

Condo Smarts

Headline: Essential Documents

Topic: Commercial Stratas, Parking, Air Space Parcels Agreements

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Dear Tony: We are in a small mixed use property in Vancouver, under 50 units. There is commercial property on the ground floor and three floors of apartments above. We have been functioning fairly well with the commercial units for the past 3 years, but have now come to a cross roads over the use and allocation of parking. When our development was built, owners purchased additional parking spaces and storage lockers, which are accessed off of their parking spaces. We had a request for a Form B, that now has to show the parking allocations, and when we did the inventory of the parking, the commercial units claim to have 10 more parking spaces than actually exist, and are demanding access to the residential parking area for the 10 spaces. We have no documentation or records on these allocations, so have no idea where to start.

Charlotte Rosser

Dear Charlotte: The allocation of parking by the owner developer is a common practice, but what complicates the allocations is the absence of any mechanism to file the agreements or register the allocations under those agreements in the Land Title Registry. Even when a strata corporation has received the parking allocations from the developer, they are provided to the management company or the first strata council, and routinely lost within a short period of time. It is impossible to verify any claims without records of the corporation and filed Land Title documents and any agreements that may exist. Here is the process we follow whenever we are assisting a strata corporation with questions about property use, allocation, alterations, voting and unit entitlement. Obtain all of the registered Land Title documents for your strata corporation. The **registered strata plan**, shows property designation and boundaries. The **schedule of unit entitlement** is the formula that determines all common expenses. The **schedule of voting rights** shows the number of votes that are allocated to each strata lot. The **general index** identifies registered documents that include bylaw amendments, mailing address, and limited common property designations by the strata corporation. The **common property index** shows all

encumbrances on the property, and these will include any registered leases, easements or right of ways that are imposed on the strata corporation property. Each of the registered documents is absolutely critical in providing correct solutions to the confusion. You may also be required to print of a number of the registered documents to fully understand property use. In reviewing her documents, I discovered a revelation about Charlotte's property. Your strata corporation is not a mixed use residential/commercial property. It is in fact, two separate properties that have an **Air Space Parcel Agreement** registered on the common index. The agreement shows that they are legally two separate parcels of land, albeit within the building, and the property allocation even divides the use of parking and storage. There is no evidence in the air space agreement, the strata plan or any of the other schedules that indicates the commercial property on the ground level has a right of access to any of the residential properties parking. If there was an agreement or an intent for an agreement created by the owner developer conveying parking to an adjacent property, it would have to be disclosed to the residential buyers before purchase through the disclosure statement. Air space parcel agreements often contain complicated formulas for sharing of costs and liabilities. It is money well spent to consult with a lawyer who understands the agreements and provide your strata corporation with a clear understanding of the obligations.

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