

## Condominium act should ensure fee equity

### Bylaws can provide another basis, but most use unit-factor approach

BY ROBERT NOCE, EDMONTON JOURNAL    NOVEMBER 5, 2011

Dear Robert: When our small condominium complex was first set up, 20 units had a unit factor of 365 each and five units had a unit factor of 450 each. We live in a unit that has 450 unit factors, and when we moved in six years ago, the monthly fees were \$35 more than the smaller units. Since that time, the spread between the smaller units and the bigger units has increased to \$100 per month, and will continue to grow as the budget increases every year. Do condo fees have to be based on unit factors, or can we simply divide the costs evenly among all units?

A: The Condominium Property Act states that condominium fees must be levied on the basis of unit factors unless your bylaws provide otherwise. Therefore, if your bylaws do not provide for any other basis on which to charge condo fees, your condo fees must be based on unit factors. It may seem unfair to you; however, the basis for unit factors is the most equitable approach.

Helpful hint: If your bylaws are silent on this particular issue and you want to change it, then you will require the support and approval of 75 per cent of the owners and unit factors to amend your bylaws to allow for a different approach in the calculation of condominium fees.

Dear Robert: Your answer in a previous column confused me, in that I do not know whether or not the board requires approval of the owners for budget and fee increases. Could you explain further?

A: The Condominium Property Act requires the condominium corporation to provide its financial statements and an annual budget to each owner. This usually occurs at the annual general meeting (AGM) of the owners, which must be held within 15 months of the last AGM.

Generally, that work is done at the board level and owners are simply receiving the financial statements and budget for information purposes. However, the Condominium Property Act also states that the powers and duties of a corporation, which are exercised and performed by the board, are subject to any restriction imposed or direction given in a resolution passed at a general meeting. In other words, owners can come together and place restrictions on the board or change a particular direction of the board in terms of the budget. Therefore, owners do have an ability to provide further instructions to their board on a particular issue.

Helpful hint: Owners have rights under the Condominium Property Act that can be exercised at an AGM or any other meeting of the condominium corporation. Unfortunately, interest among owners is relatively low at AGMs. If you are concerned about your investment, then I would urge you to take an active role.

Dear Robert: At our last AGM, the board put forth a motion for the owners to vote on, and they voted for no increase in condo fees in 2011, and to have one set of windows replaced. Last month, the board raised condo fees and did not replace the windows. Can a board negate an owners' vote?

A: Owners have the ability, under the Condominium Property Act, to impose restrictions or provide direction to the board. If the

restrictions and/or directions were given at a duly called meeting of the corporation, and a proper vote was conducted, the board must follow the direction and/or restrictions imposed on the board by the owners. If the board fails to do so, then it may expose itself to a court action in which the owners could come together to challenge the board and its inability to follow the direction of the owners.

Helpful hint: Boards cannot ignore properly voted motions of the owners; they do not have the discretion to say that the board knows better.

Dear Robert: Is it a good idea to have the account requiring two signatures with any two being the property management company officer and the condo board president, or is it better if only board members are signing officers?

A: The best approach is to do something convenient for board members that also provides security to this process. I believe that condominium corporations should always have a couple of people with signing authority, and the board should always be aware of what cheques are being issued and have the proper documentation attached to them. To avoid problems, having certain checks and balances in the chequeissuing process will provide the necessary protection.

Helpful hint: It is essential you put together a checklist to ensure people who are signing cheques have the necessary authority to do so and are acting with the right information.

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