

## Condo Smarts December 14, 2020

### Adjusting Strata Fees for the Fiscal Year

**Dear Tony:** Our strata corporation normally has its Annual Meeting 60 days after our fiscal year end at the end of February. This gives us time to review our financials in advance of the next year and provide an accurate report to the owners with our notice. Whenever we have an increase in fees, we have included an adjustment over the next 10 months to pay for the increases that would have occurred in January and February. This reduces the impact on owners and with the dramatic insurance cost increases this year it has been the best financial option for everyone. Our manager has instructed us that we must make the entire adjustment in March and cannot make this over the next 10 months, and we have a new owner who is refusing to pay the adjustment claiming they did not own the unit in January and February so why should they pay? How is a strata corporation expected to balance a budget if we cannot address the adjustments and where in the Act does it require us to collect the fees in the next month. G. R. M.

**Dear GR:** This matter has recently been before the Supreme Court of BC under strata plan LMS4385, who were challenged on retroactive fees. Strata corporation budgets are commonly approved after the fiscal year to provide owners with the most current financial statements, and the court deemed these are not retroactive fees. In the decision, The Honourable Justice G.C. Weatherill established: *“a subsequent “adjustment” to the fees paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge. There is no requirement in the Strata Property Act that strata fees be paid in equal installments. Plainly, the schedule of strata fee payments can require equal monthly installments, or installments that include adjustments to make up a deficit between what was paid and what would have been paid had the budget for the current fiscal year been in place at the commencement of the current fiscal year. Fees for one month may be different than for other months.”* A common practice and requirement for strata corporations under the notice of general meeting is to include the schedule of fees and how they are calculated for the year on the proposed budget. This is the opportunity to inform the owners how an adjustment would be calculated for the remainder of the year, either a single payment on the next month or scheduled over the remainder of the year. With the significant increases in insurance many strata corporations are seeing their fees increase 10-30% and proposing the fee increase be spread out over the remainder of the year. Sat Harwood, a Vancouver Lawyer pointed out the decision also included addressing the issue of purchasers. *“While the Civil Resolution Tribunal had earlier deemed retroactive fees were not enforceable, the decision was overturned. An owner’s strata fee obligation does not arise until it is approved at the AGM. The Form F payment certificate and the Form B information certificates were accurate when issued, and any purchaser is entitled to request copies of the Annual Budget to determine the fiscal year period and if there may be an adjustment to fees if the current year’s budget had not yet been approved.”* The cautionary message for both strata owners and purchasers is fees for the current fiscal year and how they are collected are never known until the annual budget is approved. The longer the corporation waits to convene their annual meeting the greater likely hood there will be significant adjustments if the budget increases significantly.

Tony Gioventu, Executive Director CHOA

**Covid-19 Notice:** As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

**Tuesday Lunch & Learn Live with CHOA:** CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at: <https://www.choa.bc.ca/seminars/>