

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 400-011

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## Types vs. Sections - Allocation of expenses

In accordance with section 99 of the *Strata Property Act*, common expenses and strata fees are calculated based on the overall schedule of unit entitlement.

### **Calculating strata fees**

**99 (1)** Subject to section 100, owners must contribute to the strata corporation their strata lots' shares of the total contributions budgeted for the operating fund and contingency reserve fund by means of strata fees calculated in accordance with this section and the regulations.

**(2)** Subject to the regulations, the strata fees for a strata lot's share of the contribution to the operating fund and contingency reserve fund are calculated as follows:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution}$$

A change to allocate those expenses for a distribution that affects only certain properties is possible in 2 manners.

The first option is by unanimous vote under section 100 of the Act and the changes of unit entitlement to the strata plan, to the satisfaction of the registrar and superintendent.

### **Change to basis for calculation of contribution**

**100 (1)** At an annual or special general meeting held after the first annual general meeting, the strata corporation may, by a resolution passed by a unanimous vote, agree to use one or more different formulas, other than the formulas set out in section 99 and the regulations, for the calculation of a strata lot's share of the contribution to the operating fund and contingency reserve fund.

**(2)** An agreement under subsection (1) may be revoked or changed by a resolution passed by a unanimous vote at an annual or special general meeting.

**(3)** A resolution passed under subsection (1) or (2) has no effect until it is filed in the land title office, with a Certificate of Strata Corporation in the prescribed form stating that the resolution has been passed by a unanimous vote.

The Second option is for a change of calculation which can be prescribed through bylaw amendments is for the consideration of expenses by types or sections. The basic difference between types and sections is as follows:

#### Types

Expenses are allocated only for operating for different types of strata's.

#### Examples

Only penthouse units with fireplaces.  
Penthouse units pay for the annual servicing and inspection of the chimneys,

#### Sections

Expenses are allocated for both operating and contingency (capital) expenses for each section as separated and the joint operating

#### Examples

Townhouses and apartments, and only townhouse units have wood burning fireplaces. The bylaw for sections allocates costs exclusive to those

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but any repairs and related costs that occur less than once a year are CRF or capital costs paid by the corporation.

sections, and the costs of maintenance, repairs and any future CRF/capital or special levy costs are also paid just by that section.

#### Sample Types Bylaw:

Those units who have gas fireplaces installed for their exclusive use, and are metered solely for use of the gas fireplaces shall pay for the annual gas cost based on the unit entitlement of those strata lots divided by the aggregate of only those strata lots who consume the gas.

#### Sample Sections Bylaw:

In each section, those facilities that are separate and used solely by that section shall be paid for by that section and allocated based on the cost of the operating and CRF expense. Costs will be allocated in the following formula: unit entitlement of the strata lot divided by the aggregate unit entitlement of that section.

A common bylaw for sections simply allocates exclusive costs of operating, CRF and capital expenses and special levy expenses that are exclusive to that section to the sole expense of that section. What then occurs is the creation of 3 separate budgets for sections.

The strata property act and regulations grant a provision for sections where the types are identified and allowed:

### ***Part 11 — Sections***

#### ***Act applies to strata corporation with sections***

- 190** (1) *Subject to the regulations, the provisions of this Act apply to a strata corporation with sections.*  
(2) *If there is a conflict between a provision of this Part and a provision of another Part, the provision of this Part prevails.*

#### ***Sections allowed***

- 191** (1) *A strata corporation may have sections only for the purpose of representing the different interests of*  
(a) *owners of residential strata lots and owners of nonresidential strata lots,*  
(b) *owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or*  
(c) *owners of different types of residential strata lots.*  
(2) *For the purposes of subsection (1) (c), strata lots are different types if they fall within the criteria set out in the regulations.*

#### ***Creation of sections by owner developer***

- 192** *An owner developer may create sections for a strata corporation at the time the strata plan is deposited by filing in the land title office*  
(a) *bylaws that provide for the creation and administration of each section, and*  
(b) *any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section.*

#### ***Creation or cancellation of sections by strata corporation***

- 193** (1) *To create or cancel sections, the strata corporation must hold an annual or special general meeting to consider the creation or cancellation.*  
(2) *The notice of meeting must include*  
(a) *a resolution to amend the bylaws to provide for either the creation and administration of each section or the cancellation of the sections, and*

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(b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section or to remove a designation in accordance with section 75.

(3) The resolution referred to in subsection (2) (a) must be passed

(a) by a 3/4 vote by the eligible voters in the proposed or existing section, and

(b) by a 3/4 vote by all the eligible voters in the strata corporation.

(4) On the filing in the land title office of a bylaw amendment creating a section, a section is created bearing the name "Section [number of section] of [name of strata corporation]".

