

Condo Smarts August 24th – 27th, 2016

Collecting Strata Fees & Special Levies

Dear Tony: Our townhouse complex has been using a collection service to deal with unpaid strata fees, special levies and fines. A number of owners have complained about being harassed and bullied for fees they do not owe, or additional fees on top of what they owe, and council members are having a rethink about this decision. Our management company offered to act as our collection agent, but have proposed that they retain 40% fee of the amount owing in exchange for the collection. Could you write a column outlining the simple steps for collection fees from owners?
Glen

Dear Glenn: British Columbia has some of the most progressive and effective legislation for strata corporations to collect and secure debts that are owing. There are fundamentally two types of debts owed by a strata lot. Secured and unsecured debts. Strata fees, special levies, interest authorized in bylaws or resolutions for special levies, and cost for work orders issued by an authority are debts that may be secured against a strata lot by filing a lien. A strata may also make an application to the Supreme Court of BC for an order for sale to pay those debts. When a lien is filed, the cost of the lien and the amount of the debt are secured as a priority above mortgages and personal debts. If a strata lot is sold or forced into sale, after taxation matters are settled, the strata corporation is paid first, then any remaining funds satisfy the mortgage debts, loans, or other charges registered on the title. This super priority ensures the other owners don't pay for the default and the strata recovers the debts without the requirement of other collections actions. Fees like bylaws fines, user fees, damages and insurance deductibles are unsecured debts as they are allegations of a violation or cause of action resulting in a claim. The strata corporation is not permitted to file a lien for unsecured debts; however, they may commence a court action, arbitration, or make an application to the Civil Resolution Tribunal to obtain a decision on the amounts owing. Once the strata has a decision, you may register that decision on the title. Your strata may also withhold a Form F, Payment Certificate, required for a sale of a strata lot until the amount is paid or satisfactory arrangements for payment have been made. Either option provides a strata corporation with secure economic collection solutions far below a 40% fee. It is critical that your strata maintain a monthly aging collections roster to make collection decisions before the two year limitation period expires.

A strata corporation may negotiate additional service costs for management; however, it is not the manager collecting the fee, it is the manager acting as the agent of the strata corporation, therefore the strata corporation collecting the fee. The amount collected is shown in the strata revenues, and any amounts paid for the collection services are shown in the expenses as set by the strata management service agreement. Before your strata signs any service agreements or addendums, seek advice on the consequences of the agreements. Forty percent of a 50\$ fine is \$20. Forty percent of an \$18,000 special levy is \$7,200, plus court costs if necessary. A valuable method of assessing fees and collection costs is to determine whether your strata council has the authority to spend the funds for the collection proceedings. If they are not within budgets, special levies or the bylaws, your council may be authorizing a collection cost beyond your scope of authority.

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