

**Condo Smarts**

Headline: Air Space Parcel Agreements

Topic: Air Space Parcel Agreements

Publication date: Sept 22, 2013

Publication: The Province

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**Dear Tony:** We bought into a building in Vancouver 6 years ago that we have discovered has a unique relationship called an air space parcel agreement. Our strata corporation is having a significant problem understanding what this means. We understood when we purchased that our building was a residential and commercial mixed strata, but now we are having some difficulty in identifying which of the owners is responsible for different property. We suspect there are more of these buildings around and wonder if any other strata corporations are having the same problems. The biggest issue right now is who is in control of the parking. The developer has advised that the parking belongs to the commercial property and they control and manage the parking, yet when we purchased we were sold 2 parking spaces by the developer.

*Jenna M*

**Dear Jenna:** The commercial property in your building does not form part of your strata corporation and the relationship between your strata corporation and the commercial property is not governed by the Strata Property Act. Instead, an agreement called a reciprocal easement or air space parcel agreement defines the relationship between your strata corporation and the commercial property. When an owner developer files a disclosure statement with the Superintendent of Real Estate, that disclosure statement for the strata property they intend to sell must identify all of those assets property and conditions the owner developer intends to sell purchasers, projected budget and proposed bylaw amendments, and any other type of leases, licenses, contracts, covenants or easements that may affect your property. Think of it the same as 2 houses in a neighbourhood that have a property line between them and that is the boundary between the properties. In the same manner, when your strata plan is registered, and the titles for the condos are created, a number of other documents are registered, one of them being the airspace parcel agreement. The registered strata plan of your building will show the boundaries of the strata lots, common property, the limited common property and the extension of the

property line both vertically and horizontally, of your strata corporation. The boundary is between the commercial units on the lower level and your strata lots and common property shown on the plan.

Allyson Baker, a lawyer at Clark Wilson LLP in Vancouver, routinely assists strata corporations with understanding their very complex air space parcel agreements. According to Allyson, "the air space parcel agreement is registered on the Common Property Index of the strata corporation, and any additional agreements will also be registered. The air space parcel agreement should contain a volumetric plan that shows the 3-D profile of the building, mechanical equipment, utilities, and boundaries, and most important will contain the terms and conditions of the easement and any covenants. Those are the most important because they will identify the obligations of the each of the Air Space Parcel parties. The complication arises because the agreements often do not have a clearly defined schedule of obligations and fees and how they are apportioned, so the parties often assume they know what the allocations of cost and obligations of the parties are; however, they frequently get this wrong. "

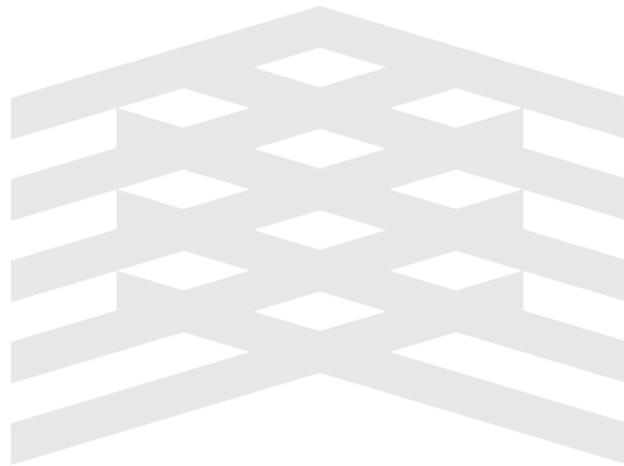
An Air Space Parcel Agreement may easily be 150 pages of documentation. It will require a significant level of legal knowledge and expertise to be able to interpret the schedule of fees, shared costs and liabilities. It is essential for the strata corporation to obtain a written legal opinion on the structure and formula of costs and liabilities so they may be properly administered. CHOA has been proceeding with a number of research projects in 2013, including, "What a strata corporation needs to understand about their Air Space Parcel Agreement" and "What a strata corporation needs to know about retrofitting parking garages for Electric Vehicle Charging Stations" . To receive a copy of the new guides as they become available, contact Donna Heide at [info@choa.bc.ca](mailto:info@choa.bc.ca) or call 1-877-353-2462 ext 2.

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