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SPENDING MONEY



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WHO WE ARE

- We are a full service law firm with a focus on strata property law. We have been advising strata corporations since the introduction of *The Strata Property Act* in July 2000.
- We deal with all the issues strata corporations face, but with a particular focus on:
 - Collections;
 - Bylaw packages;
 - Bylaw enforcement;
 - Governance matters; and
 - CRT claims.



WHAT WE WILL TALK ABOUT

- Differences between the Operating Fund, the Contingency Reserve Fund and Special Levies;
- What expenses come out of which fund;
- When is an expenditure an “emergency”;
- What is an unapproved expenditure and how to deal with it;
- Surpluses and deficits.



THE BASICS – COMMON EXPENSES

“Common Expenses” means expenses:

(a) relating to the common property and common assets of the strata corporation, or

(b) required to meet any other purpose or obligation of the strata corporation;

SPA s.91 - The strata corporation is responsible for the common expenses of the strata corporation.



THE BASICS – COMMON EXPENSES

SPA s.92 - Two funds for paying common expenses:

- (a) an operating fund for common expenses that**
 - (i) usually occur either once a year or more often than once a year, or**
 - (ii) are necessary to obtain a depreciation report under section 94, and**
- (b) a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.**



THE BASICS – OPERATING FUND

Operating fund expenses must be approved either by:

- a. a line item in the operating budget;
- b. a 3/4 vote resolution at a general meeting (surplus),
- c. if the expenditure is below the maximum threshold for unapproved expenditures [section 98(2)],
- d. if reasonable grounds exist to believe that an immediate expenditure is needed to ensure safety or prevent significant loss or damage [section 98(3)]; or
- e. if the owners have not approved a new budget and continue to use the previous budget until a new one is passed [section 104(3)].



THE BASICS – BUDGET

Budget Requirements - Regulation 6.6

- (a) the opening balance in the operating fund and CRF
- (b) the estimated income from all sources other than strata fees, itemized by source;
- (c) the estimated expenditures out of the operating fund, itemized by category of expenditure;
- (d) total of all contributions to the operating fund and CRF
- (f) each strata lot's monthly contribution to the operating fund and to the CRF;
- (h) the estimated balance in the operating fund and the CRF at the end of the fiscal year;



THE BASICS – CRF

CRF expenditures must be approved by:

- Majority vote if related to the repair, maintenance or replacement, as recommended in the most current depreciation report [s.96(2)(A)];
- a 3/4 vote at an annual or special general meeting [s.96(2)(B)];
- if reasonable grounds exist to believe that an immediate expenditure is needed to ensure safety or prevent significant loss or damage [section 98(3)];



THE BASICS – SPECIAL LEVIES

SPA S.108 – establishes:

- The ability of the strata corporation to raise funds by way of a **special levy**;
- The criteria for properly approving a special levy;
- How to manage the funds raised by the special levy;

There are no restrictions on the type of common expense that a special levy can be raised for. However, it cannot be used to contribute to the CRF - *Morin v. The Owners, Strata Plan VR 279*, 2021 BCCRT 122.



THE BASICS – STRATA FEES

s.99 - Calculating strata fees

Subject to section 100, owners must contribute to the operating fund and contingency reserve fund by means of strata fees calculated in accordance with:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution}$$

Regulation 6.4 provides some exceptions for types and limited common property.



WHAT FUND?

How does a strata corporation know what fund to pay expenses from?

The key distinction is the frequency of the expense.

Once a year or more often

vs.

Less often than once a year

The Civil Resolution Tribunal (CRT) has been very strict in its application of this distinction to expenditures.



WHAT FUND?

Greene v. The Owners, Strata Plan KAS 1244, 2021 BCCRT 291

The strata spent money on several repair expenses:

- security system replacement and upgrade;
- the installation of locks on attic access hatches;
- screens over dryer vents;
- replacement of an exterior door;
- installation of attic venting;
- a fire system upgrade and inspection.



WHAT FUND?

Poll question

*Greene v. The Owners, Strata Plan KAS 1244, 2021
BCCRT 291*

What fund do you think the expenses could have been paid from?

1. Operating Fund
2. Contingency Reserve Fund
3. Unsure



WHAT FUND?

Greene v. The Owners, Strata Plan KAS 1244, 2021 BCCRT 291 – The CRT held that:

- Main upgrades could come from CRF;
- Fire inspection costs had to be paid from the Operating Fund because fire inspections occur annually. (The \$500 expense should have been separated from the rest of the project).



WHAT FUND?

Greene v. The Owners, Strata Plan KAS 1244, 2021 BCCRT 291 – The CRT held that:

- The other repair expenses from the list should have been paid from the Contingency Reserve Fund since they are things that the strata corporation did not do every year.



WHAT FUND

Dirks v. The Owners, Strata Plan EPS2744, 2021 BCCRT 127

Costs to re-key building entry locks (\$3,984.94)

Poll question

What fund do you think the expense could be paid from?

1. Operating Fund
2. Contingency Reserve Fund
3. Unsure



WHAT FUND?

