

Condo Smarts

Headline: Alterations to Property: Who is Responsible?

Topic: Alterations

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Dear Condo Smarts: Thank you for your alteration article a few weeks ago. We are happy to understand the strata has to maintain and repair common property, as our owners never do. Our strata council has hired a company to do an extensive building maintenance project this summer. It is all part of our depreciation planning process and is definitely needed as our building 15 years old. What we have discovered through the maintenance to the townhouses and the apartments is there are a number of alterations done to the building exteriors that our strata council has no record of. There are 5 upgraded windows and 2 skylights, 3 new decks, 11 barbeque gas lines, missing deck railings, 3 decks doubled in size of the limited common property area, air conditioner vents installed on 26 units, balcony decking covered with carpet or tiles on 12 units, and two roof top decks that have been substantially increased in size. So what do we do about all of these alterations? Can we make still make each owner responsible for the costs of these alterations? What if they don't comply with the building code? Who is going to have to pay for the future repairs and maintenance? We have changed management companies 3 times over 15 years, and we have very few records prior to 2009.

Jason M. Penticton

Dear Jason: Managing records and documents for strata corporations has to be one of the most difficult tasks for any strata council. The phrase "herding cats" comes to mind, because strata corporations have a constantly changing management structure. Strata councils, strata managers and strata companies frequently change, and the records of the strata corporation are the most vulnerable during these periods of transition.

A web site for your strata, or a secure on line storage system is a valuable asset. It is not only alteration agreements that are important, but minutes of all the strata meetings, insurance records, contracts, claims histories, maintenance and renewal updates, warranties for new building components and construction, and a history of the strata business are essential in managing any property. Ideally, the storage site or web site should be solely owned by the strata corporation. When the council or manager ever changes, it's simply a matter of changing access. The site should also be secured to comply with the privacy laws and so documents cannot be removed without the express, minuted consent of council. This also means that years worth of boxed documents can be scanned and digitally filed, avoiding the need for larger physical storage areas that are often vulnerable to water damage or unauthorized access. The challenge many strata corporations are now facing is years' worth of alterations that have been a result of unauthorized actions by owners, authorized by council but never documented, or authorized and documented, but the records have been lost.

A strata corporation may have bylaws that require owners to be responsible for the cost of alterations, provided the strata corporation has reasonable knowledge on what were alterations, but the most common problem is trying to establish the origin of the alteration. It is difficult to use a model unit in a strata building, because many alterations are conducted by the owner developer during construction and sales. Barbeque gas lines for example. They are often requested by owners in new townhouse developments. In your strata all of the 11 gas lines are identical, even

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though there are 18 townhouses. It is obvious that they were installed at the same time, and quite possibly by the owner developer. The other challenge facing your strata council is that there have never been any alteration agreements, and as a result no such agreements could even be disclosed to subsequent buyers. If the strata corporation cannot verify who made the alterations, and provide documents showing an owner has agreed to future obligations, then how could the strata corporation now expect subsequent owners to be responsible for these common property alterations?

Here are a few steps to tackle this problem. 1) Review your bylaws and check out the alteration bylaw and conditions. They may be due for an upgrade. 2) Call an information/town hall meeting of your owners. Input from the owners and some ideas on solutions may be the best way to reach a reasonable consensus to address the alterations. 3) Maintain an inventory of all alterations and establish an alteration agreement that can be used for all future changes. 4) If you cannot reach a solution, it may be time for a legal opinion on the alterations and the practices of the strata corporation with some recommendations and solutions.

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