

Condo Smarts

Headline: Utility use fees

Topic: Utilities, User Fees

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Dear Tony: Our strata has a problem with collecting user fees and our annual budget cash flow is in a deficit. Our strata is relatively new, and gas meters were installed by the developer to measure how much gas is used by each suite monthly. As part of our monthly strata fees we collect each owner's share of the annual budget and then bill them separately for the gas they consume. The problem that has arisen is that the hot water in our building is generated by a gas boiler and we have a gas heated pool, both of which are not metered. Several owners have been challenging us on the gas bills claiming they are downloading the gas on each owner and not the common expense which is partly shared by 2 other strata buildings. For example, last month our owners paid for 54% of the total gas use through our meters, and only 46% was allegedly used for hot water and the pool. Considering this is summer, the only gas being used at this time is likely for cooking, as it has been a hot summer. Our council is concerned that the meters we are using are unreliable and that we are not going to be able to collect the gas charges owing. We spoke with the developer and the city and no one seems to want to discuss the issue. Are there any other strata corporations in the same problem?

JVR, Metro Vancouver

Dear JVR: The reason no one wants to talk about the sub metering for gas or electricity is because the separation of the utility expense by the strata is likely not complying with the Act.

All strata expenses that are part of the annual budget are common expenses, and based on the unit entitlement of all strata lots, even if you have a bylaw that associates types of strata lots, then it is still the unit entitlement of those specific strata lots in the bylaw. Either way, the method is unit entitlement, or any amendments by unanimous vote, which is the underlying principle of all common expenses in strata living.

The *Strata Property Act* does not allow for a sub metering or a sub billing function because that would enable strata corporations either in a budget or through a bylaw to redistribute or recalculate common expenses. Likewise the gas is not an exclusive expense of the strata lot, it is a utility consumed and budgeted for by the strata corporation. As a result, the so called "user fee" in most cases is actually just separate billing avoiding unit entitlement.

Since the inception of strata legislation, in suite metering has become much more economical, reliable, and integrated into programming operated by the strata or service provider making it easy to administer. It may be time to revisit our legislation permitting sub metering; however, some strata information has shown that some of the meters used are not reliable. Certain types of gas flow meters are not accurate resulting in incorrect user reports.

If owners are individually accountable for their utility consumption, they often use less energy, but unless a strata corporation has an enforceable model for sub metering fees, the utility bills will be complicated to collect. Because they are not part of strata fees as a common expense, and strata corporations are often not relying on Measurement Canada approved meters, strata corporations are in a complicated situation when it comes to collections.

Unlike strata fees, user fees cannot be secured or collected through a lien or order for sale application, and with the 2 year Limitation Period, strata corporations may be forced to write off uncollected fees. Review the structure of your annual budgets, your strata common utility costs and method of billing. If your strata is trying to establish metering for its owners, an approved meter by Measurement Canada would be a valuable starting place. I would also recommend a written legal opinion on the enforceability of your sub metering practices before you amend your budgets, bylaws or accounting practices.