

Condo Smarts

Headline: Council Disclosure of Remuneration

Topic: Strata Council; Conflict of Interest

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Written by: Tony Gioventu

Dear Tony: We have an awkward situation in our strata corporation and need your assistance. The vice president of our strata council has been coordinating contractors and suppliers on a 3 year construction project to replace our balconies that is costing around 1.7\$ million. Our contractor accidentally copied all our council on an email to confirm progress payments that included an invoice from our vice president who has been acting as a sub consultant of the contractor for the project and has been paid \$75,000 fees to date, acting as the certified consultant on the project. We did budget for engineering fees up to \$100,000, through a defined company, but the council and owners are very hostile that he did not disclose he worked for the company or potential conflict. We are concerned about the integrity of the project and who he is representing, the contractor or the strata corporation? How do we resolve this issue? We do not want to get trapped in an endless costly legal dispute. We have had some questionable business decisions by this person over the years so would also like to place other strata councils on alert.

MH Strata Council

Dear council members: Unfortunately, there are many strata corporations who have discovered unethical or fraudulent business transactions involving strata councils and strata management companies. Non-disclosure of remuneration, business relationships and financial transactions is a typical complaint. Whether it is major construction, an insurance claim, the wind up of a strata corporation, a costly service agreement or investment planning, the common denominator is money which is the source of most strata disputes.

The *Strata Property Act* defines the standard of care of a council member, the conditions for disclosure of

interest and their accountability to the strata corporation. Council members must act honestly and in good faith, with the best interests of the strata corporation as their obligation. With that they are bound to exercise care, diligence and the skill of a reasonably prudent person in comparable conditions.

Any council member who has a direct or indirect interest in a contract or transaction with the strata corporation, must disclose fully and promptly to the council the nature and extent of the interest, abstain from voting on the contract or transaction unless requested by council to provide information, must leave the council meeting while the contract is discussed and voted on. The relationship in this situation is between the consulting company and the contractor; however, the consultant was providing services to and on behalf of the contractor and the strata corporation, so there is a duty of care owed to the strata corporation and a duty to disclose the full nature of the interest and the remuneration.

As both the council member, the consulting company and the contractor were aware of the relationship and no one disclosed this information to the strata corporation, there is a reasonable argument to cancel the contract and retain independent services to complete the project while the matter is being resolved.

The council member who has received the compensation has a serious issue and if challenged through the courts or the Civil Resolution Tribunal may find that if the contract was unreasonable or unfair to the strata corporation they may set aside the contract, or if the council member has not acted honestly or in good faith, require the council member to compensate the strata corporation for a loss arising from the contract and require the strata council member to pay

to the strata any profit the council member makes as a consequence of the contract. There may also be representation concerns regarding permits and certification of the project. In addition to receiving a financial benefit, who was the council member acting for?

We can't serve two masters. It rarely works, especially when significant amounts of money or liability are involved. It would be prudent to have your lawyer speak to both the contractor and the consulting company. If any harm has been done in the process, a complaint may be filed with the Association of Professional Engineers regarding the conduct of the consultant and failure to disclose the relationship. It is also prudent to inform the owners of what has taken place, plus advise them of the steps council is taking.

A simple solution for strata corporations in any significant business transaction is before you approve a contract, ask council and the strata manager to declare if they are aware of any interests direct or indirect, where either a council member or strata management agent or agency would receive a financial benefit or has a business interest, and record this action and record the results in the minutes. The issue is not whether the services were competent or of value to the strata corporation, there was no valid reason to withhold this relationship. Clearly the council member was profiting from the contract and did not want their strata corporation to know.