

LET'S MAKE A DEAL ...

A Strata Council's Guide to Settling Disputes

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It will come as no surprise to strata agents and strata lot owners alike that living in a strata corporation means learning to deal with day to day conflicts. From drifting smoke, to pet noise, parking allocations to curtain colours, the "typical strata dispute" knows no bounds. A Strata Council's power to settle these disputes, however, has its limits.

We Can Work It Out

The Beatles' 1965 hit offers a useful soundtrack for our Legislature's current mission for resolving strata governance disputes. As a Strata Council member or strata agent, it is important to become familiar with these dispute resolution options.

The *Strata Property Act*, S.B.C. 1998, c. 43 ("SPA") is the principal legislation that governs strata corporations in our province, and it offers a variety of mechanisms by which a strata corporation can resolve disputes on its own or with third party intervention. The SPA operates in conjunction with a strata corporation's bylaws and rules, as well as several other provincial and municipal laws that regulate how persons can use and enjoy their strata properties.

Depending on the dispute at hand, strata corporations can find themselves at the doorstep of the Provincial Court, Supreme Court, an arbitration, or Tribunal proceeding (e.g. Civil Resolution Tribunal; Human Rights Tribunal; Employment Standards Branch). By default, the standard schedule of bylaws to the SPA also affords strata corporations a "voluntary dispute resolution" avenue for in-house remedies, in addition to the Council hearing request option available to owners and tenants under section 34.1 of the SPA. Regardless of the forum, a Strata Council is obliged to keep their community informed of active disputes and all significant developments in the dispute resolution process.

Start Spreading the News

When a strata corporation is sued, it must inform owners of the lawsuit as soon as feasible (section 167, SPA). Similarly, strata corporations are required to obtain the prior $\frac{3}{4}$ vote approval of the owners in order to initiate certain claims of its own (section 171, SPA). This approval process makes sense since lawsuits will invariably have shared financial implications for the strata community, including costs to engage legal counsel, litigation disbursements (e.g. filing fees; photocopy costs), costs from resulting judgments and/or orders, and money that may or may not be available to fund a settlement.

Although the SPA initially tasks the Strata Council to pursue or defend such legal proceedings on behalf of their community, the Council is required to regularly check in with the ownership as the dispute progresses and (hopefully) resolves. In addition to these reporting obligations, it is also incumbent on Council to report any claims or prospective claims to the Strata Corporation's insurers as soon as possible. Failing to report claims in a timely manner runs the risk of voiding coverage to defend the claim and/or indemnify the Strata Corporation and/or Council members for adverse judgments or orders.

Typically, claims are first reported to the ownership by way of a "legal update" in the next Council Meeting Minutes. In addition, strata corporations are obliged to disclose all active Court proceedings, arbitrations, and Tribunal proceedings on the Form B "Information Certificate". The Form B must additionally disclose any judgments or orders made against the strata corporation, and such judgments are required to be kept as a part of the strata corporations "permanent record".

Given the risks of receiving an adverse judgment or order against the community, it can often be in a strata corporation's best interest to try and resolve the dispute by brokering a "full and final" settlement. But how do these deals get done?

Decisions, Decisions

Deciding to settle a claim between a strata corporation and a third party (e.g. an owner, tenant or other entity) is one that can have a lasting impact on the community at large. Although most Strata Council decisions can be achieved by a majority vote resolution, many settlements will require the participation of more persons at the negotiation table, and higher voting thresholds.

(a) Council Participation

Before deciding to settle a claim, the Council should consider whether it has authority to make the decision on its own. In addition, although certain Council members may have been approved to be the "point person" in a legal proceeding (e.g. the appointed "representative" of the strata corporation in a Civil Resolution Tribunal proceeding or the instructing individual for legal counsel), a singular Council member does not have the authority to initiate settlement offers or enter into settlement agreements on their own. Minimally, the decision to make a settlement offer, or accept or reject a settlement agreement must be approved by a majority vote of the Strata Council. In the event that a Council representative receives an offer during a mediation/facilitation/settlement meeting for which they are the designated strata corporation representative, it is incumbent on the member to reiterate the limited scope of their settlement authority and to request a break/adjournment for the purpose of obtaining the requisite approval. As indicated below, this approval may also reach beyond the Strata Council and require others' involvement.

