

Condo Smarts

Headline: How are expenses allocated?

Topic: Unit entitlement, Types, Sections

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Dear Tony: Our strata corporation was created in 2003 and is a mixed use of residential units and businesses on the bottom 3 floors. We have 166 units in total, and after a bit of investigating I have discovered that we do not have any bylaws that create separate sections, but we do have a bylaw that creates some different formulas for expenses. Several of the businesses use a significant amount of water, and the strata seem to be apportioning the water in an unfair method. In one of our expense bylaws, 95% is paid for by the residential units with the balance, 5% paid for by the businesses. Not including the amount of water being consumed, if we calculate the just the unit entitlement of the businesses they are required to contribute 17.84% of the common expenses. The residential owners are rather upset by this allocation because we know the businesses use more water per unit than the residential and yet they are only paying for a small amount. Is this fair or legal?

Mark W. Vancouver

Dear Mark: There are some provisions in legislation that allow for other methods of allocating expenses; however, they can be complicated to understand and administer. The *Strata Property Act* requires that all common expenses are based on unit entitlement with the following permitted exceptions. A strata corporation may adopt a bylaw, and with the ratification of a section of the bylaw (commercial strata lots for example) creating a bylaw that allocates the exclusive annual operating and non-annual expenses of a section to only that section; however, those expenses are allocated only by the unit entitlement of those collective units in that section. For example, the section may have exclusive use and allocation of an elevator, recreation facilities like a pool, or exercise room, a separately metered gas fired boiler, or limited common property that is only the responsibility of those sections of strata lots and under a sections bylaw only those units of that section would pay for those common expenses.

A strata corporation may also create a types bylaw that applies only to a particular type of strata lot that has an exclusive feature to that strata lot. For

example, if only 20 units had gas fireplaces and the gas was an exclusive allocation, the strata corporation could create a types bylaw that required just those 20 units, based on their collective unit entitlement, to share the cost of the gas as part of the operating budget only. Both models require 2 principle provisions. An enforceable bylaw that creates or identifies sections or types, and that the expenses allocated must be exclusive.

Bylaws cannot create special "formulas". This is simply a method of trying to get around the issue of non-exclusive use and allowing for one interested party to benefit at the expense of others. There is no such provision in the Act to create special formulas without either a sections or types bylaw. The only other option is for a strata corporation to consider a unanimous vote where every strata lot owner votes in favour of a new formula of allocating expenses. Highly unlikely, especially if one party will have to pay more or assume more liability. While unit entitlement isn't always fair it does ensure that every strata lot owner understands what their share of all common expenses will be in the future. In essence, you should know before you buy what your share of costs will be in either your strata corporation or a potential section or types situation. Your strata should seek legal advice on how to remedy the bylaw and non-compliant allocation of the water expense.

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