

Condo Smarts November 17, 2021

Common vs Limited Common Property

Dear Tony: As a new condo owner, I am quite confused by the directions of our strata corporation. We have been advised that owners in the town houses must clear the leaves and snow from our walkways, driveways, and balconies, cut the grass in our back yards and clear the drains next to our townhouses. The windows on the apartment buildings are under a contract paid by the strata corporation but the townhouse owners are responsible for their own window cleaning. This seems unfair as the owners in the apartment buildings have everything done by the strata corporation. Before we challenge the strata council on how they are administering the use of property, how do we confirm who has the responsibility for the maintenance of property outside of our homes? Is there a fair method of setting this up? Monica C.

Dear Monica: The obligation to maintain and repair property is frequently misunderstood and confused by owners and strata councils. Before you can understand the scope of repairs and who is responsible, an owner and council will require a copy of the registered strata plan for your property and, any amendments that have been filed in the Land Title Registry that may have converted property designations from common to limited common property. Once you have reviewed the boundaries of the strata lots, and identified the areas shown as limited common property and common property, it's time to review your bylaws. Under the *Strata Property Act*, a strata corporation is not permitted to make an owner responsible for the maintenance and repair of common property, so even if your strata corporation has a requirement to maintain and repair walkways, that is not an enforceable bylaw if the walkways are common property. On your registered strata plan, the walkways, driveways and back yards, are common property. The balconies on the 2nd floor of the townhouses, and the original decks are limited common property. Your bylaws, which are the same as the *Schedule of Standard Bylaws* require owners to perform maintenance on limited common property areas that occurs once a year or more often. This is a basic custodial requirement such as: sweeping, cleaning of the surfaces, keeping the drains cleared. It is possible for a strata corporation with different types of buildings, or a commercial / residential mix to create bylaws that would separate those expenses that are exclusive to that type of building for annual operations or for both annual operations and long-term maintenance and repair items. A strata corporation is not permitted to segregate common expenses between the apartment units and townhouse units unless they have adopted a bylaw where types of units are identified or if sections are created. In a typed bylaw, those annual operating expenses that are exclusive to the townhouses or exclusive to the apartment units would be separated and each type would pay only for their allocated exclusive expenses. The strata corporation could also create sections where the apartments and townhouses would be allocating exclusive expenses for both the annual operating expenses and the long-term maintenance and renewal items. In many situations the operational expenses of creating types and sections budget may not be worth the additional time and expenses of the corporation. When sections are created, you are also creating a separate legal entity that requires an additional budget, separate annual meeting, council and operational records. In your situation all of the shared common expenses of your annual operating budget, such as snow removal, landscaping and window cleaning apply to common property and a common expense paid for by all owners as part of the annual operating budget.

Tony Gioventu, Executive Director CHOA

Always include your strata plan number if you are requesting assistance.

Kindly note CHOA is a member-based, non-profit association. If your strata is not currently a CHOA member please consider joining – membership details are posted on our website at:
<https://www.choa.bc.ca/about-choa/join-choa/>

Join us this Fall in the ‘Condo Classroom’: Both weekday and weekend registration options for the convenience of attendees! For more information visit our website at:
<https://www.choa.bc.ca/seminars/>

COVID-19: To prevent the spread of COVID-19 CHOA staff may be working remotely. During this time we are online and available by phone and email to assist with your strata questions. Please stay safe and healthy.