(b) Insurance Participation

At times, the defense of a lawsuit against a strata corporation or personal Strata Council members will be covered by insurance. If the strata corporation's legal defense is covered by insurance, then the insurer's interests must also be represented in the

decision to settle (particularly if settlement funds are coming from the insurance provider). As a result, the insurer's approval will be required before making strategic decisions about settlement offers and settling claims. Failing to report a claim or possible claim, as well as engaging in early settlement talks without insurer approval, may compromise available coverage for Council members and the community. In light of these considerations and consequences, it is critical to maintain open communications with insurance providers during every step of the dispute resolution process, from filing to finish.

(c) Ownership Participation

Although most Council decisions can be achieved by majority vote, there will occasions when the Council will need the $\frac{3}{4}$ vote approval of the owners at an Annual or Special General Meeting. The decision to settle a legal proceeding can be one such occasion.

Claims initiated by a Strata Corporation against a third party are considered assets of the community (i.e. personal property with an ascribed value). It will perhaps come as no surprise that owners will take special interest in ensuring that claims seeking financial compensation for their community (e.g. strata fee collections; property damage claims; breach of contract claims) are managed in strict accordance with their community's financial interests and the procedural requirements of the SPA. Although the Strata Council may have had the authority to initiate these proceedings on their own, the decision to settle these proceedings (i.e. dispose of the asset or reach a compromise on the financial claim) will invariably require the prior $\frac{3}{4}$ vote approval of the ownership (section 82, SPA). One way to streamline Council's settlement authority is to incorporate the requisite approvals in the $\frac{3}{4}$ vote resolution initiating the proceeding or raising money to pursue or defend the claim (e.g. legal fees). If the Council wishes to deploy this resolution option, however, the resolution must be clearly and specifically worded to recognize the scope of the Council's authority to discontinue/resolve the claim without the need to return to the owners for a further $\frac{3}{4}$ vote approval.

Similarly, there are some claims brought against a Strata Corporation that will require the ownership's approval to settle by a $\frac{3}{4}$ vote. If the settlement agreement requires a monetary expenditure over and above the Council's spending limit under the bylaws or the SPA, then the Council will need the $\frac{3}{4}$ vote approval of the owners in order to fund the settlement. Any offers made that would purport to spend above the Council's limit should be made on a "conditional" basis; that is, the offer is conditional on obtaining the $\frac{3}{4}$ vote approval of the owners at a General Meeting. In addition, settlements that involve the following areas of strata governance will also require the prior $\frac{3}{4}$ vote approval of the owners to make a deal: agreements respecting significant changes to the use or appearance of the common property (section 71, SPA); agreements respecting the cancellation of a strata management contract (section 39, SPA); agreements involving waiving a depreciation report (section 94, SPA); agreements regarding expenditures from the operating fund that are not otherwise authorized in the budget (section 97, SPA); agreements respecting expenditures from the contingency reserve fund (section 96, SPA); and agreements respecting bylaw amendments (section 128, SPA).

Pushing Paper

Each dispute resolution forum in our province encourages parties to resolve disputes without having to extend the litigation to judgment. It appears The Beatles were right - we can work it out. In an effort to encourage the parties to work together, the Provincial Court schedules mandatory settlement conferences and mediations early in the litigation. The Supreme Court offers judicial settlement conferences and mediation remedies for parties. The Human Rights Tribunal hosts Early Settlement Meetings, and the Civil Resolution Tribunal offers Facilitation.

Each dispute resolution forum will also have its own paperwork to document the conclusion of a proceeding by way of settlement. In Provincial Court, that paperwork often consists of a Settlement Conference Record, Payment Order, Consent Order, and/or Notice of Withdrawal. In Supreme Court, the materials often consist of more formalized settlement agreements between the parties, Consent Dismissal Orders and other Orders. Tribunals also have their own settlement material (e.g. the "Record of Settlement" with the Residential Tenancy Branch; the "Complaint Withdrawal" with the Human Rights Tribunal; the "Consent Resolution Order" and "Consent Dismissal Order" with the Civil Resolution Tribunal). As with any deal, leaving an "i" undotted or a "t" uncrossed can spell disaster. As a result, considerable time and attention should be paid to completing these settlement materials.

To ensure the finality of a settlement, efforts should also be made to secure a full and final "release". A release is a document signed by the other party which provides that, in exchange for whatever result they are achieving by way of settlement, they agree to end their legal proceeding and give up their right to make further claims on those issues.

A Deal's a Deal

Resolving strata corporation disputes is never easy - for owners or for Strata Councils. Before entering into settlement negotiations, approving settlement agreements or agreeing to consent orders involving the strata corporation, it is strongly recommended that the Strata Council obtain independent legal advice to ensure that the deal is properly approved and that the agreement is properly papered. It is all well and good to resolve disputes on our own, but we never want to be left hanging when making these decisions.

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