

# Condos Q&A: Owner shocked by special assessment demand

## If need for repair is real, extra payment unavoidable

BY ROBERT NOCE, EDMONTON JOURNAL JANUARY 16, 2013

**Q:** Recently, I received a letter from the property manager advising that my condominium building needs to fix its building envelope, demanding payment in full by January 31 of between \$20,000 and \$41,000. The building is about 15 years old, and I purchased my unit three years ago. When I bought it, the reserve fund looked OK for a building like this, but I wasn't really familiar with what to look for. I obviously made a big mistake, as I do not have the money to pay this special assessment, and I cannot try and sell my unit without losing a lot of money. I am in my mid 30s, single and thinking of moving back in with my parents. I have a sick feeling that I am on the hook for \$40,000. What can I do?

**A:** I am deeply saddened to hear about your situation. You sound like someone who wanted buy a property to build up your credit rating and equity for the future, and this may now be taken away from you. I am going to assume that the requirements to repair and maintain your building envelope are legitimate. Therefore, the request for a special assessment also appears to be legitimate. In that case, there is not a lot you can do. The Condominium Property Act gives condominium corporations the authority to foreclose on units if a unit owner fails to pay condominium fees or any special assessment. The consequences of not paying are significant. Therefore, you can either sell your unit or look at other ways to finance this particular special assessment.

Contact a mortgage broker and see if there is any way to increase your mortgage amount for the additional assessment. The good news is that mortgage rates are currently quite low. As well, I would urge you to seek additional part-time employment, which will hopefully only be temporary, so that you can meet your financial obligations. It would be a shame to see you walk away from the home that you worked so hard to buy, and from what you have said, you did your homework.

**Helpful hint:** These issues arise all too frequently. If this issue was not identified in the reserve fund study and simply came up without any real notice, the condominium corporation has no choice but to demand payment from owners to assist in dealing with an emergency. If, however, the reserve fund study identified the repair of the building envelope in 2013 but previous boards failed to account for that particular need and did not create a sufficient reserve fund to deal with this type of repair, then I would suggest that previous boards were negligent in their responsibility to owners. The condominium corporation may also want to look at other alternatives such as borrowing the money to assist owners who cannot afford to make the lump sum payment.

**Q:** I am a condominium board member, and I am concerned because our bylaws do not allow members to attend board meetings electronically. Yet, our president lives outside of Alberta and often attends meetings by telephone. I sought an opinion on my own, which conflicts with the opinion that the board got. I have asked the board to reimburse me for the cost of getting the opinion, but have not received a response. What do you think of this?

**A:** If your bylaws do not currently allow board members to participate in board meetings electronically, you must follow those rules. Of course, if the board chooses to, it can amend those bylaws in accordance with the Condominium Property Act. If you sought a legal opinion without seeking board approval, they are not required to reimburse you. With respect to the board's own legal opinion, as a board member, you are entitled to see it.

**Helpful hint:** Board members must work together. There is no value in taking an "us versus them" approach at the board level. Owners have elected individuals to the board to work together for the betterment of the condominium corporation.

**Q:** I sit on a condo board that is addressing a shortfall in its reserve fund. We have prepared a funding plan for our 2013 budget, and are increasing condo fees to specifically address the shortfall. Can we issue our budget, or do we have to wait, in light of the recent court decision regarding bareland condos?

**A:** In view of the most recent Alberta Court of Queen's Bench decision dealing with reserve funds in bareland condominium corporations, it would be prudent for you to have a lawyer review your bylaws and your reserve fund study to determine whether or not your reserve fund complies with the law. If you are seeking funds from owners to pay for things that are not the responsibility of the condo corporation, then you may be able to reduce your ask from owners in regards to the reserve fund.

**Helpful hint:** The Court decision on bareland condominiums did not provide the condominium community with any guidance in terms of how to deal with payments that have now been declared illegal, and condo corporations are now sitting on potential hundreds of thousands of dollars that cannot be used as intended. I am hopeful that the province has recognized this unusual situation and will react quickly to make an amendment to the provisions dealing with reserve funds.

**Q:** Our condo board president wants the corporation to adopt "house rules" in addition to our bylaws. The bylaws are sufficient, except that the president is slow to take action when pet bylaw infractions are brought to his attention. The previous board used fines to get the attention of negligent owners and tenants, but the current president does not do so. He chooses what he wants to do, and our property management company will only act on his instructions. I have tried to tell the president that no matter what happens with respect to "house rules," the board has the duty to enforce all bylaws. Is this correct?

**A:** A condominium corporation, through its board, cannot ignore a particular bylaw simply because it does not want to enforce pet provisions. If the board is aware of a bylaw breach, the board must act. As well, the property management company should be getting its directions from the board through proper board resolutions, not through the president, who has no authority to instruct the property manager to do or not to do something without the board's approval. The property management company should remind the board that it is to act through board resolution. Finally, a current board is not bound by any decision of a previous board.

**Helpful hint:** Adhering to board governance, and ensuring that the board is acting through proper resolutions, will ensure that issues as to whether or not the corporation had the authority to do something cannot be challenged.

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