

Condo Smarts

Headline: Challenging claims of Costs

Topic: Collections; fines

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Dear Tony: We are about to sell our townhouse and decided to gather all of the documentation in advance to make the process easier for our agent. We requested copies of all meeting minutes, annual financial reports for the last 5 years and a Form B and a Form F. When we received the Form F, we noticed that the strata is claiming we owe \$500 in fines which we were never aware of, nor have we have been notified about. We requested a copy of the details of the information about the fines from the strata council. They claim they knew nothing about the fines. The management company claims it was money owing from previous years when another company was managing the strata. After months of requesting information we have finally requested that the strata remove the claim. The strata council responded that they could not remove the amount because they didn't impose the fine and they knew nothing about it. The management company insists that we have to pay the amount to have the account cleared. Now here is the interesting part, we double checked last year's financial statements and at year end there were no receivables on the balance sheet. Everyone is now pointing fingers at the other party claiming it was the others decision. Who has the authority to make the decision about this bogus fine? Can the strata council reverse the fine?

Elaine M. North Vancouver

Dear Elaine: Strata corporations have a duty to ensure that they have complied with section 135 of the *Strata Property Act* when they are enforcing bylaws and applying fines. Notice of a complaint and the opportunity for the owner or tenant to request a hearing or to respond in writing is required before a strata applies fines or penalties. This allows for an owner or tenant to respond to the complaint and dispute the claims.

Because the enforcement of bylaws and application of fines is solely a decision of the strata council, there should also be a record in the minutes of the strata council meetings of the date the decision was made by the strata council to impose the fine. Strata councils and managers should also maintain

an active monthly or quarterly receivables list to ensure they track amounts owing, and enforce the collection of bylaw fines, insurance deductibles, damages or other claims owed by a strata lot. Part of the council obligations is reviewing financial statements and the amounts owing to the strata. There are two types of debts owed to the strata corporation, and those should be clearly accounted for separately. Debts such as strata fees and special levies may result in the strata filing a lien against that strata lot securing the debt in priority against other charges, whereas, debts such as fines, damages, and insurance deductibles may require the strata to commence a court action to eventually collect the debt. A form F Payment Certificate is required for the purpose of conveyance of a strata lot when a unit is sold. Certain types of debts, such as strata fees, special levies, interest and fines may be collected as a condition of providing the form, but damages may not be collected on a Form F. The most recent changes to the *Limitation Act* in BC now generally reduces the window for collections down to 2 years requiring a strata to take direct action on the collection of debts before the time period runs out. A strata with aging debts, such as fines, damages and insurance deductibles that have gone uncollected seriously need to review the status of those receivables, and if the strata cannot prove the origin, application or accuracy of the debt, the strata council need to make a decision. When uncollected debts for fines and penalties become a write off, they eventually show up in the annual budget as an expense, and are reconciled on the balance sheet. The Province of BC launched a new web site this week that provides helpful general information about strata living. For more information go to: www.gov.bc.ca/strata

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