

Condo Smarts March 1st-4th, 2017

Managing Alterations

Dear Tony: Our strata corporation is 164 units mixed use high rise, townhouse and commercial. Over the past 15 years a number of strata lots of all 3 types have made some significant changes to the use of their property. Our strata took a pretty casual approach to managing the alterations with the assumption that each owner would be responsible for their own repairs. Now we have issues with changes of windows and balcony enclosures that are causing damage to other strata lots. Several of the units have sold multiple times and the new owners are refusing to perform the maintenance or pay for the damages. In many circumstances we had alteration agreements drawn up, but with multiple changes of management companies over the years none of these records have been retained, so subsequent owners knew nothing of the alterations. Can we impose new agreements on the current owners through our bylaws or are we stuck with the repair costs? Natalia W.

Dear Natalia: The Strata Property Act requires strata corporations to disclose to buyers who request a Form B Information certificate, whether there are any agreements to which an owner has taken responsibility for the cost of requirements of maintenance and repair relating to an alteration. There are several problems with the disclosure process if the agreements were not drawn up correctly or have not been disclosed in every circumstance. Strata corporations are notorious for inconsistent record keeping. In addition to multiple changes of management structures where documents are frequently lost or destroyed, council members with oversight for alterations associated with other council members frequently ignore the obligation of an alteration agreement or the requirement to retain and disclose the documents to subsequent buyers. In addition, alteration agreements are often incomplete, randomly applied, or may vary greatly depending on the experience of the current strata council. All of this means it is unlikely and extremely difficult to impose a retroactive agreement or condition on a buyer who was unaware of the obligations. Bylaws may remind people of their obligation to maintain and repair their strata lots and their obligations on limited common property, but a bylaw is not permitted that makes an owner responsible for the maintenance and repair of common property. Check your registered strata plan to determine the allocation of the property. In your case all balconies and decks are common property so the obligation to repair and maintain common property automatically defaults to the strata corporation. If the strata corporation has maintained alteration agreements and properly disclosed those agreements to subsequent purchasers, you may be able to recover the costs of the repairs and maintenance of the balcony or deck associated with those agreements. It may be in the best interest for the strata corporation to address all of the decks and balconies as one project of repairs to ensure there is no further damage to the building. This often requires the removal of balcony enclosures to repair the areas attached to the building exterior. If any owner wishes to have a new enclosure reinstalled, or a deck enclosure reinstalled, the strata corporation may consider these as alteration applications under your bylaws, and if approved, council may set a series of conditions such as to who pays for future maintenance and repair costs, building permit requirements, engineering services and the cost for legal services to set up the agreement.

Tony Gioventu, Executive Director

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