

Condo Smarts March 6, 2019

What is a significant change in the use or appearance of common property?

Dear Tony: Our strata council has decided to shut down our swimming pool and hot tub for the next 3 months to save money. They claim the growing costs of winter heating are going to result in a deficit budget so they have the authority to shut down the services. Three council members have been lobbying for this because they don't use the pool. Because we are in a resort area, owners who rent their units, and resident owners use the pool are furious. Does the council have the authority to impose these changes? Helen F.

Dear Helen: Almost every strata corporation across the province has some form of common property. How common property is administered is determined through the bylaws and rules of the corporation, or the resolutions approved by the owners at general meetings. Any significant change in the use or appearance of common property requires the approval of the owners by a 3/4 vote at an annual or special general meeting. The strata council does not have the authority to approve significant changes that would alter the appearance of common property and buildings or changes that would significantly alter the use of the property. If the strata corporation is heading into a deficit, the council have several options. They could simply complete the balance of the year and if there is a deficit, the owners repay the deficit amount in the following fiscal year as either part of the next operating budget by majority vote or a special levy or contingency expense by 3/4 vote. The council could also convene a special general meeting before the fiscal year end to approve a special levy to make up the projected differences, or seek the approval of the owners by 3/4 vote to suspend operations of the pool facilities to the end of the fiscal year. While I appreciate the fiscal prudence of your council, it also has to be recognized the pool facilities are a key part of your resort property through the winter, and closing the facility may have negative impact on your owners' ability to rent their units. If your strata council does not respond, you may by 20% petition of the owners demand a special general meeting to direct the council by majority vote to open the facilities. The meeting must be held within 4 weeks after the demand is given to the strata corporation. If the council do not hold the meeting within the time period, the petitioners may give notice of the meeting and petitioned agenda items.

There is a significant amount of debate over what constitutes a significant change to common property. The Strata Property Act establishes the change must be significant and applies to use or appearance, but how does a council determine what is significant? A straightforward test on the proposed change is helpful. Will the change in use alter the ability of owners, tenants or guests to access the facility? Is the change short term only to address a maintenance or safety issue or is this a policy change in use? How will everyone be affected by the change? Will the change result in other occupants being affected adversely? If you are planning a change in use or appearance there may be other considerations. A removal of a tree or group of plantings may affect the appearance as well as the use of the property and may affect privacy. The installation of structures such as garden sheds or landscaping features may also be a significant change if they affect use or enjoyment of the common property or adjacent strata lots. Major construction or alterations to building exteriors requested by owners to enclose balconies or install skylights may also be a significant change. If it is likely that a strata lot(s) or use of area is being affected by the changes, it is probably significant and worth the effort to seek the approval of the owners at a general meeting before you proceed. Council members also need to be routinely reminded they are elected to act in the best interest of the strata corporation, not their personal agenda.

Tony Gioventu, Executive Director CHOA

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