

## Condo Smarts January 9, 2019 Caretaker & Guest Suites

Dear Tony: Our strata corporation has a caretaker suite in the building that has not been used in 8 years. Our building is coming up to some major upgrades and we are considering selling the suite to pay for the elevator upgrades. We were told that because the suite was part of the original development marketed by the developer, we could not sell the suite. Is a strata corporation permitted to sell a common asset? In addition to the proceeds from the sale we would also have one more owner contributing to the special levies so it would also be a significant financial benefit to our owners. JJ R. - Burnaby

Dear JJ: Before a strata corporation considers selling an asset like a caretaker's suite or a guest suite, the corporation must consider the designation of the property and determine if there are any encumbrances against the property. There are many strata corporations across the province with a caretaker's suite or guest units, but they may be either strata titled or simply common property. If the units are a separate strata lot, and they are not restricted by any covenant of use, the procedures are straight forward. The strata lot is an asset of the corporation and the owners must approve the sale of the strata lot and determine how the proceeds will be used by a  $\frac{3}{4}$  vote approved at a general meeting. To ensure the council has the authority to proceed with the marketing and transaction of the suite, legal advice on the preparation of the  $\frac{3}{4}$  resolution is essential to establish the terms and conditions of a listing agreement, the price and negotiating authority, terms and conditions of a sale and any limitation on time periods. It is also advisable to search the title of the strata lot to ensure there are no reciprocal easements that restrict the ability of the corporation to liquidate the suite. In your strata corporation the caretaker suite was not created as a separate strata lot. It is common property as shown on the registered strata plan. The strata corporation is not permitted to sell common property so your only option would be an amendment to the registered strata plan, including the schedule of unit entitlement and voting rights. An amendment to the strata plan will require the approval of a unanimous resolution of the owners, and application to the local approving officer which is the city of Burnaby, the approval of the Superintendent of Real Estate and the approval of the Registration of Land Titles. Because this is also a subdivision of common property it will also require the consent of interest holders. If the asset is common property, your first step is to obtain the approval of the owners at a general meeting to fund a legal opinion of the proposed conversion and sale to determine if the change is permitted, the probable costs, and the sequence of decisions and approvals necessary for the transaction. Several strata corporations have successfully proceeded with sub divisions of common property and conversions of common suites to strata lots; however, it requires 1-2 years to negotiate the approvals and obtain the consent of all owners and interest holders. Depending on the complexity of the amendments and approvals the cost for legal services could easily reach \$25,000. It may be valuable to survey your owners or hold an information meeting before you proceed. No point expending time and money if your owners are opposed to the idea.

Tony Gioventu, Executive Director CHOA

Sign up now for Spring Seminars in your area. Topics this spring will highlight Insurance, Above and Below the Deductible, Creating an Operations Plan for Maintenance, Renewals, & Annual Budgeting, and Bullying and Harrassment in your strata and the workplace.

Go to: <http://www.choa.bc.ca/seminars/>