

## Condo Smarts

Headline: Undisclosed commissions

Topic: Management

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**Dear Tony:** We have a new strata council this year and at our first council meeting we were presented with a document that authorized our management company to receive commissions and fees from third parties. We were told it was a standard form of document and every strata signs it. When we started asking detailed questions our manager become quite angry with us and told us we were being unreasonable. When pressed for more information from past years, we were told the prior strata councils had authorized this and we were not entitled to any of the prior information. We hear about finder fees and payoffs and kick-backs from contractors but never experienced it first-hand. Is this a normal industry practice? If it is, how do we know what we are signing if it is just an authorization for a contractor to receive fees as a result of doing our business, but never telling what the amounts actually are?

*Kevin J. Surrey*

**Dear Kevin:** The relationships around third party fees and commissions may vary depending on the type of contractor. The strata management company for example is your agent and has a fiduciary duty to act in your best interest as their client, whereas a contractor is not your agent and may be subcontracting for other types of services and charging a premium or fee on those services or may be receiving product rebates from suppliers. The terms and definitions of services and any financial relationships and services that are compensatory are best addressed in the contract or service agreement. Under a strata management agreement the *Rules of the Real Estate Council require*: if a licensee receives or anticipates receiving, directly or indirectly, remuneration, other than remuneration paid directly by a client, as a result of the licensee the licensee must promptly disclose to the client all remuneration paid or payable to the licensee's related

brokerage in relation to the real estate services provided, and the disclosure must include all of the following: (a) the source of the remuneration, (b) the amount of the remuneration or, if the amount of the remuneration is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and (c) all other relevant facts relating to the remuneration. A general disclosure form that simply authorizes commissions or fees is not complete unless the amounts and source of commission have been disclosed. The actual amounts being received may have a material impact on your decision. For example, if a supplier is providing seasons tickets to a local sports team but the actual value has no impact on the terms of the contract and the price is still competitive, both parties benefit; however, if the fees are increasing your cost as the consumer as a result of the financial incentive, then yes, you would assess the impact closely. After all, the money is coming out of the pockets of your fellow strata owners. It all requires your consent.

Protect your strata corporation and demand full disclosure of any amounts being received, any business relationships where the contractor, service provide or strata management brokerage owns or operates other companies that are providing services, and any incentives that are being provided to individual licensees. If a contractor is receiving benefits from a third party then whose interest are they really working on behalf of?