BRITISH
COLUMBIA

Instruction Guide 12

What to Know about Contingency Reserve Funds and Special Levies

Important Notice: This Instruction Guide has been prepared by the Superintendent of Real Estate to provide information about the *Strata Property Act* (the "Act"). This is only a guide to certain parts of the Act and Regulations. Please consult the Act and Regulations to determine the complete and precise requirements of the Act and Regulations. In addition, please remember when reviewing statements about the Standard Bylaws that they may not apply until January 1, 2002, and even when they do apply, they may have been amended or removed if the strata corporation has filed bylaw amendments in the Land Title Office. Please check all filed bylaw amendments to determine whether and how the Standard Bylaws may have been amended.

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1. What is the Contingency Reserve Fund?

Strata corporations must have a contingency reserve fund ("CRF") to pay for common expenses that:

- usually occur less often than once a year; or
- do not usually occur.

The contributions from strata owners to the CRF should be included in every budget approved at an annual general meeting.

Usually, CRF contributions will appear as a single line item in the budget, and the budget will not detail any specific use of the CRF.

Separate sections within a strata corporation have a duty to establish their own operating fund and CRF for common expenses that relate exclusively to the section. However, common expenses shared by different sections cannot be included in separate section budgets, and must be included in the strata corporation budget as a common strata corporation expense.

Strata lots that are differentiated as different types of strata lots in a bylaw do not have the power to establish their own operating fund and CRF.

2. **Contributions to the CRF**

Usually, CRF contributions are based on the unit entitlement of each strata lot in the strata corporation. Contributions to the CRF are approved in the annual budget and collected through strata fees.

If the strata corporation has separate section budgets, CRF contributions for that section are usually based on the unit entitlement of each strata lot in the section. Contributions to the separate section CRF are approved in the separate section annual budget and collected through separate section strata fees.

[Note: strata corporations with separate sections will usually have both separate section budgets for section expenses and a strata corporation budget for expenses common to strata lots in all sections.]

The following may also be added to the CRF:

- surplus funds from the previous year's operating fund; and
- surplus funds from a special levy, as long as the surplus funds owing to each strata lot is $100 or less.

3. **Minimum/Maximum Contributions**

The amount that a strata corporation must contribute to the CRF is based on the total annual budgeted contributions to the operating fund for the fiscal year that just ended.

If the amount in the CRF is:

- less than 25% of the total annual budgeted contribution to the operating fund for the fiscal year that just ended, the minimum contribution to the CRF must be at least 10% of the total contribution to the operating fund for the current year;

- 25% or greater but is less than 100% of the total annual budgeted contribution to the operating fund for the fiscal year just ended, the contribution to the CRF may be of any amount; or
- equal or greater than 100% of the total annual budgeted contribution to the operating fund for the fiscal year just ended, any contribution to the CRF must be approved by a resolution passed by a ¾ vote at an annual or special general meeting.

4. <u>**Depreciation Reports**</u>

A depreciation report may be used to assist a strata corporation in determining the amount that it should be contributing to the CRF. However, a depreciation report is only a guide for the strata corporation. CRF contributions ear marked for a certain purpose in a depreciation report can actually be spent for any purpose for which the fund may be used.

A depreciation report may never be used to lower the CRF contribution below the minimum contribution required by the Act.

The depreciation report should estimate the repair or replacement cost and the expected life of each major item of the common property (e.g. the roof) or the common assets (e.g. playground equipment).

At this time there is no standard prescribed form which must be used for a depreciation report.

Strata corporations may want to consider including the following items when preparing a depreciation report:

- electrical system
- heating system
- plumbing system
- elevators
- exterior walls
- roof
- carpeting and furnishings
- interior and exterior painting
- parking facilities and roadways
- recreational facilities

This list is not exhaustive and a strata corporation may prepare a depreciation report for any common property or assets belonging to the strata corporation.

5. **Expenditures from the CRF**

Expenditures from the CRF must be:

- approved by a ¾ vote at an annual or special general meeting; and
- consistent with the purpose of the CRF.

6. **Unapproved Expenditures from the CRF**

An unapproved expenditure will only be permitted:

- if the expenditure is necessary to ensure safety or prevent significant loss or damage; **and**
- if the expenditure does not exceed what is required to ensure safety or prevent loss or damage; **or**
- if the expenditure is for the purpose of paying an insurance deductible required to repair or replace damaged property.

If an unapproved expenditure occurs a strata council must inform owners as soon as possible about the expenditure unless the expenditure was to pay for an insurance deductible.

7. **Investing and Managing the CRF**

The CRF can be invested or held:

- in an insured account at a savings institution in British Columbia; **or**
- in an investment permitted by section 15 of the Trustee Act (see attached Appendix “A”).

The CRF:

- must be accounted for separately from other monies held by the strata corporation or separate section;
- must include any interest or income earned on the CRF;
- can be used to secure a strata corporation loan by approval of a ¾ vote; and
- can be lent to the operating fund to cover temporary shortages resulting from expenses becoming payable before the budgeted monthly contributions to the operating fund to cover these expenses have been collected.

- a loan made to cover a short term temporary shortage in the operating fund must be repaid by the end of that fiscal year; and
- if a loan is made, the strata council must inform owners as soon as feasible of the amount and purpose of the loan.

8. **Claim to Monies in the CRF**

When the sale of a strata lot occurs, the seller is not entitled to a return of contributions to the CRF.

