

Condo Smarts

Headline: Depreciation Report Drafts & New Legislation

Topic: Depreciation Reports

Publication date: April 17, 2014

Publication: The Province

Written by: Tony Gioventu

Dear Tony: We attended an information meeting last week and the issue about draft depreciation reports came up. The advice that was given indicated that a depreciation report received by a strata council was not a valid report and considered a draft until the strata council had approved the report. The problem we are having with our council is that the report had been received in November and is allegedly still in draft form. How long is the strata council permitted to hold the report? We are concerned that just because the council doesn't like the information in the report they can perpetually hold the report as long as they wish, but we the owners have already paid for this report. Don't we have a right to access the information? Our strata has delayed the report for 11 months.

A concerned strata owner

To all strata owners, council and managers:

The *Strata Property Act & Regulations* do not refer to or use the term *draft* report in the legislation. Up until December 13, 2013, the report had not become fully mandatory, so strata corporations had some comfort in reviewing and disclosing their reports; however, if your strata corporation has not exempted the requirement for a depreciation report by three quarters vote, and are sitting on a report they are not disclosing to potential buyers or owners on request, the strata council and corporation are increasing their chances of litigation and not in compliance with the Act. If there is a condition in the report that would result in a potential buyer, insurer or other interested party from proceeding with a transaction with an owner or the strata corporation, the risks increase. The *Strata Property Act*, Section 35 which defines records that must be maintained by the strata and available on request, was specifically amended last year to include a line that identified "n.1 any depreciation reports obtained by the strata corporation under section 94 of the act and n.2 any reports obtained by the strata respecting repair or maintenance of major item in the strata including without limitation, engineer's reports, risk management reports, sanitation reports, and reports respecting items for which the information

is required for a depreciation report". In addition to this provision, an owner or their agent may also request any correspondence under the same section, sent or received by the strata corporation and council. It is essential for strata councils to maintain a working relationship with their depreciation planner as the process is being completed to ensure accuracy of documents and information. The strata council needs to review the document for accuracy and interpretation of the strata plan and bylaws. Strata corporations with Sections, Air Space Parcel Agreements, need to closely review the report to ensure the proper information is being disclosed. There have already been a number of complaints relating to strata councils deeming reports are only in draft form for months on end, and sellers finding their sales collapsing without the information. If the strata corporation receives a valid request under Section 35 of the Act, they seriously need to assess whether they will avoid providing information, and the consequences. If a vendor/buyer request copies of correspondence relating to depreciation reports, and any of the related documents and reports, and the strata corporation choose to deem a report a draft and not release, you are setting the wheels in motion that may jeopardize a sale, or result in a claim for losses or defects that were not disclosed. The decision is solely that of council, not the manager or the consultant. If in doubt get legal or technical advice before you create a risk for your strata corporation. There was a small but significant change to the *Strata Property Act* last week that strata corporations need to be aware of. Under Bill 12, expenses from the contingency fund will now be majority vote if, the amount is to obtain funds for a depreciation report, or an expense is related to a repair or maintenance recommended in the most current depreciation report. This is a significant change in that those strata corporations who have obtained a depreciation report, will now only require a majority vote for the recommended costs from the contingency reserve fund, as they arise.

**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.