

Condo Smarts October 6, 2021

Who Gets the Money?

Dear Tony: What happens when there are funds left over from a special levy? I sold my unit 6 months ago and was informed at the time by council, and it was posted in the minutes, that the balance in the special levy fund for the roof was less than \$5,000. The result of this was no one was going to get more than \$300 and the strata was going to vote at the AGM to simply deposit this into the contingency. That was fine. My neighbour told me yesterday the balance was actually \$35,000. The council had spent \$30,000 of the fund on another project and didn't tell anyone, and now the corporation is in a huge conflict. When an owner sells, and there is a refund from a special levy, who is entitled to the refund. Carrie V.

Dear Carrie: Special levies are often mis-handled and mis-reported by strata corporations. A special levy must be accounted for separately. It is not part of the operating budget or contingency reserve fund. Any interest earned during the levy becomes part of that fund. As long as the levy is active and retains a balance, the strata corporation must include a financial report as part of the annual general meeting financials showing the opening balance, any revenue, the details of any expenses and the closing balances. If a strata council uses the funds for other purposes, it opens the door on a variety of disputes. The owners, by 20% have the opportunity to demand a special general meeting to correct the financials. If there is \$30,000 remaining in the contingency that could be allocated by 3/4 vote to cover the expense that was incorrectly applied, and the special levy funds could then be refunded to owners. No matter what you do, the money has been spent, and the owners end up paying from one fund or another. Owners may want to file a claim against the council members if the funds spent were not reasonable. The problem that has been created by the council action are the 3 sales that have occurred since the minutes went out quoting the incorrect number of the surplus and not disclosing how the funds were spent. Now the strata corporation is exposed to a number of potential claims.

If the project is complete and any owner is entitled to more than \$100 in refund, the balance must be refunded to all owners. The strata corporation is not permitted to reallocate the surplus to the operating as revenue, contingency fund, or another special levy fund. When a strata lot sells, an owner essentially discharges their connection with the strata corporation, and they are no longer the beneficiary of refunds. A refund is paid to the owner on title at the time the refund is due. This also applies to new special levies as they are not exposed to any additional or new levies once they sell. If an owner is relying on a refund, you may want to wait until the account is completed before you sell. The agreement is with the buyer, not the strata corporation. Speak with your agent and lawyer about an agreement with the buyer on the proceeds of a refund and their obligation to transfer that amount, if and when it is issued.

Under normal circumstances as a past owner and seller you would not have any claim against the strata corporation; however, you may be able to prove the misinformation provided by the corporation led you to a decision that resulted in the inability to collect your share of the refund. If you were aware of the correct amount, you may have been able to postpone your listing and sale to a later date. This could be a claim through the Civil Resolution Tribunal for the time when you were still an owner.

Tony Gioventu, Executive Director CHOA

Always include your strata plan number if you are requesting assistance.

Kindly note CHOA is a member-based, non-profit association. If your strata is not currently a CHOA member please consider joining – membership details are posted on our website at:

<https://www.choa.bc.ca/about-choa/join-choa/>

Join us this Fall in the ‘Condo Classroom’: Both weekday and weekend registration options for the convenience of attendees! For more information visit our website at:

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

COVID-19: To prevent the spread of COVID-19 CHOA staff may be working remotely. During this time we are online and available by phone and email to assist with your strata questions. Please stay safe and healthy