

Condo Smarts June 27th, 2018

Alterations and Common Property

Dear Tony: I am a realtor in Vancouver and have helped many owners buy and sell condos over the years. One of the chronic problems we encounter is the issue over alterations, specifically balcony enclosures or sun rooms on townhouses. Our office has noticed a recent trend that is troubling when it comes to owners purchasing units with alterations. Even though there is no agreement on the Form B Information Certificate where the seller has taken responsibility for the alteration, several management companies are forcing buyers to enter into alteration agreements as part of the purchase documents or within a few weeks of their purchase. One company told the new owners it made no difference anyhow because once the balcony was enclosed it was no longer common property and the strata corporation was not responsible for the enclosure. Could you provide some clarity on how alterations are managed on building exteriors and how they apply to subsequent buyers? Phillip W

Dear Phillip: There are no boiler plate answers that will solve all the scenarios. Bylaws of strata corporations, designations of property, agreements signed by the previous owners, and the historic practices of a strata corporation will all influence the possible outcome of an alteration dispute. When an owner wishes to alter common property, they are required under the Schedule of Standard Bylaws of the Strata Property Act and most amended bylaws of strata corporations to make a written application to seek permission before they alter the property. In a perfect world this would happen in every strata and the alteration would be completed by a competent contractor with permits, plans and the applicant would agree in writing to take responsibility for the construction and future costs associated with the alterations. However, over the past 50 years of strata living in BC, very few owners and strata councils have followed or properly enforced their bylaws so there are many alterations that resulted from conversations, without permission or conducted with minimal construction standards. Even fewer of those alterations were completed under the conditions of a written alteration agreement. As a result, we have an extensive number of alterations that don't complying with building codes, were poorly installed and cause constant building envelope failures and frequently pose a safety risk to the occupants.

If common property is altered, it does not change the designation of the property. It is still common property and the strata corporation is still responsible to maintain and repair the alteration as well as other adjacent common property areas. No one has the authority to impose a retroactive alteration agreement on an owner or buyer, and the management company cannot set out conditions to the transaction requiring the buyer to sign any such agreement. The strata corporation is only permitted under the Act to require an owner to enter into an alteration agreement where the owner of the strata lot will be responsible for any costs relating to the alteration. This has to be a condition of the alteration at the time of construction. Some owners have voluntarily agreed to enter into such agreements but I always recommend they seek a legal opinion before they sign for the liability.

Record keeping is the other pitfall of this relationship that has serious consequences. Many strata corporations do not retain past alteration agreements. As a result, they cannot disclose or attach them to Form B Information Certificates essentially leaving the strata corporation with the burden of the cost. Much to the surprise of buyers and owners, if an enclosure requires major repairs and the owner of the strata lot is unwilling to cover the cost, the only option for the strata corporation may be the removal of the enclosure. If the owner wishes to have an enclosure reinstalled they will be required to apply to the strata corporation once again for permission to meet all of the alteration conditions and costs required within the bylaws, and subject to the strata corporation agreeing to the alteration.

If you are using the Standard Bylaws, the strata corporation does not have to permit an alteration to common property.

Sincerely,

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