

Condo Smarts June 21st-24th, 2017

Billing Surcharges

Dear Tony: I have recently become the treasurer of our strata council. In reviewing the correspondence to collections a number of owners have complained about the strata management company back charging them for administrative or service costs. We have nothing in our contract with the management company that permits them to charge owners service costs. In most cases this is simply a \$50 service that has been added to simple maintenance or repair bills when owners have required repairs to their strata lots, or a service technician was sent out by the property manager to complete fire safety inspections. We now have one owner who refuses to pay the \$50 service charge, and the management company have added it to their account, placing them into arrears and requested we authorize a lien be filed under the bylaws. We're not sure how to collect this amount or if it is even fair or legal? James M.

Dear James: It is helpful to understand that your strata management company is under contract as your agent. Under an agency agreement, they are essentially acting as you the strata corporation with the authority and limitations imposed by the Strata Property Act, the strata management contract or the instructions of strata council. The management company has no authority to bill owners directly for their services as their contract is with you the strata, not each individual owner. Likewise they have no authority to impose any penalties or surcharges on recoverable costs. Only the strata corporation may attempt to recover costs such as strata fees, special levies, interest authorized in bylaws or 3 / 4 vote resolutions, damages, fines, penalties, insurance deductibles or costs relating to work orders. With these limitations in mind, even strata corporations are not permitted to charge or impose service or administration costs. Most strata management companies are doing this correctly. Your bylaw that determines any debts owed will be applied to an owners account and paid first from strata fees is also a problem. Court decisions have made it clear that bylaws that attempt to prioritize debts that are not lienable or charge administration costs are not enforceable. It is important for owners to remember there are 2 different types of debts owed to a strata corporation. Secured debts (fees) which a strata can file a lien against the strata lot for such as strata fees, special levies, interest and work orders, and unsecured debts which are essentially claims that someone has violated a bylaw, caused an insurance claim or damages to the common property. The two different types of debts must be accounted for separately if the strata corporation is going to be successful in collecting unpaid secure debts, and any debts that relate to bylaw enforcement, damages or insurance deductibles will require a claim be filed with the Civil Resolution Tribunal or the courts to obtain a decision or judgement for the amount owing. Even with a court or tribunal decision, those types of unsecure debts will rank low in priority after family maintenance enforcement payments, taxes, strata fees and levies, mortgages and other debts registered on the title. An important item that appears to be a misunderstanding. Even if you do receive a decision or judgement for unpaid bylaw fines, administrative fees, damages or insurance deductibles, your strata corporation cannot file a lien against the strata lot for those amounts.

Sincerely,

Tony Gioventu, Executive Director
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