
Condo Smarts

Headline: Buyers beware and ask questions

Topic: Buying and Selling

Publication / Date: Province, June 23, 2022

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Dear Tony: I purchased my unit in a Saanich strata building. The building was constructed in the 80's, wood frame, 4 floors and very well maintained. This was the major attraction for us as we are downsizing and didn't want any experiences of building disasters or repairs. The strata council and the owners have done a great job keeping this property in A-1 shape. What I didn't know was the owner above us has had a long period of bylaw enforcement issues over noise. Hard wood floors are permitted on the property, including our unit, but in addition to the habits of this person there are chronic night time activities and incursions that has made occupying our unit impossible. There was virtually nothing in the 2 years worth of minutes that we read but we just found out there was an arbitration 4 years ago involving this person, our previous owners and the strata corporation. I asked why it was not disclosed and were informed it was confidential. I now have a copy of this decision. I would never have purchased had I seen this. Is it possible for a dispute such as this to be withheld from buyers, especially when one of the parties was the seller?

C.R.W

Dear CR: Form B Information Certificate defects are a common problem. The absence of information doesn't necessarily imply nothing exists. It may have been accidentally excluded. The strata corporation may not have a central record keeping system, such as a host web site, and strata management or council turnover could have resulted in documents being lost, or it simply boils down to lousy record keeping.

Strata corporations must retain the following documents permanently: *Strata Property Act 35, any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation.*

On a Form B, the strata corporation must disclose: 59 *“any court proceeding, arbitration or tribunal proceeding in which the strata corporation is a party and any judgments or orders against the strata corporation?”*

The best practice is for the strata corporation to maintain an aging list of decisions and orders made against it. This list can easily be updated with additions and attached to the Form B, Information Certificate. Minimally, it should identify the date and case citation number or jurisdiction, if any, so that the buyer can review further or request additional information. Arbitrations are generally not identified on the court registry unless they have it registered. An arbitration decision may have confidential conditions imposed as part of a settlement, but the arbitration itself is not secret. The strata corporation must identify the decision as it did include an order against the strata corporation for bylaw enforcement. You may have a case against the seller for failing to disclose this decision.

Buyers do your homework. Before you buy, check out Google and especially Canlii.org for possible legal cases. These are great resources to search for information on properties. If a decision is reported and registered it will be on Canlii. Simply enter. “the owners, strata plan ABC 1234” into the search function on the property you would like to investigate