

Condo Smarts

Headline: User-fee Fight

Topic: User Fees

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Dear Condo Smarts: I live in a bare land strata and would like to know if our council has the authority to charge extra user fees for what they consider to be excess garden refuse removal from our strata lot. From the inception of our strata corporation, over 20 years ago, water consumption and the removal of garden refuse from our lots has always been part of our corporation's common expenses which was included in owners' monthly strata fees in accordance with their unit entitlement. Without an owners' approval vote, during the last half of 2012 and in the upcoming gardening season, our new council has imposed a \$2.00 extra fee pickup charge for the removal of more than one bag/container of garden refuse from their strata lot. I consider this to be a "user fee" system. Some owners have protested the imposition of these fees on the grounds that it violates the Strata Property Act. Our council's position is that owners should not be subsidizing other owners for the removal of more than one bag/container of garden refuse from their lots.

Jim Rodney, Cobble Hill

Dear Jim: Common expenses of a strata corporation are based on the unit entitlement, the schedule filed in the Land Title Registry, or any amendments duly passed by unanimous vote and filed in the registry. Whether it is common expenses for operations, maintenance, service requirements, administration renewals or any other expenses incurred by the corporation, they are all part of the annual budget and shared on the same formula. If a strata lot has a specific type of exclusive expense, it is permitted through a types bylaws to allocate that expense to that strata lot or lots that share that exclusive benefit, based on their respective unit entitlement. An example of that is where 8 pent house units have fireplaces, and no other units

have fireplaces. The strata corporation is permitted to create a bylaw that requires those 8 owners to pay the exclusive operating expenses just for those fireplaces.

When it comes to user fees, user fees are only permitted for the use of common property or common assets if the following conditions are met: a) the amount is reasonable and b) the fee is set out in a rule or bylaw properly ratified by the strata corporation. Here are some examples of user fees that readers have sent in over the past couple months, that are not permitted under the Strata Property Act or Regulations. 1) additional fee of \$50 each month charged to owners who rent out their strata lots 2) additional fees of \$250 a month charged to owners who have a live in caregiver or nurse, 3) additional fees of \$75/month charged to owners with barbeques for alleged increased building maintenance, 4) additional fees of \$35/month charged to owners in a townhouse complex if the basement is finished and owners add an additional washroom, and of course yours, 5) additional fees charged to owners for waste management disposal. Strata corporations do not have unrestricted levying authority; it is either common expenses, or user fees for common facilities. Before your strata ends up in a court dispute, get some legal advice on rewriting your bylaws and rules, and apply the user fees to the common property. User fees for extra parking, to book the elevator for a day for moving, extra storage lockers, or even health club privileges are all possible and help offset expenses. Penalizing owners through unenforceable user fees is not a solution to financial planning for strata corporations.

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