

Condo Smarts February 24, 2020

Insurance Special Levies

Dear Tony: Our strata corporation is one of the properties where our deductible has gone from \$25,000 to \$100,000 dollars as a result of 2 claims last year. We approved our annual budget in December and now are projecting a short fall of about \$ 65,000 with the insurance increases. A number of questions have arisen as a result. Are we permitted to call a special general meeting and amend our budget part way through the year? This would seem to be the easiest solution. Is the council permitted to draw the extra funds from the contingency fund as a loan to pay the amount, which we have already done? Our property manager has suggested we pass a special levy for the extra insurance cost and for one potential claim of \$100,000 so we have enough funds in our cash flow in the event we have a claim. We had a very large contingency as we scheduled the replacement of our piping in 2019, as a result we are in a low cycle of our contingency balance. Claire W.

Dear Claire: I am often asked whether a strata corporation is permitted to amend their budget part way through the fiscal year. For a variety of reasons, the Strata Property Act did not contemplate or permit this as an option. At an “annual” general meeting (AGM), the proposed budget for the next fiscal year may be amended by majority vote before the budget is approved. There are two cycles where this may occur. At the routine AGM of an established strata corporation, and at a meeting required to implement a phase in a strata plan, where the new phase must hold its meeting, often referred to as the AGM of the phase. Because a phase meeting often occurs between the routine AGM’s of a strata corporation, the budget may be amended only at a phased AGM to incorporate the changes to accommodate the new phase(s). Another reason the budget cannot be amended, is the integrity of disclosure on an Information Certificate would be affected, because buyers are informed of the strata fees for the current fiscal year. If budgets were to change throughout the year, it would create unpredictable financial reporting for buyers, financial institutions and taxation filing. In the short term it is important the insurance premium is paid. While the strata corporation may borrow from the contingency for cash flow, it must be paid back within the same fiscal year. If there is room in your budget to accommodate the additional \$65,000 in your current budget, without being in a deficit, your strata corporation could manage the CRF loan; however, if this places you in a deficit the deficit must be paid back within the next fiscal year. While deferring the inevitable debt to a future year seems appealing, it always results in dramatic increases in strata fees the following year because your strata will then compound a deficit with further increases. You could also approve the additional contingency insurance expense by $\frac{3}{4}$ vote at a general meeting. Special levies are also an option; however, there is no need to approve a special levy for a potential claim in advance. A strata corporation does not require a $\frac{3}{4}$ vote at a general meeting to issue a special levy for an insurance deductible. If there is a claim, the strata council approves a special levy for an insurance deductible that includes the amount, purpose, method of calculation and date of payment. It is difficult to comply with the reporting and refund requirements of a special levy for a potential deductible. If the funds are not used for the purpose intended, the strata corporation must refund the levy to the owners if any owner is entitled to \$100 or more. If your strata corporation does not have a claim this year that requires the payment of the \$100,000 deductible, how do you intend to hold the funds? Any seller will demand the levy be refunded and create a potential Tribunal claim against your strata. Important to note is the issue of a special levy to each owner for a specified claim. This may permit each owner to file that claim against their homeowner insurance for the levied insurance deductible. That is not possible if you pass a special levy for a potential claim. Your best option? Always to plan your budget and contingency contributions to anticipate future risks. It is only a majority vote at your AGM to approve the budget and any contribution to your contingency fund.

Tony Gioventu, Executive Director CHOA

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