

Condo Smarts

Headline: Stratas must respect rights

Topic: Strata Fees

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Dear Tony: I purchased a unit in a Vancouver highrise this spring. Our strata fees are paid monthly and the strata has a bylaw that requires owners to pay for fees on the beginning of the month. It does not identify the method of payment. I sent post-dated cheques to our management company and they were returned, insisting that I had to provide a direct deposit access for the payment of fees. I contacted the strata council, which advised that was the method the management company used. I reviewed the deposit form and discovered it also authorized the management company to remove fees for bylaw fines, penalties, damages and insurance deductibles up to \$5,000 a month. I removed those conditions from the agreement to only authorize strata fees, and the company returned the form, saying I could not alter it. So now we're at an impasse. The strata manager won't accept my postdated cheques, and I refuse to sign the agreement without removing the authorization for other costs. How can we resolve this? *Mae F.*

Dear Mae: Strata corporations cannot impose conditions on owners where the owners are forced to surrender their rights to challenge claims such as bylaw fines, damages or insurance deductibles. Under the *Strata Property Act*, the strata has a clear obligation to respect the basic principles of justice where they must notify the person of the complaint or claim, the person is entitled to a hearing or to respond and challenge the claim, and the person is entitled to bring the matter before the courts, arbitration and soon, the Civil Resolution Tribunal. Strata corporations that attempt to subvert a person's rights to challenge claims, and essentially attempt to use bylaws or the method of collecting strata fees to pay for items other than strata fees, interest and special levies, if permitted, are trying to short circuit the justice system and default owners into arrears. Even if a strata corporation obtains a judgment in the courts for a bylaw fine or insurance deductible, the judgment does not take priority over taxes, registered mortgages, strata fees, special levies and interest.

If the strata lot was sold by an order-for-sale procedure, the judgment would still be last on the list. While we have no case law to refer to on this issue, common sense indicates that subverting natural justice to gain a priority for claims by the strata against an owner over strata fees, special levies, mortgages or other priority charges is just a bad idea.

I contacted Mae's strata council, which was helpful and unaware of this form. The president of council reviewed the form he signed two years earlier and there is no such requirement. As a result, the strata council has instructed the manager to modify this form to reflect the past requirement of strata fees only. It is important to remember that the strata management company is an agent of the strata corporation. What they do, you do, so it is up to the strata council to make appropriate decisions and instruct their strata management company. If the removal of funds for a claim of alleged bylaw violations, damages or insurance deductibles results in someone defaulting on a mortgage payment or other payment that affects an owner, the strata may be assuming a greater level of liability than ever intended. A strata is also limited if it does not have bylaws that prescribe the method of payment.

Once the Civil Resolution Tribunal is in effect, disputes for strata corporations will become mandatory if commenced by an owner or tenant. The cost will be minimal and strata corporations can expect to see many of their bylaws and policies challenged. The tribunal will also be able to determine if such bylaws or policies are enforceable.

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