

Condo Smarts July 16th, 2018

What is Interest Upon Destruction?

Dear Tony: Our strata corporation has been involved in the winding up process for 3 months and we are at a stale mate with our owners. Our condo was built in 1988 and as a result we have been told the formula used to buy each owner out is not the same as how we have been paying strata fees and special levies. What this means for several of our owners that even though they have been paying higher rates for our leaky condo repairs and maintenance over the past 30 years, they are now going to receive less money than units smaller than their who payed substantially lower fees. We are at a lost to explain to our owners how this formula applies and why? Carol R. Burnaby

Dear Carol: The schedule of Interest upon Destruction was a formula introduced into the legislation under the *Condominium Act* that set a value to each property within a strata corporation. The formula would be used in the event the property was destroyed or sold. For example, if your building was to experience a devastating fire and the structure was demolished, the insurance would pay the settlement amount under your policy to each of the owners based on the schedule of interest upon destruction. You are correct the formula is different from the schedule of unit entitlement but look at it from the perspective of real estate value. A top floor one-bedroom unit with a view may sell for more than the same unit on the ground floor facing the street. This was the approach that was taken at the time the legislation was adopted; however, after reviewing hundreds of strata plans in this time period there appears to be a significant variation to the application of the formula. We often see within the same strata corporation where 3 identical units with the same unit entitlement that determines strata fees and no differences at all, have significantly different schedules of interest on destruction. Unfortunately, if your building was developed and filed during the time period of the Condominium Act this schedule legally applies to your wind up. If you can convince all of the owners to amend the schedule to another formula such as unit entitlement or current assessment values that is an option, but it requires a unanimous vote which means a vote in favour by all the votes of all the eligible voters. If you have 66 units and 66 votes, you require all 66 votes in favour to amend the schedule that is being used. A few strata corporations have tried to amend their schedules and failed once the benefitting owners realize they are giving up proceeds from their unit. If your strata corporation was developed before the Condominium Act you may be sharing your proceeds based on unit entitlement, and if the strata corporation has been developed since the Strata Property Act came into effect in 2000, the interest schedule is based on each unit's comparative recent assessment value. Before anyone ventures into the time periods and formula for your strata, it is critical that all the relevant Land Title documents are accessed and interpreted by an experienced legal professional. Several strata corporations have started their wind-up process with the incorrect information and more time was spent on conflict than the wind up process.

Sincerely,

Tony Gioventu, Executive Director
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