

Financing Repairs with Borrowed Funds

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In these economic times councils are looking for ways to finance repairs immediately required to buildings and building systems with a payment schedule that is affordable to owners. In some circumstances, the best option may be to take out a loan. Under section 111 of the *Strata Property Act*, a strata corporation is able to borrow money if there has been approval to do so by a resolution passed by a $\frac{3}{4}$ vote of the owners at a general meeting. In order to obtain a loan from a financial institution, strata corporations need to find ways to satisfy the financial institution's requirement for security. Some strata corporations own a caretaker's suite and are able to offer that as security. Other possible security can include an assignment of unpaid strata fees and/or special levies.

Financing the repayment of a loan over an extended period of time is normally done by special levy. That way, the owners can commit to making the payments over several years, as opposed to raising the money through the budget.

Prior to drafting the $\frac{3}{4}$ vote resolution approving the repairs and the loan it is important that the council understand the terms of the loan and the financial institution's requirements. The council should consider the following issues:

- (a) the loan amount;
- (b) the term and the amortization period of the loan;
- (c) the amount of the loan payments and how the money will be raised to pay them;
- (d) what security the financial institution will require;
- (e) what the interest rate will be;
- (f) the purpose of the loan and the use of the proceeds;
- (g) the agreements that council will need to execute on behalf of the strata corporation;
- (h) the cost of the set up and administration fees of the financial institution, annual review fees and so on; and
- (i) whether a financial statement prepared by an accountant each year the loan is in effect is a requirement of the loan.

Prior to the financial institution funding the loan, two council members will likely need to execute a series of documents. These documents may include an assignment of construction contract, general assignment of book debts, and a general security agreement. Prior to funding the loan, most financial institutions require a letter from a lawyer undertaking that the loan, including all required agreements, have been properly approved by the strata corporation. Since it is the owners at a general meeting that need to approve the granting of such security, it is important that the $\frac{3}{4}$ vote resolution passed be drafted in consultation with legal counsel, to ensure that requirements of the financial institution are met.

A sample resolution is set out below for discussion purposes.

BE IT RESOLVED by a $\frac{3}{4}$ vote, pursuant to sections 79, 82, 105, 108, 109, 111 and the whole of the *Strata Property Act*, that The Owners, Strata Plan BCS 000 agree to re-pipe the strata development including but not limited to installing new piping, demolition and disposal of materials, reconnection to existing tubs, toilets and faucets, and drywall, tile and paint restoration and related professional costs, including engineering fees and lawyer's fees ("Project") and agree to the following financial arrangements:

- (a) To borrow funds from ABC Bank ("Bank") in the maximum amount of \$500,000.00 by way of a loan with a fixed interest rate of ___% with an amortization period of five years and a term of five years ("Loan");
- (b) Pass a special levy in the amount of \$_____ to be used to repay the Loan. Each strata lot's share of the special levy is calculated based on the unit entitlement of each strata lot and the amount of each strata lot's share of the levy is set out on the attached schedule. Each strata lot's share of the special levy shall be paid in 60 equal installments due on the first day of each and every month from _____ to _____. The amount of each strata lot's payments are set out in the attached schedule. If a strata lot is sold after this special levy is approved then the seller owes the Strata Corporation the levy if it is payable before the date the strata lot is conveyed and the purchaser owes the levy if it is payable on or after the date the strata lot is conveyed;
- (c) Transfer \$50,000.00 from the current operating fund surplus to the contingency reserve fund in accordance with section 105(1) of the *Strata Property Act*.
- (d) That the Council can expend an amount of up to \$100,000.00 from the contingency reserve fund and that this money will be used to pay for the Bank's set up and administration fee of \$3,000.00, and the annual review fees totaling _____, the draw fees totaling \$250.00, accountant prepared financial statements every year for as long as the Loan is outstanding and any other fees or charges required, including legal fees for the Bank and the Strata Corporation, as well as towards paying for the Project directly;
- (e) The money to repay the Loan will be taken first from the monies from the contingency reserve fund and then from the special levy amount. As a result, if

there are monies left outstanding after the Project is complete, then the Strata Corporation will return the monies to the owners in proportion to their contributions if the amount any owner is entitled to is more than \$100.00. If no owner is entitled to a refund of at least \$100.00, then the amount may be deposited in the contingency reserve fund;

- (f) The Owners, Strata Plan BCS 000 will grant a mortgage and assignment of rents over the strata lot owned by The Owners, Strata Plan NW 92, such strata lot with a legal description of:

Parcel Identifier: 000-000-000
Strata Lot 1 District Lot 1 Group 1 New Westminster
District Strata Plan BCS 000 together with an interest
in the common property in proportion to the unit
entitlement of the strata lot as shown on form 1

(“Rental Suite”)

creating a first fixed financial charge over the Rental Suite. Any two members of Council have the authority to enter into the mortgage by executing such documents as are required and providing them to the Bank and/or to the land title office. Such mortgage will be for the amount of \$_____. As part of the mortgage, there will be an assignment of all risk insurance, in an amount and from an insurer that are both acceptable to the Bank, on the Rental Suite showing the Bank as first loss payee by way of standard mortgage endorsement, such policy to include public liability insurance;

- (g) Pursuant to sections 79, 82 and 111 of the *Strata Property Act*, The Owners, Strata Plan NW 92 agree to grant the following security for the Loan:
- i. a general security agreement in favour of the Bank creating a first fixed charge over all present and after acquired personal property of The Owners, Strata Plan NW 92;
 - ii. a first ranking general assignment of book debts in favour of the Bank;
 - iii. an assignment of unpaid contributions, whether strata fees or special levies, in favour of the Bank;
 - iv. an assignment of the fixed price contract with respect to the re-piping, acknowledged by the contractor; and
 - v. a Certificate of the Borrower, confirming, among other things, that the necessary $\frac{3}{4}$ vote resolution has been passed to enable the borrowing and the granting of security.

- (h) That any two Strata Council members have the authority to execute such documents as are necessary to enter into the Loan and to grant the security required by the Bank for the Loan and the mortgage including but not limited to all items listed in this $\frac{3}{4}$ vote resolution.

Your financial institution may require different security than what is provided for above. Given the amount of paperwork required when a strata corporation takes out a loan, it is generally only done to finance large scale repairs.

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