

Condo Smarts

Headline: What are types bylaws?

Topic: Types

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Dear Tony: Our strata is a 26 unit apartment building with 2 commercial units on the ground floor. For the past 12 years we have been basically operating as two separate strata corporations and have not had anything to do with each other, but now we have been forced into working with the commercial owners because we have a problem with the building plumbing systems. The commercial owners claim that they are only responsible for 3% of the plumbing costs because only 3% of the plumbing is used by their area. They claim the types bylaw basically divides our strata into two separate parts and their liability is limited in the bylaw to 3% for the commercial and 97% for the residential owners. Our property manager has told us on a number of occasions to legally deal with the bylaw problems because we were not sharing the costs properly, but our owners have been unprepared to pay for the legal costs and chose to just leave things the way they were. Could you explain the difference between types bylaws and the square footage we use for determining strata fees?

Helen Lau

Dear Helen: Types and sections are a method of allocating exclusive expenses to either one type of strata lot or a specific type of section that is created under the bylaws. One of the challenges of the *Strata Property Act* is that it uses the term "types" for both methods, but it has different applications. As a result, many strata corporations with home grown bylaws often confuse the difference.

A types bylaw is only for the purpose of allocating exclusive annual operating expenses that apply only to that specific type of strata lot. For example, an apartment building that has gas fire places on only the top floor, and they are the only users of the gas. If the

strata created a types bylaw identifying the exclusive use of the gas, the cost of the gas in the annual operating budget is then allocated to only those strata lots affected, and they divide the cost based on their collective unit entitlement.

Another common error that occurs is that strata corporations believe they can adjust the schedule of unit entitlement in their bylaws to apply to either types or sections. Neither sections or types bylaws allocate costs based on percentages. They are only to determine that in the case of types the exclusive operating expense is allocated to the specific strata lots, and in the case of sections, both the operating annual and non annual capital costs are allocated to those exclusive sections.

To determine what qualifies as a section, the Act uses the term "type" for the second time. In this case it determines that residential and non residential may be separate sections, different "types" of sections such as apartment style and townhouse may also be sections, and that within non residential strata lots, those used for different purposes may be created into sections.

I always recommend legal advice when dealing with sections and types bylaws because the creation of enforceable bylaws is imperative to avoid an inevitable legal dispute, and the common misinterpretation of how the cost allocations are done. A good example is Helen's strata. The costs are not divided 3% for commercial and 97% residential. When you apply the schedule of unit entitlement, the two commercial strata lots pay 6.94% and 5.11% of all common expenses. Clearly the commercial units have not been paying their share of the expenses.