

Condo Smarts September 27-30th, 2017

Who pays for the pool?

Dear Tony: We have an issue of fairness in our strata that is dividing our community. Our strata is divided into 2 basic types of units. The first 10 floors are hotel use and floors 11-16 are residential condos. The hotel has a pool that has always been included in the common expenses of the strata corporation even though the strata corporation only has access to the hotel if we pay a club membership fee. No one in our strata feels we should pay the membership fees, and the pool is identified on the strata plan as limited common property for the exclusive use of the hotel. We challenged the payment schedule but were told by the property manager we are required to either have a bylaw that allocates expenses by type or a bylaw where we create sections to segregate our common expenses. How is it possible to create exclusive use where one owner benefits but everyone pays for? Charlie M.

Dear Charlie: The *Strata Property Act and Regulations* have specifically addressed this issue. Regulation 6.4 specifically identifies a formula that allocates operating expenses for limited common property, to only those strata lots who benefit from the expense. In your strata this requires the operating expenses of the pool, hot tubs and saunas be allocated to only those strata lots that have been identified as limited common property designates. The key qualifying condition in this formula is that the expense must solely benefit the limited common property. The pool servicing and maintenance or obviously exclusive expenses as your residential owners do not have a pool, sauna or hot tubs. The gas and electric bills may also be expenses of the hotel if they are metered separately. You do not require a types or sections bylaw for these allocations.

If the owner of the hotel wishes to set up a membership for the pool services that is their discretion; however, your strata should also seek legal advice on the imposition of user fees if they are charged by the strata corporation and whether the fee structure is valid as it is neither a rule or a bylaw in your strata.

The same types of expense allocations can be found in a variety of strata corporations across the province. For example, strata corporations with marinas where only the water front units have access to the marina facility which is limited common property and those designated areas are an expense that can be solely attributable to the water front strata lots. Unfortunately the Act does not make reference to the limited common property expense allocation, it is only a part of the regulations. It helps to read the whole book.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
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