

Collecting Strata Fees and Special Levies When There is a Tax Sale

Elaine McCormack

Strata corporations that are trying to collect strata fees and special levies from owners, especially those trying to collect large special levies, should take precautions to avoid a municipal tax sale completing on a strata lot, leaving the strata corporation with no lien and possibly no reasonable prospect of collecting the outstanding amount.

Strata corporations have been granted special rights through the *Strata Property Act* to collect monies owing for strata fees and special levies. A strata corporation can place a lien on the title of a strata lot registered in the land title office for monies outstanding for strata fees and special levies, and can also apply to the Supreme Court of British Columbia to sell the strata lot and pay the strata fees and special levies out of the proceeds of the sale. In accordance with section 116(5) strata corporations are in the enviable position of taking priority over almost all liens and charges that may be on the title of a strata lot. As a result, a strata corporation's lien for non-payment of strata fees takes priority over mortgages registered on title, even if the mortgage was registered on title before the strata corporation's lien.

However, the provisions of the *Local Government Act* and the *Vancouver Charter* also give municipalities special rights to collect municipal taxes. The procedure involves the strata lot being put up for auction and a tax sale notice being placed on the title of the strata lot. One year after the auction, the tax sale completes and the strata lot is sold, at which time the charges on title, including in our experience liens filed in accordance with the *Strata Property Act*, are removed from the title of the strata lot. This procedure leaves the strata corporation who still needs to be paid for outstanding strata fees and/or special levies either:

- (a) trying to obtain a personal judgment through the court system against the past or present owner;
- (b) trying to obtain a court order that provides that the strata fees and special levies have priority over the municipal taxes; or
- (c) trying to negotiate with the municipality and the previous owner to pay the amount owing to the strata corporation out of any surplus funds that may be left over after the municipal taxes and other charges of the municipality have been paid.

Keep in mind that the municipality can sell the strata lot for less than market value, so it is possible that the sale price may not cover the amount outstanding to the strata corporation.

As a result of the language used in the *Strata Property Act* and the *Local Government Act* and the *Vancouver Charter*, it is questionable whether municipal taxes have priority over strata fees and special levies or the other way around, but a court challenge is necessary to answer this question.

In order to protect your strata corporation from this problem, it is important to not only register a lien for amounts outstanding, but also to do a title search of the strata lot after registering a lien to check to see if a tax sale notice has been filed. If a tax sale notice has been filed against the title to a strata lot, it is prudent to have the file reviewed by a lawyer, as it may be wise to apply to court so that the strata corporation can sell the strata lot prior to the tax sale completing. That way, the strata lot will sell for market value and the strata corporation will have a greater chance of being paid out in full than if the strata lot is sold through a tax sale. Also, if the strata corporation has filed a lien, it is wise to do a title search every six months to ensure that no tax sale notice has been filed on title. If a tax sale notice has been filed, it is then prudent to discuss with a lawyer whether to apply to a judge for an order that the strata corporation can sell the strata lot and pay out the realtor's fees, strata fees, special levies, municipal taxes and other charges, with the balance going to the owner of the strata lot.

Mortgage holders generally foreclose on a strata lot prior to a tax sale completing, so the chances of a tax sale completing increase if there is no mortgage holder. The chance of a tax sale completing also increase if there is a costly repair levy outstanding and the strata lot has dropped in value, because then the owner may consider that there is no equity left in the strata lot for him and he may allow the tax sale to complete.

Other issues arise concerning collecting amounts owing for strata fees and special levies, including what to do when:

- (a) the owner is going bankrupt;
- (b) foreclosure proceedings have commenced; or
- (c) builders' liens have been placed on the title to the strata lot.

In each of these cases, it is helpful to seek legal advice to determine the best route to collect the monies owing to the strata corporation.

First published: CHOA Journal – Summer 2003
For more information contact: Elaine McCormack
Alexander Holburn Beaudin & Lang LLP
2700 – 700 West Georgia Street
Vancouver, B.C. V7Y 1B8

Ph: 604-484-1704
Fx: 604-484-9704
emccormack@ahbl.ca