

Condo Smarts

Headline: Who controls common property?

Topic: Alterations to Common Property

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Dear Tony: When I bought my home in 2005, I was told by the seller, who was the president of council at the time, I was responsible for my limited common property garden areas around my patio. I have a 2 bedroom ground floor unit adjacent to green space in North Vancouver and the patio area is a significant part of my lifestyle. As a result of our depreciation report and a building inspection, the strata council have recently approached me and advised I had to remove the pond I had installed and that three trees that I had planted were going to either have to be removed or at least pruned significantly to avoid damages to our building. I am refusing to remove any of the additions that I have made to the area as it adds so much value to my home. Surely I can keep these alterations as they have been there since 2005 and I have always paid for their upkeep?

Amanda M.

Dear Amanda: I hope everyone that reads this column understands that limited common property and common property are not part of the strata lot and under the control of the strata lot owner. It is possible that the previous owner misunderstood the designation of Limited Common Property. Just because someone has a deck, balcony or patio does not mean it is limited common property. As an owner, potential buyer, the strata council or the strata manager, the first task is to refer to the official documents. Those would be the registered strata plan, and any amendments showing designations or changes to the property that are filed in the Land Title Registry. It is impossible to accurately enforce bylaws, allocate use of property or disclose information to buyers if you cannot provide the facts. In your strata, the strata plan shows all of the deck and patio areas as common property. There have not been any amendments that would alter that designation, and as a result, the maintenance, repair and control of these

areas are the sole responsibility of the strata corporation. If you review your bylaws, the strata must maintain and repair all common property, and owners are not permitted to alter common property without the written permission of council. The gardens at the time of your purchase did not include a pond or your 3 trees, and you did not obtain the written permission of the strata corporation to amend common property. It is possible that the trees are a valuable asset to your strata, but they were not part of the original landscaping, and the council has received several complaints from owners on the 2nd and 3rd floor about the trees covering their balconies and blocking their view. Common property is for the use and enjoyment of all strata lot owners and is regulated by the strata corporation. Unauthorized or informal approval of alterations to common property or limited common property almost always end badly. The most common complaints are: new plant materials such as trees, bamboo and shrubs, balcony enclosures that rarely comply with the building code, changes in doors and windows or items attached to the exterior of buildings such as ornaments, flag holders, awnings and blinds. I would suggest that you request a hearing with your strata council to discuss the alterations and request formal permission to retain the work you have done. Review your bylaws closely as the strata is generally not required to grant permission for alterations to common property so a negotiating process may be necessary, and you may want to discuss this matter with your lawyer. To enforce their bylaws strata corporations may impose a fine, remedy the contravention by removing the alteration and recover the costs associated with the bylaw enforcement. Drastic measures of enforcement such as removing or undoing an alteration should be handled with the utmost of formality for the protection of both the council and the owner. Proper notice of a bylaw complaint and the opportunity for the owner to be reasonably heard are

crucial to ensure the process is fair and in compliance with the bylaws of your strata. Ultimately yes, the strata can order the removal of the alterations, and they may seek a court order to enforce their bylaws.