

Condo Smarts

Headline: Common Property Alterations: No means no

Topic: Alterations to Common Property

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Dear Tony: I have a south facing unit in an 8 floor building, and my deck is open to the full exposure of the sun. During the day the deck surface heats up and it is unusable as a result of the heat. I put in a letter to my council advising I would be installing an arbour and awning structure that would cover half of the area and reduce the glare within my strata lot. I attached the construction document showing how these would be attached to the building. The council has flatly refused my application and advised that our bylaws do not require the strata to permit alterations to my limited common property. It might be helpful to know that our building is only 3 years old. Will we be able to use the Civil Resolution Tribunal to challenge council decisions?

Phil W.

Dear Phil: Limited common property is common property that has been designated for the exclusive use of one or more owners. In your case your deck surface area is designated as limited common property for your exclusive use and your bylaws require that you do annual maintenance, such as cleaning and washing. Many owners are under the false impression that they own their decks or patios as part of their strata lot because they are common property. They do not. It is still common property, just designated for your exclusive use.

The alteration that you are proposing will have an impact on the vertical surfaces of the building which are not part of your strata lot. In addition to an alteration to the building exterior and structure, the proposed changes may have a negative impact on the 5 year building envelope warranty that covers your strata, and may result in damages to the building exterior.

Under the Standard Bylaws of the Act, a strata corporation is not required to grant permission for alterations to common property. The building exterior is designated and constructed as collective enclosure that if altered without

vigilant care may have devastating consequences in the future.

If the strata does agree, they may impose conditions for the approval that could include engineering reporting and testing, the agreed consent of the warranty provider, building permit requirements and costs, an agreement of who will pay for the cost of future liabilities such as maintenance, inspection, replacement and additional insurance costs. The simple installation of an awning that is bolted to a building exterior will breach the building envelope and require ongoing inspection and maintenance to reduce risks of failure.

Experience has taught the condo industry that alterations to building exteriors such as installed balcony enclosures, awnings, roof deck attachments and patios, and random window and door replacements, almost always result in some unanticipated disaster for the strata. While it may not occur within the next 5 years, damages become obvious as building systems age and require more servicing.

The enforcement of bylaws is a duty of the strata council, which council is not permitted to delegate to other parties. Even the owners collectively at a general meeting are not permitted to interfere with the enforcement of bylaws. Owners may petition for a special general meeting so the strata could consider amending the bylaws to permit certain types of alterations, and the council would then compelled to enforce the new bylaws; even then, any alterations to building exteriors should only be considered with the highest duty of care possible.

The Civil Resolution Tribunal will be able to order a strata or owner to do or stop doing something if it applies to the compliance with the Act or the bylaws of the strata, but the tribunal won't be able to overrule a decision of council, unless there is an error in law or significant unfairness.