

**Common Expense Fund v. Reserve Fund: How do you determine what is a “major” repair that should be funded from the reserve fund rather than the common expense fund?**

Pursuant to the Condominium Property Act, 1993 the condominium corporation is responsible for all expenses and liabilities incurred with respect to the common property and common facilities included in the condominium plan.<sup>1</sup>

The Act further provides that in order to pay for such expenses and liabilities the condominium corporation must set up at least two different accounts; a common expense fund and one or more reserve funds.

The Act provides some guidance with respect to what each account should be used for. The common expense fund or operating fund, will be used to cover the routine, day-to-day maintenance and expenses incurred in the control, management and administration of common areas. This includes any expenses incurred as a result of enforcing the bylaws, and/or discharging the obligations of the corporation. Minor repair due to normal wear and tear is an operating expense and will be funded by the common expense fund.

The Act provides that the reserve fund should be used solely for any unforeseen common expenses, major repair or replacement of common areas, or assets of the corporation including roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators and laundry, recreational and parking facilities. Section 55(4) of the Act specifically provides that a corporation shall not use moneys in its reserve fund for any purpose other than a purpose described in subsection (3).

Since the Act provides that the reserve fund can only be used for specific unforeseen expenses or major repairs, the condominium board has to distinguish major repairs and replacements (costs properly charged to the reserve fund) from minor repair and ordinary maintenance (which should be charged to the common expense fund).

When is maintenance, which includes the obligation to repair after normal wear and tear, properly characterized as *major* repair or replacement?

A condominium’s repair and maintenance responsibilities can be divided into two categories:

1. Items or classes of items that repeat annually, so that the cost of such items also repeats annually, subject to inflationary increases;
2. Items which occur less frequently than annually, so that the cost fluctuates from year to year.

As a general comment, most items that fall within category No. 1 should be addressed in the operating budget, as an annual expense. The remaining items should be covered by

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<sup>1</sup> *Condominium Property Act, 1993* section 54

the Reserve Fund and taken into account in the Reserve Fund Study. In other words, it is possible to interpret “major repair or replacement” as including any work that is not properly caught in the annual operating budget.

When faced with repair or replacement of a common element component, the corporation must ask the following questions: Was this an expenditure that was anticipated as part of our most recent reserve fund study? If so, how does the amount of the expenditure compare to the planned expenditure? If the expenditure was not anticipated, it may still be a proper reserve fund expense, but an adjustment to the reserve fund contribution may be necessary in order to ensure that the plan stays “on track”. If the cost of the expenditure was greater than anticipated, or the expense is incurred sooner than anticipated, then an adjustment to the reserve fund contribution may be needed. Until any increase or adjustment is made, it may be necessary to mention the pending increase or adjustment in any Status Certificate issued.

The reserve fund study may not mention every possible reserve fund expense. Some expenses may be anticipated in the study but may be grouped under other major repair headings in the cash flow plan.

Cannot be a new item coming out of the Reserve fund.

When considering whether or not an unplanned expenditure can be properly charged to the reserve fund, and determining the extent of any adjustment required, it may assist to discuss the implications with the consultant who prepared the most recent reserve fund study.