
Condo Smarts

Headline: Levy payment penalties

Topic: Special Levies

Publication / Date: Province, Feb 23, 2022

Written by: Tony Gioventu

Dear Tony: Our townhouse complex of 38 units in Abbotsford approved a special levy in 2 payments for roofing replacement. The first levy of \$8,000 was due on February 1st; however, we are unable to start the project until May 1st as the contractor has a number of delays associated with staffing issues. There are no leaks or serious problems, but our roof is definitely due for replacement. Several owners have informed us they will not pay the levy until May 1, while 80% of the owners have paid the levy and 2 units that sold have paid the full levy. The president of the council has decided we won't force the payment until May. Are we allowed to do this?

Krista M.

Dear Krista: The enforcement of bylaws and resolutions is a requirement of the strata corporation under the *Strata Property Act*. Your obligation as a council is to administer the bylaws and the collection of levies on resolutions equally and fairly. Construction cycles are frequently delayed as a result of building permit delays, supply chain and labour issues, and adverse weather conditions. This does not alter the obligation of owners to pay the levy.

To ensure the strata corporation can collect these fees and administers the collections equally against all owners, those owners who have not paid on the deadline should be issued a demand notice requiring payment, identifying any associated interest costs permitted in the resolution or the strata bylaws, and indicating if they have not paid the amount owing within 20 days, the strata corporation will be entitled to file a lien. Contact your lawyer to determine the associated costs of legal services and filing for a lien, and indicate to the owners in arrears what those costs will be.

Another side of the notice of lien applies to the eligibility of council elections or status. Your strata corporation, like many, has adopted a bylaw that prescribes the following: *"If the strata corporation is entitled to file a lien against a strata lot, an owner for that strata lot is not eligible to be elected to council or permitted to continue on council"*. You also have a bylaw that makes those strata lots ineligible to vote for majority and 3/4 votes at general meetings.

The failure of payment you have identified includes 2 council members, which are now in potential bylaw violation and failing to enforce the resolution deadline dates to their own benefit. This is a conflict for those council members and unfair to the remaining owners who have paid their levies. A best practice solution for receivables on levies, strata fees, fines, user fees, damages and insurance deductible costs, is a monthly arrears report provided at council meetings. All receivables are identified and the decisions of council are tracked for minutes and collections. This enables the strata corporation to segregate collections between those you can lien, such as strata fees, interest and special levies, and those you cannot lien, which are fines, damages, insurance deductibles and user fees.