
Condo Smarts

Headline: Cost Sharing in Air Space Parcels

Topic: Air Space Parcel Agreements

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Dear Tony: Our high-rise condo building is part of an air space agreement. There is a commercial and parking section that is the first 4 floors of our building. Our parking is underground and our terraces, recreation areas and residences are from the 5th floor up. About 3 years ago, the strata council negotiated cost sharing rates with the commercial property owner for services such as fire monitoring, sprinklers, security systems, emergency door exits and stairwell maintenance, and window cleaning. These formulas were never approved by the owners at a general meeting, and the current council is questioning the validity of the agreements as we are now having to pay for significant upgrades of our fire safety and emergency systems. Does the strata council have the authority to negotiate these agreements? How would we dispute the agreements if they are unfair? Interestingly, 2 of the condo owners who were council members at the time, are also commercial property owners.

Janet F.

Dear Janet: Strata councils do not have the authority to negotiate and approve agreements that affect an interest in the property, unless specifically permitted by the *Strata Property Act*. Also, amendments or approvals to easements, right of ways, covenants or leases all require the approval of the owners by 3 / 4 vote at an annual or special general meeting.

When Air Space Parcels are created, the legal relationships between the separate property owners are defined in an Air Space Parcel Agreement (ASPA), which is an easement/covenant that is filed for all the properties in the Land Title Registry. It is important for your strata council to obtain a complete copy of the agreement and the geometric drawings that show the boundaries of property ownership. Between the agreement and the drawings, the obligations for property components that are shared or operated by

one party on behalf of all the property owners is defined.

The agreements are often 200-300 pages in length, with drawings to match. Your council will require the services of someone who is competent to read both the agreements and the drawings, and create a summary that is a reliable reference for your strata council. Many of the APSA's provide a summary to show the services that are shared, who is responsible to administer the service, whether it is maintenance or renewals, and how the costs are apportioned.

Depending on the complexity of the agreement and formulas, the costs may have a significant impact on owner strata fees and future liabilities. The formulas within the ASPA are part of an easement/covenant and cannot be amended by strata council. Any changes must be approved by the strata corporation. The ASPA may also contain procedures for approval of expenses and reimbursement. Without the approval of the owners of your strata corporation, your strata council must apply the formula within the ASPA.