

## Condo Smarts November 29th, 2017

### Negotiating access

Dear Tony: The property next to our strata corporation has been sold and a new development is about to start construction. Our building is a relatively new high rise with 10 town houses with a large underground parking garage. Our strata council has been approached by both the city and the developer and have received a number of requests for access to our property through the lane area, and standard types of development agreements that would permit them right of ways for construction and services. In your last column you were talking about the subdivision of property and the need for every owner to agree to the changes. Is our strata required to obtain the approval of all of the owners before we can proceed or is council permitted to approve these agreements? Mike

Dear Mike: A subdivision of property occurs when a section of the common property of the strata corporation is defined and surveyed and divided off from the strata corporation and sold to another party. That requires the consent of all owners and registered charge. The types of agreements your strata corporation is likely being requested to consider are easements and right of ways. These are very common on all properties and likely several are registered in the Land Title Registry and shown on your existing strata common property. An easement or right of way creates an interest on behalf of one or more parties with respects to another property owner or user. Easements, rights of ways and leases all affect the common property in a variety of manners to generally provide access for services and utilities that cross over another property, the right to use property such as a shared driveway or courtyard, or impose more complicated obligations that relate to use, access, cost sharing and future liability of the easement. A few tips though to protect your strata corporation. There is no such thing as a “standard easement or development agreement” with neighbouring properties. What may seem like a simple agreement at the time may have far reaching costly implications for your strata owners. Current and future implications have to be considered. If a developer wants access to your property or concessions for use, remember it is your property and you have a duty to protect the interest of your owners. The proposed easement may also have significant value for the strata corporation that should be negotiated in each separate case. If your strata corporation is willing to consider the proposals, one condition of the agreement is the developer will be required to pay for all of your legal and related expenses to review, negotiate and ratify the agreement at an Annual or Special General Meeting of the strata corporation. Start by retaining a lawyer who has expertise in this area of construction and development and engage them to work for your strata corporation. Determine if there is any value to the requested easement. Elaine McCormack, with Wilson McCormack Law Group, cautions all councils to be closely engaged with the process so they understand what the easement means regarding the use and condition of the strata complex. “A strata corporation is not required to give a neighbour access to its land, including the courtyard or driveway, but if you do, you may be able to negotiate compensation. If the easement is important to a new development, granting the easement could result in significant revenue for the strata corporation. There are also a number of construction issues requiring easement agreements, including underpinning of building structures, soil support, over head crane swings, modifications to utilities, and other impact to your building to consider.” Finally, before you can agree to any easements, your strata corporation will be required to pass a 3 / 4 vote at a general meeting and give the council the authority negotiate and authorize the terms and conditions of the agreements.

Sincerely,

Tony Gioventu, Executive Director  
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