

Condo Smarts

Headline: Door & Windows (Who Pays)

Topic: Repair & Maintenance

Publication date: June 8, 2008

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: Our strata council is deeply divided on the opinion of who is responsible to maintain and repair doors and windows. Our strata was built in 2004, and we passed a bylaw that declared the windows and the doors on the exterior of the building as limited common property. We did this so we could make owners responsible for the doors and windows of their own units. Several owners have indicated however, that they have no intention or ability to maintain and repair their windows, especially those on the 4th floor that have no balcony next to them. They have rightly pointed out, that in order for them to maintain those windows from the exterior it will require a trades person to either mount a ladder, a lift or scaffold via the common property and landscaping and possibly damage other areas or units in the building that they will not assume the liability for. So we're locked in dispute. The exterior of the building is not being maintained, and several owners are threatening court action if we don't get on with maintenance. Is there a solution? Mr. JJ Fischer, White Rock

Dear Mr. Fischer: Here are the technical basics. To determine how the property is defined in your strata, I reviewed your registered strata plan and common amendments at the Land Title Registry. In your plan (also referred in your warranty documents) the exterior of your apartment style strata building is clearly common property. The windows are outside of the dividing boundary between the strata lot and the exterior, and the warranty documents clearly identify your windows as part of your common property warranty for the building envelope. A very common error in strata corporations is that you can convert common property to limited common property simply by making it a bylaw. That is incorrect. Bylaws only determine who is responsible for the common and limited common property and their use. To designate windows as limited common property

(LCP) will be extremely difficult to meet the requirements of the Strata Act. The strata must first pass a resolution that creates the LCP, and include a sketch plan that satisfies the registrar of Land Titles, defines the areas of LCP and specifies to which lot the LCP is allocated. Then it all has to be filed with the Land Title Registry. Clearly your strata corporation has not met those requirements, casting doubt on the enforceability of the bylaw. From a practical perspective though, your strata owners need to rethink their decision. A main reason we live in strata buildings is to commonly share those duties of maintenance and benefit through lower costs by quantity negotiation. If an owner has to replace 1 window, it may for example cost them \$250.00. The strata replacing 10 windows at a time can bring that unit cost well below \$150.00 per window. They also control the common area repairs and ensure that the entire building exterior is protected at the same time. You should also read your warranty conditions. The warranty contract includes your common property exterior doors and windows as part of the building envelope under the first 5-year period. By devolving the responsibility from the obligation of the corporation to the owners' responsibility, it is quite possible you may have jeopardized your warranty coverage. Contact your warranty provider and seek legal advice on how to resolve this impasse.

**For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.**

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.