

Condo Smarts August 31st – September 3rd, 2016

Financing Insurance

Dear Tony: Every year our strata corporation insurance renews at exactly the same time as our new budget is approved. As a result, we never have enough money in the our operating to pay the bill, so the strata corporation finances the insurance policy over 12 months for easy payment, which is over \$80,000. One of our owners has challenged this practice claiming we did not disclose the amount of the financing in the budget, and the strata did not get approval for the financing. Have we violated the Strata Property Act? Marilyn

Dear Marilyn: Before a strata corporation borrows money, and this includes financing of projects or service agreements in the form of a loan, the strata corporation must approve a 3 / 4 vote resolution at an annual or special general meeting. Include the term and cost of the loan in the resolution to ensure your strata has the authority to borrow the funds. There are three other issues with financing relating to insurance that your strata corporation must also be aware of. First, the cost is significant and may be anywhere from 8-15% of the total policy. Why would your strata corporation not borrow the funds from the contingency reserve fund (CRF), which is only generating 1-2% at this time, and pay the amount back to your CRF over the year as the cash flow from strata fees is collected? Your strata will be paying \$7,480 in financing charges this year, and your CRF of \$250,000 is not currently invested, and your strata could be saving that financing charge. Borrowing from the CRF is permitted by the Act, and the council can approve the loan by majority vote, and must report the loan in the minutes. Second, if you do finance, check the terms of the financing and insurance contract closely. There may be conditions, that in the event of a missed payment, the policy may be cancelled with no refund or there may be penalties that increase the financing costs. If the strata council was responsible for the failed payment and there was a void claim you may be personally liable for the losses. Third, confirm whether anyone is receiving a fee for the loan. It is not uncommon for lending agencies to offer finder's fees for loans to strata corporations. This includes strata managers, brokerages and council members. The Real Estate Services Act requires strata managers and brokers to disclose the amount of a fee or commission that is received from any third party on services provided to the strata corporation. Council members must disclose a direct or indirect interest in any transaction with the strata corporation.

Strata councils and managers are often uncomfortable with probing questions that are raised at general meetings about transactions and disclosure, yet those are the very questions that the council members should be asking. Just because council members are volunteers doesn't imply they shouldn't closely scrutinize the business practices of their strata corporation, the strata management company or service providers. Put inquiries in writing/email. Confirm conversations in writing/email whenever a service provider or contractor provides verbal information. Above all, question everything. If someone is uneasy about a question there is likely a problem.

Tony Gioventu, Executive Director
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