Condominium Home Owners' Association
Serving BC's Strata Property Owners since 1976
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Condo Smarts
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Dear Condo Smarts: We are the first strata council of a new development in the Kootenays that will be eventually 9 phases. Our first meeting was in October of 2009. The annual budget was approved that identified a fiscal year for the strata from November 1 to October 31st each year. In December another meeting was held to bring on phase 2 and add 2 council member. In March, a 3rd meeting was held to bring on phase 3 and to add 2 new council members; however, the developer changed the fiscal year of the strata corporation without the consent of the strata council and used all of his votes from phase 4 & 5 to force the issue. In short, our finances are a disaster, we have no reserves, and the bills far exceed our expenses. When we calculate the fees, there should be more than enough money in the accounts to cover all costs, yet the manager has told us the developer doesn't have to pay their strata fees until the units are sold. This is totally unfair. Why should the new owners be subsidizing the developer? None of the common amenities have been built, and we're paying all the bills. Sheila Kelly

Dear Sheila: Phased strata developments can be very complicated to administer. They are vulnerable to market conditions, the developer changing their intentions, multiple developers if for example, the original developer sells their interest, goes bankrupt or is forced into bank foreclosures, changes in legislation and building codes, or simply the intent of the developer not to proceed with completing the project.

There are many misunderstandings of how the strata corporations convene their annual general meetings and how the meetings for each phase are implemented. Once the strata corporation has set a fiscal year, the only way that can be changed is if the strata corporation passes a 3/4 vote at a general meeting to amend the period. Once the strata corporation has been created by the filing of the first phase, and the first AGM is held, the developer no longer acts on behalf of, or controls the strata corporation.

Voting and the payment of strata fees are frequent violations of the Strata Property Act in phased developments. Once a unit is conveyed (sold) in a phase, the strata fees commence for all units in that phase on the first day of the month following the date of that sale. The developer has no exemption to pay fees deferred to when the units sell, they must pay their fees like everyone else on the first of the month, or as set out in the bylaws of the strata. The owner developer is the same as any other owner in that they must pay their strata fees for the unsold units. This also includes a bare land development, after the first sale, if the phase or bare land has been filed in the land title registry creating the titles.

Voting rights do not exist for any phase, until the phase or strata plan is filed in the Land Title Registry to create the titles, which subsequently creates the voting rights. In Sheila's strata, phase 4 & 5 have not yet been filed; therefore, the votes did not exist to be exercised at the meeting by the developer. Once the first phase is filed, the strata corporation is created.

The developer acts on behalf of the strata corporation as the "strata council" until the first AGM at which the council are elected.

The council is then the representatives who act on behalf of the strata corporation. In addition to strata fees, the owner developer must also seed the contingency reserve for each phase, which includes an amount of 5% of the interim operating budget.

The strata council has a duty to enforce bylaws and that includes the collection of strata fees. To protect the priority of the strata's interest in the money owing, the council may decide to file liens against the unsold strata lots that the developer has not paid strata fees on, and may even proceed as far as a court action for an order for sale of the strata lots. Strata council must remember that the priority only exists ahead of other loans and interests against a strata lot, if a lien has been filed. If there is a bankruptcy or foreclosure, and no lien has been filed, the ability of the strata to collect their fees can be challenged. In phased strata plans, each new general meeting for a new phase, the implementation of common expenses for shared amenities and recreational facilities, warranty administration and claims are all complicated proceedings. Mix that with inexperienced strata corporations and diverse ownership and you have the potential for significant problems. If you have questions about the implementation of your phased development, seek advice. It's too late to try and fix the problems or collect the losses, once the developer is finished and has sold all of their units.