

Condo Smarts

Headline: Changes come into effect

Topic: Collections; Liens

Publication date: Dec 1, 2013

Publication: The Province

Written by: Tony Gioventu

Dear Tony: We had a lengthy debate at our Annual General Meeting last week about how high the receivables have become in our strata corporation. We are 88 units and as of the end of October, we have 11 owners who owe us over \$100,000. Strata council members have not been taking any action because they have been told there is not much we can do unless the amount is \$10,000 or more, but as a result of that position, the amounts owing are increasing, and we now have a cash flow problem. Everyone we talk to seems to have a different opinion of the best approach to collecting the outstanding fees that are due.

Marissa Whyte, Vancouver Island

Dear Marissa: The strata council has a duty to enforce the bylaws of the strata corporation, comply with the Strata Property Act and protect the interest of the strata corporation and all owners. This includes the collection of money owing to the strata corporation. If the amount owing may be included in a lien filed against a strata lot, the strata corporation may secure the debt owing by filing the lien in the land Title Registry against the strata lot. Common lienable amounts include items such as: strata fees, special levies, a rate of interest up to 10% as permitted in the bylaws or included in a special levy resolution, the costs of filing a lien, and legal and administrative costs for filing the lien and the cost of removing the lien. Before a strata corporation is entitled to file a lien, they must first issue a demand notice to the owner with a 14 day notice period, allowing the owner the opportunity to contact the strata corporation or strata manager and resolve this issue before a lien is filed. Once

the lien is filed the strata corporation has protected the debt. Unless a lien is filed, the debt is vulnerable if an owner declares bankruptcy or their lender forecloses on their mortgage. It is the decision of the strata council to determine the appropriate time to secure the debt and file the lien, but don't wait too long. Many law firms provide a package service on filing the liens, the cost of which is included in the debt owing by the owner, and they can advise you on the appropriate time to take the action. Once the lien is filed, the next decision of strata council is about cost and timing. Because of the changes to the Limitation Act this year, your time periods to take action may now be limited to a two year period, so talk to your lawyer about the correct time to proceed with an order for sale proceeding in the courts, if the owner does not pay the amounts owing. No one wants to see an owner in financial hardship or lose their home, but everyone has an obligation to pay their strata fees and special levies. Owners could make other arrangements with the strata council, but the strata council may still have no choice but to file the liens to ensure the debt is protected.

In British Columbia the Strata Property Act protects the interests of the strata corporation, and grants a super priority for strata corporations over other debts owed by owners. Once the lien is filed, the debt to the strata corporation is secured over other debts such as mortgages and loans registered against the title.

**For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.**

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.