

Why Are Shared Facilities Agreements So Contentious?

11 April 2023

Whenever I meet with new condominium boards, one of the first questions I ask is whether they are subject to a shared facilities agreement. From my experience, anytime that a condominium corporation shares facilities and services with an adjacent condominium corporation (i.e., a swimming pool or underground parking garage), or with a developer or commercial owner (i.e., a restaurant or convenience store), there is the potential for a dispute.

There are a few reasons why shared facilities agreements are so often subject to litigation. The most common reason is that the agreements are often very difficult to understand and interpret.

These shared facilities agreements are drafted by the developer's lawyer prior to the creation of the condominium corporation. For new buildings, the draft shared facilities agreements are included as part of the purchaser's disclosure documents. The problem is that at the time that the shared facilities agreement is drafted, the developer will likely not have a strong sense of how the respective parties will actually utilize the "shared facilities." The developer will include as a schedule to the shared facilities agreement specific percentages that each party has to contribute towards the shared facilities. Unfortunately, these percentages are usually not reflective of the actual percentages that the respective parties will be using the services on a going forward basis.

Key Takeaways

These "shared percentages" are usually the main cause of frustration for condominium boards, who are being asked to contribute monies towards shared facilities, even if the services are not, in reality, actually shared between the parties. Condominium boards do not want to have to essentially subsidize the usage of the shared facilities by the other parties to the agreement.

The good news for new condominium Boards is that if it becomes necessary, under the [Condominium Act](#), a Board can apply to court within one year of the election of the "new" Board to terminate the shared facilities agreement.

For older buildings, however, the respective parties have rights to mediate and arbitrate any disputes with respect to the interpretation of the shared facilities agreements. Before any of these steps are taken, however, the respective parties (usually with assistance of property management) need to work together to find a way to reach common ground within the context of the shared facilities agreement already in place.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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