

Condo Smarts July 20, 2020

Retroactive Strata Fees

Dear Tony: We recently purchased a condo in a Fraser Valley community the first week of June. We obtained the disclosure forms in advance, read the minutes and bylaws closely, and we were aware in advance the insurance was increasing by 250% due to the location and type of construction of the building. We just received notice of the Annual General Meeting (AGM) to be held electronically in August, and other than routine business the annual budget is increasing by 27% to address a deficit from the previous year and the significant increase in insurance. What we find alarming is the strata fees for September, if approved include the increase from May – August as the fiscal year for the strata corporation ends April 30th. We did not find the increase unreasonable, because the fees appear artificially low, the 27% increase for the first 4 months is due and payable all at once in September adding \$486 to a monthly fee of \$607. The back charge for the first four months is being called a retroactive fee. As buyers, why do we have to pay for a period of fees when we were not the owners? Is the retro fee enforceable? Lillian & Dave M.

Dear Lillian & Dave: There have been several Civil Resolution Tribunal Decisions on this issue that originally deemed the status of retro fees was unenforceable; however, the BC Supreme Court has “disagreed” with the tribunal’s conclusions and upheld the practice in a matter of fiscal year strata fees involving a “commercial strata development”. The case is 625536 B.C. Ltd v. The Owners, Strata Plan LMS4385, 2018 BCSC 1637, the Supreme Court of British Columbia. The dispute primarily focused on the interpretation of the *Strata Property Act* and whether a strata corporation who was charging the additional increase of fees for the period of the fiscal year that had already passed, was compliant with the legislation. In the court’s view, there was nothing in the strata corporation’s approach to strata fees that placed it offside the act. A subsequent “adjustment” to the fees paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge.

The Tribunal based its determination in large part of the notion that the strata fee information required to be disclosed in a Form B or Form F would be inaccurate if a prospective purchaser of a strata unit obtained those forms (a Form F remains “current” for a period of 60 days after it is issued) prior to the approval of a new budget. The buyer would be led to believe that the seller’s strata fee payment obligation was up to date when in fact it was not. With the greatest of respect to the Tribunal, the judge disagreed. An owner’s strata fee obligation does not arise until it is approved at the AGM. The Form F (and indeed the Form B) will have been accurate when issued. There is no requirement in the Act that strata fees be paid in equal installments. Plainly, the schedule of strata fee payments can require equal monthly installments, or installments that include adjustments to make up a deficit between what was paid and what would have been paid had the budget for the current fiscal year been in place at the commencement of the current fiscal year. Fees for one month may be different than for other months. Ultimately the budget approved for the fiscal year becomes the obligation of the strata corporation to collect that amount through a schedule of fees due monthly as adjusted; however, not every strata corporation collects fees monthly or on the same schedule. Always read the bylaws of a strata corporation, especially resort properties if you are concerned about the payment of strata fee.

Many strata corporations hold their AGM after the fiscal year end as they wait for the completed financial reports to determine budgetary needs for the following year. The AGM must be held within 2 months of the fiscal year end, unless there is an emergency order as we are currently under, which extends the period to 4 months. If the AGM is held prior to the end of the fiscal year, financial projection statements must be prepared and circulated to the owners in advance of the AGM as well as a completed financial report within 8 weeks of the end of the fiscal year. While it is

advantageous to convene the AGM as early as possible to execute the next year's budget, the total amount owing by each strata lot for that fiscal year is the same total whether you approve the budget before the fiscal year end or after. When the strata corporation issues notice of the meeting, the fee schedule required by the Act showing either an adjustment in the next month or over the balance of the year is included, which by default is ratified by the owners when they approve the annual budget by majority vote.

Tony Gioventu, Executive Director CHOA

Covid-19 Notice: As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

Tuesday Lunch & Learn Live with CHOA: CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at:

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