

Condo Smarts August 14, 2019

Who Gets the Special Levy Refunds?

Dear Tony: I sold my strata lot on June 3, and as a condition of the sale, the buyer agreed if there were any refunds from the 3.5 million-dollar special levy we paid in 2017, they would authorize the payment to be directed to the seller. I have been informed by an owner in the building there was \$235,000 remaining in the levy which would have left me with a refund of \$2,905 from my original contribution. The buyer informed me they never received the refund because the strata corporation approved a new resolution that re-allocated the special levy surplus to another decorating project. They decided to apply the remaining funds to new carpeting and painting throughout the building. She did attend the meeting, voted against the resolution and advised the council she had an obligation to refund the surplus back to the buyer. Both the property manager and the president of council advised the strata corporation could do whatever it wanted provided it passed a 3/4 vote and the refund was my problem not theirs. Is this permitted? Carol W.

Dear Carol: A resolution that re-allocates a special levy surplus does not meet the requirements of the Act and your strata corporation is exposing the owners to dispute through the courts or the tribunal. The Strata Property Act is very specific on the matter of a special levy surplus and what must occur. If any owner is entitled to a refund of \$100 or more, all the funds must be refunded back to the owners based on the same formula of entitlement as they were collected. If no one is entitled to a refund of \$100 or more the strata corporation may deposit that amount in the contingency reserve fund. The legislation was specifically crafted to protect strata owners from councils misusing funds as the funds must be used for the purpose set out in the resolution and could not use a surplus for other expenses. An option that strata corporations are trying to apply when there is a surplus available and the strata corporation still has outstanding projects, is to convene a meeting to approve another special levy for the same surplus amount where each owner is required to authorize the use of their refund for the new special levy. The complication of this solution is what happens when an owner does not authorize their refund to be applied to the special levy? It will consume an extensive amount of administrative time to process the refund and approvals. The complication that arises for sellers is they are longer an owner, therefore; any refunds are returned to the owner on title at the time the refund is payable. The dispute is now between the seller and the buyer. Because the refund was reallocated the seller could seek a claim against the buyer as there was a refund identified, and the buyer could file a claim against the strata corporation for not complying with the Act. One of the over riding problems with this scenario is the cause of the problem. The resolutions for this meeting were written by the property manager or someone within their company. Writing resolutions for corporations or associations, while being compensated is a practice of law. Strata councils constantly pressure managers, who are paid and contracted by the strata corporation, to write resolutions to avoid legal costs, placing the manager or their company at risk of discipline from the Law Society or a complaint with the Real Estate Council of BC. If your strata corporation is proposing a resolution that requires a 3/4, 80% or unanimous vote, always seek legal advice first. Even a majority vote resolution that approves a significant depreciation report repair cost from your contingency reserve fund would be worth a legal opinion. As strata council, confirm you are proposing resolutions and bylaws that comply with the Act, clearly define your objective and ensure you have the full scope of authority you require to act on behalf of the corporation.

Tony Gioventu, Executive Director CHOA

Sign up now for Spring Seminars in your area. Topics this spring will highlight Insurance, Above and Below the Deductible, Creating an Operations Plan for Maintenance, Renewals, & Annual Budgeting, and Bullying and Harassment in your strata and the workplace. Go to:

<http://www.choa.bc.ca/seminars/>