

Guide 12

What to Know about Contingency Reserve Funds and Special Levies

IMPORTANT NOTICE

This guide was prepared by the Superintendent of Real Estate and updated by the Ministry of Housing and Social Development. This guide, along with other guides in the series, provides basic information about certain parts of the British Columbia *Strata Property Act* (the “Act”) and its Regulations.

Readers cannot rely on the guides for legal advice

The guides do not:

- provide a legal interpretation of provisions of the *Act* or Regulations. Please consult the *Act* and Regulations and court judgments to determine the complete and precise requirements of the legislation.
- include information about how the courts may have interpreted provisions of the *Act* or Regulations.

Readers should seek professional advice if they need to determine specific legal rights and duties which may apply in their particular situations.

The Province of British Columbia may periodically update the guides. Nevertheless, neither the Superintendent of Real Estate, nor any other authority of the Province of British Columbia, is liable for any inaccurate or incomplete information in any guide. For the convenience of readers, **updated information has been flagged in bold italic** in the guides and will remain marked this way for approximately one year from their noted revision dates.

In addition, the Standard Bylaws referred to in the guide do not necessarily apply to every strata corporation. Strata corporation bylaws can be enacted, amended or repealed by the developer or the strata corporation. Please conduct a search at the Land Title Office to obtain a copy of all filed bylaws and bylaw amendments for a specific strata corporation to determine which bylaws are applicable.

1. **What is the Contingency Reserve Fund (CRF)?**

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 (Contingency Reserve Fund) should be included in every budget approved at an annual general meeting.

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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 $\frac{3}{4}$ vote at an annual or special general meeting.

4. Depreciation Reports

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 earmarked 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; for example, landscaping may be included in depreciation reports.

5. Expenditures from the CRF

Expenditures from the CRF must be:

- approved by a $\frac{3}{4}$ 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 insured accounts with savings institutions in British Columbia
- ***those investments permitted by Strata Property Regulation 6.11.***

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 $\frac{3}{4}$ 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 $\frac{3}{4}$ 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 $\frac{3}{4}$ vote.

13. Excess Special Levy Funds

The strata corporation must return excess funds from a special levy to each owner of the strata lot proportional to the contribution made to the special levy in respect of that strata lot, 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.

14. INVESTING AND MANAGING THE SPECIAL LEVY

The special levy can be invested or held:

- *in insured accounts with savings institutions in British Columbia*
- *those investments permitted by Strata Property Regulation 6.11*

The special levy:

- *must be accounted for separately from other monies held by the strata corporation or separate section;*
- *includes any interest or income earned on the special levy*

15. CHARGING INTEREST ON LATE PAYMENT OF A SPECIAL LEVY

A strata corporation may, by bylaw or by a resolution approving a special levy establish a rate of interest not to exceed the rate set out in the regulations, to be paid if the owner is late in paying his or her strata lot's share of the special levy.

The interest payable is not a fine and forms part of the special levy.

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, **6.11**, 11.1-11.3