
Condo Smarts

Headline: Major Projects: Is Bonding Worth the Investment?

Topic: Repairs and Maintenance

Publication / Date: Province, Sept 15, 2022

Written by: Tony Gioventu

Dear Tony: Our strata is about to proceed with a membrane repair that is estimated around \$2.5 million. We have exercised as much prudence as possible. As we are negotiating the contracting process the issue of bonding has come up. Our council is divided over the issue, as we are trying to minimize cost but don't want to increase our exposure to liability. We get mixed answers from our consultant and property manager to verify the value of bonding. What would you recommend?

JJ Walsh

Dear JJ: When a strata corporation undertakes a major repair, there are numerous liabilities assumed by the owners. Contractor failures are a real possibility, leaving a strata corporation burdened with cost over runs and risk of law suits. Bonding creates a layer of qualifying conditions and screening by an insurance provider that provides a higher level of comfort and protection. Nothing is 100%, but the best protection possible will protect your owners' hard-earned resources and minimize the risk of project disasters.

The discussion on bonding and contract negotiations should be conducted with your lawyer when you review your specifications for bidding. Procurement for major projects is complicated. Protecting your strata corporation from challenges or failures under procurement law is essential, and the question of bonding should be raised at this time.

Sat Harwood of Lesperance Mendes Lawyers explains "*Construction bonds can be grouped into two major categories:*

- 1) Performance bonds which help secure the performance of the contract by the general contractor, and*
- 2) Labour and materials bonds which help secure payment for work done by sub-trades, and therefore reduce the risk that liens will be filed on your property. Construction bonds are an important safety measure for owners entering into larger construction projects. At the front end, the insurers who issue these bonds conduct due diligence on the contractors seeking to obtain insurance, and they may even require the contractor to provide collateral. This helps to ensure that only higher-quality contractors will get the job. On the back end, construction bonds help to ensure that, if things go sideways, the project may still be completed, and sub-trades will get paid, so that liens can be removed from title."*

As volunteer council members we rely on our professionals to advise us to make the most prudent decisions. There are occasions where a strata council has to make decisions that affect cost, timing and material choices. Our obligation is to replace like for like when it comes to standards and values. A valuable business practice to consider for major projects: if the contractors or consultants cannot qualify for bonding or provide credible insurance for construction and liability, why are you hiring them?