor originally was the minimal standard of the time. After several quotes, our projected cost including a roofing inspector and taxes, will be \$400,000. We held our SGM in December and approved the levy with an equal share for each owner due on February 1st. One unit sold in January, and the buyer's agent indicated that we over charged the amount for the roof, as the sold unit was one of the smallest of the 48. The buyer produced a copy of the plan from Land Titles, and sure enough, the formula shows there are 6 different sizes of units and different unit costs, although the roofing inspector has identified that the roofing area over each unit is virtually the same. Do we have to change our formula? Can we amend the documents in Land Titles so they are consistent?
Anna Ferguson, Kamloops

Dear Anna: A strata corporation is created when the owner developer files the strata plan in the Land Title Registry. Whether it is an older strata plan that shows the unit entitlement on the measured drawings or a newer plan, where the schedule of unit entitlement is filed separately, the schedule that is filed in the Land Title Registry is the formula that applies. It is a very common error, when strata corporations use the documents originally disclosed to buyers. Part of the problem is that the owner developer does their best to estimate what they intend to create as formula, but the actual formula that is established, is created when the surveyor measures the property, and the formula is approved by the Superintendent of Real

Estate and the Registrar of the Land Title Registry. Anna's original disclosure had indeed indicated that all strata lots may share common expenses, if possible, on an equal basis; however, there was also a draft schedule of unit entitlement attached to the disclosure statement that projected the measured area of each strata lot and how that would be converted in the schedule of unit entitlement. The strata plan also went further to indicate these were not the final measurements and the filed strata plan would include the final schedule of unit entitlement after the survey.

A strata corporation must use the registered schedule of unit entitlement for all expenses, except in the circumstance where the strata corporation has amended the schedule or there is an order from the courts replacing the schedule with an alternative, which for example, may be considered if there is a material error in the plan, resulting from significant unfairness. To amend the plan, the strata corporation, would be required to pass a unanimous vote in favour of a resolution by all the votes of all the eligible voters. In Anna's strata, it would be possible to amend the registered schedule to reflect their historic practices if all 48 strata lots and their eligible voters voted in favour of the resolution. The proposed amendment will also require the approval of the Superintendent of Real Estate and the Registrar of Land Titles. If your strata is considering an amendment or attempting to correct years of improperly calculated fees, seek the advice of a lawyer who is experienced with the Strata Property Act and amendments to the strata plan requiring unanimous votes.

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