

Condo Smarts February 14-17, 2018 Retroactive Fees

Dear Tony: We just purchased a condo in Langley and within a week of becoming owners were sent an invoice from our property manager that we owed back strata fees for November and December. These are the increases to the strata fees that were not approved until the AGM at the end of December 2017 and we only became the owners as of January 5th 2018. Our strata fiscal year runs from November 1 to October 31st. While the amount is not significant, it is the principle of the claim and the penalties being imposed by the strata manager that has us irate. Is a strata allowed to back charge retroactive fees from previous owners to new owners? Carol and Dave J.

Dear Carol and Dave: The simple answer to your question is no, there are no provisions for retroactive fees; however, this is a more complicated problem that requires understanding how the Strata Property Act, Regulations and the bylaws of each strata corporation function. Here are the basic accounting principles for a strata corporation. Every strata must approve an annual budget for a fiscal year. They may approve this before the year end for the next year or no later than 2 months after the fiscal year end. To ensure a strata corporation does not run out of operating funds, owners continue to pay the same previously approved strata fee until the next budget is approved. When the budget is proposed in the notice package, the notice must also include the schedule of proposed strata fees for the fiscal year and this is where the owners would be notified of how increases will be covered in the next fiscal year, and by having approved either the budget or amended budget, the owners are also consenting to the fee schedule. If the budget is approved before the new fiscal year begins the solution is simple, the new fees come into effect. If it is approved after the fiscal year end then the balance of the fee increases have to be paid for the remainder of the year. The strata must collect the amount approved in the budget for the fiscal year as that is the legal requirement under the Act, which is the total amount of the budget divided by the unit entitlement/total unit entitlement of each strata lot for the fiscal year period. If the strata approves \$100,000 in operating and a \$25,000 contingency for the 2018 fiscal year they must collect it. If they do not and result in a deficit the strata must pay that deficit back to the budget in the next fiscal year. Many strata corporations who approve their budget after the fiscal year end choose to calculate the balance of the increases over the next ten or eleven-month period so it has the least impact on the owners and sets a comparable fee for the next year's period with the least increase, but some also introduce an adjustment for the next payment and call it a retroactive fee, which is incorrect as the fee was not approved for that period, it encompasses the full fiscal year. This is where your bylaws come into effect. Strata corporations have modified their bylaw on payment schedules and methods and this impacts the ability of the strata corporation to manage and collect fees. This is especially vulnerable when there is a sale that occurred during the budget approval process. In your strata, the bylaws require the provision of 12 post-dated cheques for the next fiscal year, but that would be impossible as your strata does not approve its budget until the end of the 2-month period after your fiscal year end. A close look at the notice package for the AGM should indicate what the strata had intended and approved for the payment schedule. A recent CRT decision involving strata plan NW2729 will hopefully open the dialogue on this issue and help strata corporations plan their budget approvals, bylaws and manage their increases in strata fees correctly.

Sincerely,

Tony Gioventu, Executive Director
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