# Condo Smarts June 7th-11th , 2017
# Alteration Agreements: Are they binding?

Dear Tony: We purchased a great 2 bedroom condo in False Creek in 2016. At the time of the purchase we requested all of the documents for the past 5 years, engineering reports and a Form B Info Certificate. After we completed our review, our lawyer reviewed the document along with the property disclosure statement of the seller and nothing popped up as a potential risk or cost. A year later and we are still very happy with our purchase. We have noticed a dispute in our strata that is raising concerns for several owners who have altered balconies. The strata council are insisting the owners have to maintain and repair their balcony areas and enclosures, and if they do not, the strata will have the work done and bill them for the cost. There seems to be a fair amount of pressure on these owners to pay for something they inherited and for an argument that may be rather thin. Jacob M.

Dear Jacob: Alteration agreements are a very complicated procedure to properly enforce. The Strata Property Act Standard Bylaws, and the Form B Information Certificate both refer to alteration agreements as either a condition of approval for altering common property or to disclosure an alteration agreement that may have been established for a specific unit. The challenges that many strata corporations face are often associated with incomplete record keeping, inconsistent enforce and application of the bylaws, and alteration agreements that are not binding on the parties. In my experience, most alteration agreements and the procedures of the associated strata corporations, do not meet a reasonable test that would make them enforceable. Here is a common example.

Jenny owns strata lot 25 and in 2001 requested permission to have a balcony enclosure installed. The council granted permission on the condition she would be responsible for the maintenance and repair of the alteration. Jenny sold her unit to Mark in 2005. At the time he requested a Form B Info Certificate and there was nothing disclosed about the alteration. In 2015 Mark sold his unit to Hardip and once again the strata disclosed nothing about an alteration agreement or any knowledge of the alterations. This is a common sequence of errors in strata corporations. Records are often lost or destroyed as they transition through newly elected councils or changes with property managers. No one has a copy of the original agreement, it was never disclosed to subsequent purchasers, and if you look closely at the number of balcony enclosures on the building, there are several completed where the requirement of an agreement was never a condition. An additional ongoing problem about these agreements is that strata corporations attempt to down load the duty of maintenance and repair of common property to owners, which is not permitted by the Act. The strata is only permitted to make an owner responsible for the cost associated with the maintenance and repair of the alteration, which will require a specific detail of those future costs. The lack of fair application of the bylaw also questions whether the agreements are enforceable, and whether they would even apply to existing owners who have entered into current agreements. If your strata is in the habit of applying or enforcing alteration agreements, I would strongly recommend you obtain a legal opinion on your bylaws and how the agreements have been enforced or applied. These types of bylaws and agreements are perfect scenarios for Civil Resolution tribunal claims as they incorporate the Act, the bylaws of the strata, and the procedures applied by strata corporations.

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Sincerely, Tony Gioventu, Executive Director
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