

Condo Smarts

Headline: Managing common property

Topic: Common Property

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Dear Tony: Our strata and 3 other strata corporations form an association that manages our common property, including our golf course, guest suites, club house and health club. At each annual meeting, the 4 strata corporations approve their annual budgets and our share of the annual budget of our association. This year, the largest strata defeated the budget and have advised they will not continue to participate in the association. Merry Christmas right? So they have stopped paying their share of the fees, which means we will have to lay off full time staff unless we can find some solution. They have complained on a number of occasions that the money has not been used properly and the association has failed to provide accurate financials, so they have some reasonable cause to complain. They have also refused to provide 2 council members to sit on the association board to administer the property. Do you have any recommendations how to solve the problem? There must be other strata corporations in BC with the same relationships.

Stella Gabriel

Dear Stella: There are several hundred strata corporations in BC that share common recreation facilities or that have joint use privileges over amenities that are placed on neighbouring strata corporations. In almost every situation there are easements or covenants that were created by the developer that guaranteed the right of access and use to these facilities and defined how budgets and funding would be created and approved, who owed what share of the costs, and who was responsible to maintain, repair and insure the assets. The easements are filed in the Land Title Registry and frequently found on the common property index or general index of your strata and the other properties entitled to the use and enjoyment of the facilities.

This is a critical time to engage a lawyer who is experienced with strata law and joint use facilities. No two interests are created or written the same, so the first place to start is a written legal opinion on the easements or covenants to determine how they apply, who is affected, who is responsible for the maintenance and repair of the facility, how the facility may be limited or controlled and how the cost of the operations is shared between the parties included in the easement. There are two different types of models that are used. Yours which is most common, where all of the facilities are on one or more of the strata corporation's properties, or where there is a separate property which is owned by a shared interest of each of the strata corporations.

After a bit of research I discovered that your strata corporations have an easement that joins you to the use and administration of the facilities, with each strata sharing 25% of the costs. All of the facilities are actually part of your original strata that was built, as this was used as a marketing tool for the remaining strata properties. The obligation to maintain, repair and insure the facilities rests with the original strata, and the remaining 3 stratas have the right of access and use, and must pay 25% of the annual operating costs as set by the original strata each year.

One other problem is that your "association" is not an association under the BC Societies Act and has no formal function as a legal entity, which raises a number of questions around the authority to collect money from each strata, operate bank accounts, employ staff or make decisions on behalf of the facilities which are the responsibility of the original strata. The coming new year is always a good time to start fresh, get some advice on your next steps, and sort out the confusion.