

Condo Smarts February 7-10, 2018 Strata Councils and Buyers Beware

Dear Tony: Our strata council presented a series of agreements to our owners at a recent Annual General Meeting that raised a number of serious questions. Our manager had brought a number of requested easements from a developer who is building on the property next door and the resolutions we discovered were written by either a council member or our property manager. The problem with the resolutions and proposed easements is the language of what we were being asked to vote on and the outcome did not match. In several resolutions we were simply asked to approve the easement without the details of the agreement and without the benefit of the strata lawyer present to explain to the owners the implication of each of these agreements. I was unpopular with the council and the manager at the meeting but successfully motioned to have all of the easements deferred to a future meeting until all of the information was detailed and published for our owners to review and seek legal opinions before we next vote. Is this a normal practice? We were advised by our manager the council had reviewed and negotiated everything and it was routine, but none of our council are lawyers and no one considered the future implications. More troubling was the lack of disclosure from the manager and the council president who declined to answer whether the strata or anyone was being paid. Brenda C.

Dear Brenda: Development of neighbouring property is a condition that potentially affects every property owner in British Columbia and strata corporations need to remember that in addition to their strata lot, they are also the shared owner of a larger piece of property. An easement is an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose of time and conditions. Your property is a perfect example. The developer is proposing a high-rise next to your mid-rise garden community. The adjacent parking garages will result in possibly property movement with possible damaging affect if certain steps are not managed. The developer has approached your strata requesting permission for an underpinning and anchor agreement to secure both sites. This is necessary during excavation and construction and future maintenance and access requirements and in most situations the most economical method for the developer. Seems like a simple request and negotiation, right? Not at all. The simplest easement could impose conditions that reach far into the future of your property ownership and may even affect property values and your ability to wind up your strata corporation or future development of your site. Your strata corporation does not have to agree. Every property has unique conditions and the implications of any easement for access, construction, future maintenance, terms and conditions of the easement and the related costs require close scrutiny by the lawyer representing only your strata corporation. If someone approaches your strata requesting an agreement it obviously has value for them. The expectation is your strata council should be able to confirm all of the legal and engineering and related construction costs will be reimbursed by the developer back to the strata corporation and the proposed easements will be closely reviewed to analyze what the current impact would be on your property and how these easements may affect the future use of your property and possible property value. Your strata council should also be investigating the current value of the easement. It is possible there are access or property use requirements that have significant value. You are essentially giving away some of your property rights, so why not be paid for them? This is the time for a shrewd business negotiation. Remember the easement is rarely for your benefit, the neighbouring property holder needs some concessions from you to develop and sell. I would not vote in favour of any proposed easement without the benefit of legal advice and the complete disclosure of the exact wording of the easement.

Your strata manager should be recommending independent legal advice on the easements and the resolutions. Strata Managers may be in violation of the Legal Professions Act in BC if they are writing resolutions, constitutions or bylaws and being paid a fee, and management companies are charging through the service agreement. If the strata manager has received any fees from the developer or a 3rd party not fully disclosed to the strata corporation, they are also potentially in violation of the Real Estate Services Act. Complaints may be filed online through the Law Society of BC www.lawsociety.bc.ca, or the Real Estate Council of BC www.recbc.ca.

Sincerely,

Tony Gioventu, Executive Director
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website: www.choa.bc.ca