Dirks v. The Owners, Strata Plan EPS2744, 2021 BCCRT 127

- The CRT determined that “the money should have been taken from the CRF (or alternatively, a special levy under SPA section 108) because lock rekeying was not an annual event;
- The fact that all the owners at the AGM approved the budget containing the expense made no difference;
- Nor did the fact that it related to security allow the expenditure from the wrong fund.



WHAT FUND?

Meybodi v. The Owners, Strata Plan EPS869, 2021 BCCRT 89

Cost of repainting fences - \$20,196.75 including GST

Poll question

What fund do you think the expense could be paid from?

1. Operating Fund
2. Contingency Reserve Fund
3. Unsure



WHAT FUND?

Meybodi v. The Owners, Strata Plan EPS869, 2021 BCCRT 89

- Strata argued that cost could be included in the Operating Budget because the bylaws specifically referred to duty to repair and maintain fences.
- The CRT disagreed. It is the frequency of the task that governs.
- Remedy was to order the strata to immediately move cost from the CRF to the operating fund.



WHAT FUND?

Hodgson v. The Owners, Strata Plan LMS 908, 2022 BCCRT 117

Patio drainage project which included patio coring, plumbing drain installation, patio membrane replacement, and replacement of planters and shrubbery.

Poll question

What fund do you think the expense could be paid from?

1. Operating Fund
2. Contingency Reserve Fund
3. Unsure



WHAT FUND?

Hodgson v. The Owners, Strata Plan LMS 908, 2022 BCCRT 117

- The CRT held that these were not Operating Fund expenses;
- It disagreed with the strata that the expense was typical of other building, landscaping, plumbing, and other maintenance expenses that occur regularly every year;
- The strata should have obtained ownership approval to pay for the patio drainage project out of the CRF. Alternatively, the strata could have held a vote on collecting a special levy, under SPA section 108.



WHAT FUND?

**Borland-Spry v. The Owners, Strata Plan EPS4534,
2021 BCCRT 339:**

- tree removal services as part of ongoing efforts to remediate the landscaping
- add bark mulch annually to locations based on a recommendation from the landscaping committee
- install paddleboard storage racks,
- Automatic door opener/“accessibility buttons”



WHAT FUND?

**Borland-Spry v. The Owners, Strata Plan EPS4534,
2021 BCCRT 339**

Poll question

What fund do you think the expenses could be paid from?

- 1. Operating Fund**
- 2. Contingency Reserve Fund**
- 3. Unsure**



WHAT FUND?

**Borland-Spry v. The Owners, Strata Plan EPS4534, 2021
BCCRT 339**

The CRT held that:

- **tree removal was specifically before the ownership in 2019 as part of the strata's ongoing efforts to remediate the landscaping and as part of the budget.**
- **owners approved the mulch as part of the overall landscaping budget and so it falls under SPA section 98(1)**



WHAT FUND?

**Borland-Spry v. The Owners, Strata Plan EPS4534,
2021 BCCRT 339**

- **Strata used the line item “Security/Enterphone Lease ” to pay for the accessibility buttons**

The CRT held the accessibility buttons were:

- **unrelated to the lease and thus not approved as part of the operating budget**
- **not an operating expense because they were a unique purchase.**



WHAT FUND?

**Borland-Spry v. The Owners, Strata Plan EPS4534,
2021 BCCRT 339**

- CRT held should have been paid from CRF as purchasing paddleboard racks was a unique, one-time expense
- Strata relied on a fire inspection report to claim it was an emergency expense.
- CRT said not emergency because:
 - Racks not installed until 2 months latter
 - Could have had residents remove paddleboards



WHAT FUND?

Sometimes an expense that would normally fall in the CRF can become an Operating Fund Expense.

Strata Corp. LMS 509 v. Andresen, 2001 BCSC 201

- Building envelope repairs and associated investigation expenses could be paid for through the Operating Fund since they were occurring on an ongoing basis each year. They were no longer unusual or extraordinary.



SO WHAT DOES IT ALL MEAN?

- Carefully consider how often the particular expense (not merely the general type of expense) occurs.
- If the particular type of expense is not one that occurs annually, the strata corporation must either:
 - call a Special General Meeting as expenses arise throughout the year;
 - plan very carefully for the AGM to ensure that resolutions are presented for approval.
- consider more frequent work and descriptive budget categories (Borland-Spry)



SO WHAT DOES IT ALL MEAN?

Practically this will likely mean:

- Lower repair and maintenance line items (what can really fall under the Operating Fund?);
- Higher CRF contributions in the Operating Budget to fund repairs (or alternatively more special levies);
- More frequent repairs (LMS 509 case).



EMERGENCY EXPENDITURES

SPA s.98

- (3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

- (5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

- (6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3).



EMERGENCY EXPENDITURES

To be an “emergency” an expenditure must be:

- based on reasonable grounds
- immediately necessary
- ensure safety or prevent significant loss or damage, whether physical or otherwise (including to obtain and maintain insurance)

It must not exceed the minimum amount needed.

The expense must have an urgent nature, not merely a prudent nature. (i.e. it cannot wait for 20 days to call a meeting).



