
Strata Living

Headline: Section Expense Allocations

Topics: Sections

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Dear Tony: Our strata is a mid rise of residential units above and commercial units on the ground floor. Two of the commercial units are restaurants that use a significant amount of water but our bylaws only allocate 5% of the water bill to the commercial section and 95% of the water bill to the residential units. If we use our schedule of unit entitlement, the commercial units would pay 11.92% of the water. The same allocation applies to our natural gas bill and electricity. Our residential owners are unhappy with the allocations because if we use the unit entitlement allocation the residential strata fees go down significantly and we feel like we're subsidizing the commercial properties. Is this a fair way of allocating utility expenses?

Dennis M.

Dear Dennis: The creation of sections is permitted under the *Strata Property Act*. Through the adoption of a bylaw, by three quarters vote at a general meeting, a strata corporation would identify and create the sections permitted by the *Act*. Sections bylaws may also be created either by the owner developer as part of the original development. If the strata adopts bylaws that creates sections, the bylaw is approved separately by both the sections and the strata corporation. A sections bylaw, permitted under the *Act* creates the allocation of expenses that solely benefit that section, it does not permit strata corporations to portion or allocate expenses based on other formulas.

If a strata corporation wishes to change the formulas of how expenses are allocated, this requires a unanimous vote, which requires every strata lot voter to vote in favour of the amendment, and the new formula showing how common expenses are allocated is then filed in the Land Title Registry. If an expense does not

solely benefit a section(s), then it is a common expense of the corporation, included in the annual budget and based on unit entitlement.

Unless your strata corporation and sections can agree to amendments to the bylaws to correct the allocations, the only option to correct the bylaw is for the residential owners to make an application to Supreme Court or commence arbitration under the *Act* to challenge the bylaw. Many such bylaws remain unchallenged due to the cost and voting support that the strata councils and sections require, but change is coming.

Under the Civil Resolution Tribunal, a strata council or section council executive will be able to commence a claim to challenge bylaws, budgets, allocations and compliance issues without the need for a three quarters vote of the owners at a general meeting. The CRT will have the jurisdiction to determine whether a bylaw is enforceable and to order a strata corporation or section to do or stop doing something.