

**Condo Smarts**

Headline: Who is responsible for past alterations?  
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**Dear Condo Smarts:** How do we determine who is responsible for alterations or additions undertaken by owners without permission? Over the years owners have added to their decks by increasing them in size, adding hot tubs, additional landscaping and ponds, and barbeque pits. Now a new owner has complained that the neighbour's deck area far exceeds what is allocated to them, and that their use of the deck is causing a nuisance. Council did investigate, and the offending owners have substantially increased their deck area, and if they are sitting at the end of their deck, they look directly into the living room window of the neighbours. Our complex has been very casual so we have probably contributed to the problem by not following the bylaws, but no one in the development has followed the bylaws when it comes to alterations. Everyone has agreed to sit down with a third party and find a reasonable solution, but we don't know where to start to undo two decades of casual errors. David McCauley, North Vancouver

**Dear David:** Your email compares to a recent court decision of *Chan vs the Owners Strata Plan VR151*. In brief, Ms. Chan purchased a ground floor unit in a four-story strata. The unit had an outdoor patio portion as part of the strata lot, and on that area was planted a cedar tree by a previous owner. Eventually as the tree grew into the common property area, it obstructed the view of the units above Ms. Chan. The Strata then adopted a bylaw that limited the height of trees, and Ms. Chan agreed to have the tree cut to a significant area where the strata agreed the tree was no longer in violation of the bylaws. Subsequently the owners passed a new bylaw that prohibited trees from growing beyond the boundaries of a strata lot, and the strata consulted to have the tree pruned to meet the bylaw limitations. At this point Ms. Chan filed a court action arguing that the tree was in place when she purchased and was grandfathered and cut not be cut down without her consent. Here are some of the observations and decisions of the Judge, strata corporations and owners should consider when looking at alterations to a strata lot or common property. The judge determined that as there was no decision of the strata council to grandfather the tree, no such exemption existed. The judge clearly states in the

decision that neither the seller nor the realtor had the authority to make representation that would be binding on any strata council or the strata corporation. Even if a tree is permitted, section 76 of the Strata Property Act (Act) limits the strata corporation to providing such permission on a temporary and revocable basis. The Judge noted that it would be beyond the legal ability of the strata corporation to grant permission for the tree Ms. Chan claimed existed.

The challenge that many strata corporations face is that owners execute alterations or additions to common property with the expectation that once done, eternally committed; however, whether with or without the permission of the strata council, the Act imposes specific limitations of privilege or time to alterations of common property use. The Chan decision indicates that the permission is on a temporary and revocable basis. While the circumstances and conditions and each set of facts and events of the court decision are unique to each strata corporation, the lessons learned and the underlying principles of the Act still apply and are enforceable. It is extremely complicated to undo years worth of alterations that did not conform to bylaws are procedures set out in the Act or the Strata's bylaws; however, it is possible at this time to consider bylaws and agreements that will respect the use and enjoyment of common property and strata lots by the owners. Your strata can save years of conflict if you establish agreements that formalize alteration agreements. In addition to allocation of use you can also establish who is responsible for the costs associated with the alterations and the obligations of subsequent owners.

Public Consultations are now under way with the Provincial Government on Depreciation Reports and Audits for Strata Corporations. To register for updates and online input, go to:  
<http://housing.gov.bc.ca/housing/strata.htm>.

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