

Condo Smarts May 4, 2022 Special Levy Conflict: “How Small Issues Become Costly”

Dear Tony: We are a modest 58 unit low rise building. Our annual meeting was scheduled for March 21st, however, since there was no quorum, the meeting was adjourned to one week later. We had a small special levy on the agenda to install an automatic door access mechanism to our main entry and elevator lobbies, to accommodate all residents. The special levy indicated the due date was on passing of the resolution. We assumed this was March 28th, as the meeting had been adjourned, but our property manager insisted it was on the notice for March 21st meeting, making it due at that time. The problem stems from a sale that occurred in the week between. The property manager refused to release the Form F until the levy was paid, but it was not actually approved until March 28, and had not even been approved yet. The seller paid this into trust to the strata corporation and has come back to us demanding the money be refunded. It's a small amount of \$278.00, but this has raised an issue and we would like to avoid being dragged into a CRT dispute. Carl W.

Dear Carl: The *Strata Property Act* stipulates that a due date for payment is required for a resolution to be valid. A general practice often used is the approval of the levy on passing, plus the date the amount must be paid or due dates if there are payments scheduled. If your special levy had not passed, the strata management company as agent of the strata corporation would have not complied with the Act by with holding the Form F, as there would not have been a valid approval of the levy, or the levy could have been reconsidered requiring other meeting and vote if the owners had petitioned for this under the *Act*. An agreement between the buyer and seller is common to ensure the levy is either paid in advance or there is a hold back in the event the levy is approved. This situation created a seller who was not obliged to pay the levy, but was forced into it, and a buyer who was informed the levy was paid. The *Act* requires the owner to pay the special levy on the due date, or dates the levy is due. If there is an agreement for sale, and there is a payment schedule, unless the buyer has required the seller to pay all levies, the buyer will become responsible for the balance of the payments once they take possession. I would be curious who wrote the Special Levy, as the writing of resolutions and bylaws is a practice of law under the provisions of the *Legal Professions Act*. This type of error is common when inexperienced and unqualified parties undertake the writing of their own bylaws and resolutions. The results are costly, unenforceable, and create a fair amount of conflict within our communities. Strata council volunteers either write the resolutions, or they pressure their manager to provide the resolution in hopes of avoiding legal costs. One hour of legal fees to write an enforceable resolution seems to be a good deal now the corporation is in a conflict.

Tony Gioventu, Executive Director CHOA

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/>

We bring together industry experts to discuss the many issues affecting BC's strata community. Click here for a link to our archived webinars: <https://choa.bc.ca/resources/webinars/>

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.