

Condo Smarts August 21, 2019

Are Special Levies for Contingency Contributions Valid?

Dear Tony: We sold our condo in Burnaby in February. At the time of the sale we were instructed to pay for a special levy that was due over the next 3 years as a special levy to increase the contingency reserve fund. As part of our sale, the strata manager and council advised we would be required to pay for the next 3 years payments as a condition of the resolution. Each strata lot is paying their share of \$300,000 every 6 months starting January 1, 2019. While the resolution did not recognize any specific project, it did indicate the levy was to increase the reserve fund to plan for upcoming major projects. There was a low turn out at the meeting last December to approve the special. As a result, owners petitioned for a Special General Meeting in July and cancelled the special levy by 3/4 vote. As an owner and seller who was forced to pay the levy in advance, how do we get the funds returned? The remaining owners are not paying the full levy as we were forced to pay it yet the strata council is refusing to respond to inquiry or pay the refund. Is any of this legal? Dave & Beth R.

Dear Dave & Beth: Your circumstances are a perfect example why special levies that raise funds for the contingency reserve fund are fraught with problems and pose a questionable ability to comply with the requirements of the *Strata Property Act*. Special levies must be treated separately from contingency reserve funds and for specific projects. Section 108 of the *Act*, is clear on what is required and permitted for special levies. Special levies often cover an extended period of time for projects; however, the levy resolution must include: the purpose of the levy, the total amount of the levy, the method used to determine each strata lot's share, the date by which the levy is to be paid or if the levy is payable in installments, the dates by which the installments are to be paid. A resolution that sets a schedule of payments and then imposes a payout on sale of a strata lot does not comply with the *Act*. If there is a remaining schedule of payments after the sale, the subsequent owner is responsible for those payments and as a condition of the sale they may reduce the offer. Talk to your lawyer as you have a may have a valid claim due to a questionable resolution or unfair payment procedures imposed on a vendor.

The strata must account for the funds collected for a levy separately from other money of the strata corporation, use the money collected for the purpose set out in the resolution, may invest the money, and must inform the owners about the expenditure of the money collected. Any interest collected from late payment penalties on the levy must become part of that levy, and of course refund the balance of the levy to the owners if any owner is entitled to \$100 or more of a refund. In addition, in the event the strata corporation is required to pay a common expense insurance deductible, the deductible may only be expended from the operating fund, the contingency reserve fund or by a separate special levy on the owners. A special levy fund for another purpose may not be used for insurance deductibles. How do you segregate contingency funds and special levy funds that are pooled? Impossible. All of these conditions combined create a number of complications for strata corporations who try to increase their contingency funds by special levy when there are problems. It is also unnecessary for strata corporations to raise contingency funds by special levy which requires a 3/4 vote, as the contingency contribution as part of the annual general meeting is determined by a simple majority vote. The argument has been presented that owners may not approve the same contingency contribution next year. There is nothing that prevents a strata corporation from adopting a bylaw that sets higher minimum limits or requires the strata corporation to reach a certain funding level each year based on their depreciation report. I encourage everyone to plan their contributions to avoid special levies. Always have a 10-year plan to know what major expense are on the horizon. It is much easier to pass a majority vote at an AGM to approve a budget for long term contributions than a special levy you may have challenged in the Civil Resolution Tribunal or the courts. The argument that lower strata fees make it easier to sell strata lots is simply not true. Some of the best managed strata corporations in the lower

mainland have strata fees 25% higher than their neighbouring properties and are fully funded for future repairs. Because of the focus on funding, operations and maintenance, units sell quickly, for full price or more and sellers and buyers alike benefit from the investment in the future. If your strata corporation is proposing a special levy for contingency contributions, speak to an experienced strata lawyer first.

Tony Gioventu, Executive Director CHOA

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