

Condo Smarts

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Dear Condo Smarts: As part of our annual general meeting two weeks ago, our owners approved a 10% increase in the annual budget. Within that budget the owners also included an amount that would increase the fees the strata corporation is authorized to pay for management fees. At our first council meeting this week, the property manager informed us that this approved their increase and commencing November 1, they automatically started paying themselves the increased amount. As an entirely new council we're not sure how this works. Who has the authority to spend the annual budget and how do we approve increases in the fees? If we are working with any other type of contractor and have a negotiated contract, isn't a new fee or new terms part of a new negotiation? Christine Johnson, Carriage Estates

Dear Christine: The requirements for fees and terms and conditions of a strata agency agreement are set out in the Real Estate Services Act, Regulations and Rules of the Real Estate Council. *Section 5-1(6) of the council rule*

The remuneration to be paid under the agreement and the circumstances in which it is payable must be defined as set out under Rule 5-1 (4) f. Even when a strata corporation's proposed annual operating budget is ratified by its strata owners (which includes an increased budget for strata management fees), a brokerage would only have authority to withdraw the increased management fee amount when the increased fees have been affected in writing and signed off by the strata corporation client and an authorized signatory of by the brokerage.

Rule 5-1(6) sets out the changes to an agreement: *Any amendment of or addition to the terms of a service agreement required under subsection (1) must be in writing and signed by the client and an authorized signatory of the brokerage.*

There are a few possibilities that may exist within your written service agreement, so before you can determine the method required to approve the increase in fees, you will first have to review the agreement. The agreement may contain a fixed fee for

the services prescribed, with no schedule for specific increases, and that would require the strata corporation (council) to renegotiate the agreement based upon the services and expense approved in the annual budget. If there is a request for a fee increase, it could potentially open the entire contract to renegotiation. If that is the case, the strata council may want to seek legal advice on the proposed terms and conditions of the contract, or any amendments proposed or new fees proposed. The approval of the annual budget simply authorizes the strata council to expend those fees. It does not approve a new contractual agreement or new schedule of fees. That is the duty of the elected strata council. However, your strata corporation may have signed an agreement that includes a specific fee structure over three years, five years, or a longer period of time. The contract may include a fixed fee that also defines a fixed and negotiated yearly increase over a longer period. There is no standard agreement for strata management contracts. Strata corporations are at liberty to negotiate the terms and fees for their contracts, based on the services they receive and duties of the manager set out in the contract. There are hundreds of variations of contractual agreements with differing levels of service, but every written service agreement must include the provisions set out in section 5-1 of the Rules of the Real Estate Council. There are also many potential complications in service agreements that may be dual agency or multiple representations. A strata agent may represent multiple parties such as separate sections, multiple strata corporations in the same development, or rental management in addition to strata management in the same building. Before a strata council enters into a strata agency service agreement, CHOA recommends that the strata corporation seeks independent advice from a lawyer who is experienced in both real estate management and the operations of a strata corporation under the Strata Property Act & Regulations. To review the Real Estate Services Act, Regulations and Rules of the Real Estate Council go to: <http://www.recbc.ca>, select Consumer Info and then Real Estate Legislation.

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