

Condo Smarts

Headline: Conflict of Interest

Topic: Strata Council; Conflict of Interest

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Dear Tony: We are having some serious issues with 2 of our council members who are benefitting from their council involvement. One of them works for the developer and constantly pushes any issues away from the developer's responsibility and the other is an employee of the management company that we currently employ who also manages other properties of the same developer. In a new building we were fortunate to elect several council members who have engineering and legal backgrounds, so we have a very real sense of our duties and the essence of deadlines. How do we deal with these individuals? They are constantly attempting to bully the council and threatening that they will have the owners remove us for a more cooperative council.

Ron L.

Dear Ron: The best solution for all business of a strata corporation is to make decisions official and operate by the book. The downfall of many strata corporations is the informal approach where no motions are made at council meetings, no decisions are recorded in the minutes, and whenever there is an issue over potential conflict of interest, the strata does not identify the conflict in the minutes or require the council member to leave the meeting during those discussions.

A potential for conflict exists whenever a council member may have a direct or indirect interest in a contract, transaction with the strata corporation or a bylaw violation complaint. To compound the problem, council members are asked if they have a conflict to which most claim they do not, or they deny any such involvement. It is not up to the council member to determine whether they have a conflict. They have a duty to disclose any possible involvement and then the remaining council members determine whether a

conflict is possible. Self-adjudication of conflict status is often the first symptom of a problem.

The most common conflicts generally arise from bylaw violations or financial debts. If there is a matter relating to a council member and a bylaw complaint, the council member must recuse themselves during those discussions once the information has been gathered and must refrain from voting on the outcome. The same consideration should be made for matters such as whether a council member is responsible for an insurance deductible, whether a lien is imposed on the council member's strata lot for collection purposes or whether damages were caused by the owner or their tenants and occupants. If the council member has any relationship to a contractor, if they are an employee of the strata corporation, or if they work for a developer or management company to which the strata is in negotiations, they should also recuse themselves from the portions of the meetings where decisions have to be made that may affect or benefit the companies.

For the protection of your strata corporation and the council members, check that you have included the disclosure of any conflict in the minutes and the time the member recused themselves allowing for unfettered discussions. Transparency has no shadows.