

Condo Smarts March 16th, 2016

Undisclosed Alterations

Dear Tony: I bought a townhouse in Surrey in the spring of 2015. This unit was especially attractive because it had a glassed in extension on the back, redesigned and upgraded interior and a great landscape plan. We love the place and the community is great. Our strata has just had their AGM and we have received a notice for the cost of the replacement of the deck area in the landscaping. The area is common property so we assume it is strata responsibility, but the strata has produced an alteration agreement that lists all of the expenses in the agreement that we will be liable for. These even include the glass extension and changes to the roofing to accommodate the changes. When we purchased the unit we requested all the routine forms and read the bylaws, but nothing seemed unusual to us. The seller didn't tell us anything or disclose anything in their sale and our agent didn't pick up on anything unusual. How can the strata come back at us now after the sale? Marco

Dear Marco: User agreements that follow the strata lot to the next owner are a record keeping nightmare for most strata corporations. They are frequently omitted from Form B Information Certificates because the records have been lost or were never retained in the first place. Maintaining corporate history in strata corporations is critical if a strata corporation plans on enforcing alteration agreements and the best solution for a strata is to maintain suite files that include historic information and agreements that relate to each strata lot.

Owners, tenants, and buyers are entitled to copies of the records of the strata corporation and this would include alterations agreements, bylaws of the Strata Corporation, contracts or service agreements, and engineering or depreciation reports. Both Oscar and his strata agreed to cooperate with a bit of detective work in an attempt to resolve the misunderstanding and provided copies of the Form B issued and received before the purchase, the bylaws of the strata, the minutes of the council meetings for the past 5 years, and the depreciation report. The Form B lists an agreement which makes the owner responsible for alterations and costs associated with the strata lot and the common property; however, the agreement as required by the Strata Property Act was not attached and noted that it was provided by the seller. Strata corporations cannot rely upon a seller to provide agreements or documents that the strata is required to provide under the Act.

Both the bylaws of the strata and the depreciation report identify the alteration to the glass enclosure and the landscaping indicating your strata lot is responsible for the costs relating to maintenance and repairs. The minutes also describe the alterations made in 2014, the permission to alter common property and the strata requirement for an agreement for costs. There is a significant amount of evidence relating to the alterations to your strata lot, but there is one more piece of information that may have been neither the fault of the strata corporation or the purchaser. The person providing the Form B Information Certificate and the records was also the seller. Strata council members who are selling their strata lots or who have an interest in a matter with the strata corporation must remove themselves from the role of representing the strata corporation at the same time. Both the buyer and the strata may have a claim against the seller if they failed to disclose the agreements, especially if they are acting for the strata corporation and provided incomplete information. Multiple roles create problems for everyone involved. At this time the strata and the seller are consulting their lawyers in hopes of finding a fair solution.

Sincerely,

Tony Gioventu, Executive Director
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