(5) On the creation of a section the registrar may establish a general index for the section.

### **Powers and duties of section**

**194** (1) After the creation of sections, the strata corporation retains its powers and duties in matters of common interest to all the owners.

(2) With respect to a matter that relates solely to the section, the section is a corporation and has the same powers and duties as the strata corporation

(a) to establish its own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all the strata lots in the section,

(b) to budget and require section owners to pay strata fees and special levies for expenditures the section authorizes,

(c) to sue or arbitrate in the name of the section,

(d) to enter into contracts in the name of the section,

(e) to acquire and dispose of land and other property in the name of or on behalf of the section, and

(f) to enforce bylaws and rules.

(3) Despite subsection (2), a section must not enter into a contract, or sue or arbitrate, in the name of the strata corporation and the strata corporation has no liability for contracts made, or debts or legal costs incurred, by the section.

(4) A section may obtain insurance only

(a) against perils that are not insured by the strata corporation, or

(b) for amounts that are in excess of amounts insured by the strata corporation.

(5) For the purposes of subsection (4), a section has the same insurable interest as the strata corporation has in property contained within the section.

(6) Division 4 of Part 10 applies to a dispute between sections and between a section and the strata corporation.

### **Expenses of section**

**195** Subject to section 100 and the regulations, expenses of the strata corporation that relate solely to the strata lots in a section are shared by the owners of strata lots in the section and each strata lot's share of a contribution to the operating fund and contingency reserve fund is calculated as follows:

unit entitlement of strata lot

X total contribution

total unit entitlement of all strata lots in section

### **Administration of section**

**196** (1) The eligible voters of a section may call and hold meetings and pass resolutions in the same manner as eligible voters of the strata corporation.

(2) Each section must elect an executive for that section and the section executive has the same powers and duties with respect to the section as the strata corporation's council has with respect to the strata corporation.

(3) A member of a section executive is eligible for election to the strata corporation's council.

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### ***Bylaws and rules for section***

*197 (1) The strata corporation's bylaws apply to the section unless they have been amended by the section.*

*(2) The bylaws may only be amended by the section if the bylaw amendment is in respect of a matter that relates solely to the section.*

*(3) Subject to section 127 (4) (a), an amendment to the bylaws respecting a matter that relates solely to the section must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting of the section.*

*(3.1) Despite subsection (3), if a section is composed entirely of nonresidential strata lots, an amendment to the bylaws respecting a matter that relates solely to the section must be approved by a resolution passed*

*(a) by a 3/4 vote, or*

*(b) if a different voting threshold is provided for in the bylaws of the section, by that voting threshold at an annual or special general meeting of the section.*

*(4) The executive of a section may make rules governing the use, safety and condition of*

*(a) land and other property acquired under section 194 (2) (e), and*

*(b) limited common property designated for the exclusive use of all the strata lots in the section.*

*(5) Section 125 applies to section rules.*

### ***Judgments against strata corporation relating to section***

*198 (1) If a judgment against the strata corporation relates solely to the strata lots in a section, the judgment is against only the owners of strata lots in the section.*

*(2) A strata lot's share of a judgment referred to in subsection (1) is calculated in accordance with section 195 as if the amount of the judgment were a contribution to the operating fund and contingency reserve fund, and an owner's liability is limited to that proportionate share of the judgment.*

It is important to understand that the creation of sections also creates divided liabilities and obligations for each of the sections. A judgement or claim against one section, for example, is not a shared liability with the corporation, it is borne solely by that section. A failure of a building component in one section, roofing for example, is a cost that is shared by that section and not a cost shared by the corporation, unless the bylaws have been specifically worded in that manner. The formulas for budgeting costs and allocations can also be divided based on exclusive cost if the bylaws have created a specific delineation of expenses.

A sample budget is attached that illustrates the difference between types and sections. In the types budget the only exclusive cost difference is the gas fireplaces for the penthouse units, all others costs are shared in some part with other units and cannot be separated by type. The sections budget, however, has divided all costs for each sections and the common expenses such as common area landscaping and insurance are one of the few expenses that remain.

The strata corporation should proceed with caution when considering sections and types. The application of the budgets or liabilities may not always be in the best interest of the corporation. A common example is where one section neglects maintenance and repairs of their building to detriment of the other sections, causing a loss in property values and greater liability risks.

The draft bylaws for sections should contemplate operations, maintenance, service contracts, special levies and CRF allocations, and separate bylaws for council and financial operations if any are requested.

Because of the complicated nature of section bylaws, and the structural differences with sections, it would be ideal to meet with council first and assist them in creating a draft set of bylaws for the consideration of sections.

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