EMERGENCY EXPENDITURES

- A thoughtful analysis of whether an expense is an emergency is required – *Mitchell v. Strata Plan KAS 1202*, 2015 BCSC 2153;
- Independent evidence or the advice of a professional saying that the matter should be addressed immediately is helpful in meeting the test - *Perry et al. v. The Owners, Strata Plan LMS 180*, 2017 BCCRT 135.
- The fact that something has been in need of repair for a long time and there is now increased urgency, does not mean it is an emergency (in fact, it can indicate the opposite) - *Fournier v. The Owners, Strata Plan LMS 768*, 2017 BCCRT 1



EMERGENCY EXPENDITURES

- Cannot lump unrelated and/or non-urgent expenses together with a legitimate emergency expense - *Stevenson v. The Owners, Strata Plan VIS 1419*, 2017 BCCRT 70.
- Cost overruns on a project are not an emergency expenditure - *Stevens v. The Owners, Strata Plan KAS 2490*, 2021 BCCRT 492
- Legal fees can be an emergency expense depending on the circumstances - *Campbell et al v. The Owners, Strata Plan BCS 2742*, 2019 BCCRT 111; *Sabell v. The Owners, Strata Plan KAS 3635*, 2021 BCCRT 620



UNAPPROVED EXPENDITURES

SPA s.98

- (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.
- (2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is
 - (a) less than the amount set out in the bylaws, or
 - (b) if the bylaws are silent as to the amount, less than \$2000 or 5% of the total contribution to the operating fund for the current year, whichever is less.



UNAPPROVED EXPENDITURES

What is it?

- SPA doesn't define and the decisions take different approaches
- Bill must be paid to be an expenditure. Merely incurring the expense doesn't count- *Wolff v. The Owners, Strata Plan NES3191*, 2021 BCCRT 987



UNAPPROVED EXPENDITURES

Different interpretations of what an “unapproved expenditure” is:

Only an expense for which there is no line item (*Woytuik v. The Owners, Strata Plan VIS 5970, 2017 BCCRT 3*)

OR

One or more approved expense categories which exceed the budget overall (*Gadbois v. The Owners, Strata Plan NES 206, 2020 BCCRT 353*)

OR

An approved expense which exceeds the amount for the expense line item (*Haw v. The Owners, Strata Plan EPS 1869, 2019 BCCRT 509; 1093870 B.C. Ltd. v. The Owners, Strata Plan NW213 2022 BCCRT 328*)



UNAPPROVED EXPENDITURES

- Cases are hard to reconcile.
- Prefer Gadbois/Woytuiuk combination (no line item or exceeds budget overall) – most consistent with the SPA
- Consider whether a bylaw could define what is “unapproved” – s.98(4) SPA



UNAPPROVED EXPENDITURES

Some things to note regarding unapproved expenditures:

- There is a limit to them (\$2,000 or 5% of strata fee total or the amount in bylaws);
- The limit does not apply to emergency expenditures but they are still counted toward the total for unapproved Operating Fund expenses.
- Only applies to the Operating Fund (CRF expenses must be approved or be an emergency);



UNAPPROVED EXPENDITURES

Some things to note:

- Need to seek approval before exceeding the limit-
Gadbois v. The Owners, Strata Plan NES 206, 2020
BCCRT 353.
- Expenses need to be consistent with category -
Borland-Spry v. The Owners, Strata Plan EPS4534,
2021 BCCRT 339
- The bylaws can set out further conditions or
limitations



LOANS FROM CRF

- Regulation 6.3(1) permits a loan from CRF to Operating Fund
- Only to cover temporary shortages in the operating fund resulting from expenses becoming payable before the strata fees have been collected.
- The loan must be repaid by the end of that fiscal year of the strata corporation.
- Cannot use the CRF to make up for poor budgeting (i.e. transfer and approve at next AGM)



SURPLUS AND DEFICIT

SPA s.105(1) - Surplus

A surplus must be dealt with in one or more of the following ways:

- (a) transferred into the contingency reserve fund;
- (b) carried forward as part of the operating fund, as a surplus;
- (c) used to reduce the total contribution to the next fiscal year's operating fund;
- (d) any other use approved by $\frac{3}{4}$ vote.



SURPLUS AND DEFICIT

- Use is usually reflected in the proposed Operating Budget and approved as part of it
- Council can decide on its own what to do with the surplus - *Kierans et al v. The Owners, Strata Plan EPS 1290*, 2019 BCCRT 1086
- Can use the surplus for non-operating fund expenses
– *Lo v. Strata Plan VR 2100*, 2018 BCCRT 366.



SURPLUS AND DEFICIT

SPA s.105(2) – Deficit

A deficit must be eliminated during the next fiscal year.

That can be done by:

- Increasing strata fees for the coming fiscal year;
- Applying a prior surplus against the deficit;
- Operating below budget (*Townsend v. Strata Plan NW2545*, 2018 BCCRT 209)



QUESTIONS

QUESTIONS

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The information provided during this presentation is of a general nature and should not be taken as legal advice about a specific situation.