

Condo Smarts November 7, 2020 Commercial vs Residential

Dear Tony: We own a commercial strata lot on Kingsway in Vancouver. It's a typical development where the residential units are upstairs, and the ground floor units are commercial retail. Our building is over 10 years old and to date has been very well run. The residential owners pay their expenses, and the commercial owners operate separately and pay their expenses. We rarely have a common interest, but recently, the strata owners of the residential units included us in the notice of Annual General Meeting to approve a number of new bylaws around rentals and pets, and to make us pay for common expenses for items we have no access to. We are also concerned that our units may now be subject to several bylaws that could limit our business operations. All of this has thrown our strata into quite a lot of conflict. We have been told that we cannot operate separately, and we are part of the strata for all the shared expenses. This will have a significant change on our operating costs and fees. Please explain how this works and what options we might have. DD C.

Dear DD: When there are strata corporations with different uses such as commercial and resident, or different types of buildings such as a high rise and separate townhouses, a strata corporation is permitted to create sections for those different types of uses or buildings called sections. The strata corporation is the main corporation that continues to operate and will still be required to hold meetings, approve an annual budget, elect a council, enforce bylaws and manage the operations for all strata lots and common property and common assets. Sections are technically additional corporations that operate the same as the strata corporation, with the same duties and obligations, but they deal with the exclusive expenses and operations that apply to that section. For example, the operations of the commercial strata lots may include additional commercial insurance, maintenance exclusive to the commercial areas, and specific additional bylaws or rules that apply on to the commercial units. At the same time, the residential units will have a separate budget that applies to the costs that are solely for the residential units and their allocated and designated areas. Because every building is different, the types of costs that may be exclusive will vary. Even if a strata corporation has created sections, there are still many common costs and liabilities such as insurance, or building envelope maintenance, or parking garage access and waste disposal. As a result, the strata corporation is required to operate as both a single corporation and independent sections, so there would technically be 3 separate corporations operating under the same umbrella. It requires 3 separate strata councils or executives, 3 separate budgets, separate bank accounts, and separate annual meetings. The Strata Property Act and Regulations set out specific terms to create sections. Sections are created through the approval of a bylaw of the strata corporation and the sections, and when there are separate residential and commercial units, any bylaw amendments must be approved separately by both the residential and commercial strata corporations by a three quarter vote at an annual or special general meeting. Your strata corporation has never approved or created separate sections, so you do not operate separately, and all common expenses are shared by all strata lots based on the unit entitlement files in the Land Title Registry. Sections bylaws are a time when strata corporations and the intended sections are strongly recommended to consult with a lawyer experienced with the Strata Property Act and the creation and operation of sections as the consequences may be significant.

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/>