

Condo Smarts June 13, 2018

What are holdbacks?

Dear Tony: Our strata council has dragged our owners into trouble over a roofing contract that has gone poorly. There have been endless delays, work site problems and now at the end of the project a number of serious defects, including improperly installed flashings resulting in leaks. Our council decided to hold back 25% of the price at the end of the project and the contractor has filed builder's liens against all of our units. Needless to say, no one can sell or remortgage while we are trying to fight this battle. There is a lot of confusion over the hold backs and what our steps are next. Help! 18 unhappy townhouse owners.

Dear 18: There are 3 basic types of financial securities that are routinely applied to major construction. The builder's lien holdback which is legislated, a deficiency holdback which is negotiated, and bonding which is purchased as a form of security or insurance. Under the Builder's Lien Holdback Legislation in BC, if a contract is valued at \$100,000 or more, the client/strata corporation must retain 10% of the contract amount in a separate trust account for the duration of the project. The builder's lien holdback is not for deficiencies but a form of security for the contractor, sub trades and suppliers in the event the client fails to pay for services or the contractor does not pay the amounts owing for services and materials. The amount may be used to satisfy those debts and prevent the filing of liens against your property. A deficiency holdback is negotiated through the contract and will have terms and conditions on how the holdback can be applied, the conditions for deficiency corrections, the terms when the holdback is released, and a dispute resolution process.

Bonding is a form of security or insurance which protects the client/strata corporation in the event the contractor does not perform, encounters a financial failure or loss, or is not able to complete the project. The terms and conditions of bonding are set by the insurer and the cost of the bonding is negotiated between the client and contractor. One of the benefits of bonding is a 3rd party provides another level of screening over the contractor. If a contractor does not qualify for bonding they are likely serious credit risk or have a history of claims that indicate a rocky road ahead.

Contract successes or failures begin with the purchasing process. Whether your strata is looking for bids or quotes on a project or working with a single contractor, the best protection is a written contract that covers all of your expectations and liabilities and the detailed specifications of the scope of work and materials. Roofing is certainly the most common dispute we encounter and by using a licensed roofing inspector you can avoid the nightmares. The consultant will create your specifications and scope of work and inspect the roofing throughout the construction and provide the final certificate of completion. Very few council volunteers have the knowledge necessary to administer construction contracts and the cost for most of these services is below 2% of the total construction.

Many of the contract nightmares that arise can easily be avoided with a diligent process before your strata agrees to any contracts or services. Most law firms will perform a contract review for major construction for under \$5,000 and provide you with recommendations to protect your owners and cover your liabilities. Strata corporations who end up in a volatile dispute with their contractors will easily spend ten times that amount in resolving disputes over deficiencies and removal of liens. Unfortunately for the 18 home owners, money and time invested with your lawyer is now your best option and likely could have been avoided with a reasonable standard of care at the beginning.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
website: www.choa.bc.ca