9. **What is a Special Levy?**

A special levy is monies collected for a specific purpose:

- where the expenditure has not been included in the annual budget because it was either not contemplated or because of the infrequency of the expense;
- where there are insufficient funds in the CRF; or
- where a decision is made not to use monies from the CRF.

10. **Preparing a Resolution for a Special Levy**

A resolution approving a special levy must:

- set out the purpose of the levy;
- state the total amount of the levy;
- state the method for determining each strata lot's share of the levy;
- state the amount each strata lot must pay; and
- state the date(s) by which the levy must be paid.

11. **Approving and Contributing to a Special Levy**

A strata lot owner will contribute to a special levy:

- in the same way that strata fees are paid, which is usually by unit entitlement, but may be by some other method, if the strata corporation has approved by unanimous resolution, an alternative method of apportioning strata fees; or

- by a fair division of expenses.

A special levy must be approved at a general meeting. The vote necessary to approve a special levy will be:

- a ¾ vote if contributions to the levy are apportioned in the same way as strata fees are apportioned; or
- a unanimous vote if contributions to the levy are apportioned by a fair division of the expense rather than the way that strata fees are apportioned.

When a strata lot is sold, if a special levy is approved before the strata lot is conveyed to the purchaser:

- the seller will owe the strata corporation the portion of the levy that is payable before the date the strata lot is conveyed to the purchaser; and
- the purchaser will owe the strata corporation the portion of the levy that is payable on or after the date the strata lot is conveyed.

12. Expenditures and Uses of a Special Levy

Monies collected for a special levy must only be spent for the purpose of the special levy.

The strata council must inform owners on how monies raised from a special levy have been spent.

The special levy can be used to secure a strata corporation loan by approval of a ¾ vote.

13. Excess Special Levy Funds

The strata corporation must return excess funds from a special levy to the owners in the same proportion that the levy was collected, if there is at least one owner entitled to more than $100.

If no owner is entitled to more than $100, the strata corporation may deposit the excess funds in the CRF.

References:
Sections of the Act: 1, 91-96, 98-101, 103, 105, 108, 109, 111, 158, 194, 195
Sections of the Regulations: 6.1-6.6, 11.1-11.3

APPENDIX "A"

Trustee Act

15 A trustee may invest trust money in his or her hands, if the investment is in all other respects reasonable and proper, in
(a) securities of Canada, a province, the United Kingdom, the United States of America or a municipal corporation in a province,
(b) securities the payment of the principal and interest of which is guaranteed by Canada, a province, the United Kingdom, the United States of America or a municipal corporation in a province,
(c) securities issued for school, hospital, irrigation, drainage or other similar purposes that are secured by or payable out of rates or taxes levied under the law of a province on property in that province,
(d) bonds, debentures or other evidence of indebtedness of a corporation that are secured by the assignment to a trustee of payments that Canada or a province has agreed to make, if those payments are sufficient to meet the interest on all the bonds, debentures or other evidence of indebtedness outstanding as it falls due and also to meet the principal amount of all the bonds, debentures or other evidence of indebtedness on maturity,
(e) bonds, debentures or other evidence of indebtedness of a corporation incorporated under the laws of Canada or a province that are fully secured by a mortgage, charge or hypothec to a trustee on any one or combination of the following assets:
(i) land;
(ii) the plant or equipment of a corporation that is used in the transaction of its business;
(iii) bonds, debentures or other evidence of indebtedness or shares of a class or classes authorized by this section,
(f) bonds, debentures or other evidence of indebtedness of a corporation incorporated under the laws of Canada or a province if the corporation has earned and paid a dividend,
(i) in each of the 5 years immediately preceding the date of investment, at least equal to the specified annual rate on all of its preferred shares, or
(ii) in each year of a period of 5 years ending less than one year before the date of investment, on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid,
(g) guaranteed trust or investment certificates of
(i) a bank, or
(ii) a corporation that is incorporated under the laws of Canada or of a province and that has a business authorization to carry on trust business or deposit business,
(h) bonds, debentures or other evidence of indebtedness of a loan corporation or similar corporation
(i) that at the time of investment has all of the following:
(A) power to lend money on mortgages, charges or hypothecs of real estate;
(B) a paid up nonreturnable capital stock of not less than $500 000;
(C) a reserve fund amounting to not less than 25% of its paid up capital, and
(ii) the stock of which has a market value that is not less than 7% in excess of its par value,
(i) preferred shares of a corporation incorporated under the laws of Canada or of a province if the corporation has paid a dividend,
(i) in each of the 5 years immediately preceding the date of investment, at least equal to the specified annual rate on all of its preferred shares, or
(ii) in each year of a period of 5 years ending less than one year before the date of investment, on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid,
(j) first mortgages, charges or hypothecs on land in Canada, but only if the loan does not exceed 75% of the value of the property at the time of the loan as established by a valuator whom the trustee believes on reasonable grounds to be competent and independent,
(k) securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by the *Bretton Woods and Related Agreements Act* (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, a member of the British Commonwealth or the United States of America,

(l) fully paid common shares of a corporation incorporated under the laws of Canada or of a province that, in each year of a period of 7 years ending less than one year before the date of investment, has paid a dividend on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid, and

(m) deposits in, or non-equity or membership shares or other evidence of indebtedness of, a credit union.