

Condo Smarts

Headline: Contingency Fund Interest

Topic: Contingency Reserve Funds

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Written by: Tony Gioventu

Dear Tony: At our annual general meeting in February an issue was raised about the amount of interest our strata earned on our contingency fund this year. Our strata had a \$900,000 investment in 2017 that showed only \$4,500 in revenue but the rate of interest on the investment was posted at 1.85% which should have shown \$16,650 in revenue. When challenged, our property manager advised the rate of interest paid is only .05% because the strata signed a management agreement in 2013 whereby the management company acts as our investment agent and retains as a fee, everything above .5%. The owners who attended this meeting were furious when they were informed council signed this type of agreement. None of our current council members were aware of this condition so we were quite embarrassed. Is this legal?

Mark D. Vancouver

Dear Mark: When your strata corporation signs a strata management services agreement they also agree to a schedule of fees for the management and operations of your strata corporation. While the strata corporation may agree to certain types of fees and services, this fee in particular may not be in compliance with the *Strata Property Act* unless certain conditions have been met.

Under the *Real Estate Services Act* and Rules of the Real Estate Council, funds held by strata management companies for strata corporations must be held separately in trust in the name of the strata corporation. This applies to the operating

fund, the contingency fund and any special levy funds that may arise. As a result, your annual tax return and financial statement must show the full amount of the interest and revenue that was generated by the fund for the fiscal year and any expenses relating to that fund.

The *Strata Property Act* specifically requires that any interest earned on the money in the contingency fund becomes part of that fund. Any expenses from the contingency fund are approved under one of the following methods: an emergency expense, an expense recommended as part of the depreciation report and approved by majority vote, an insurance deductible, or any other expenses approved by a three-quarter vote at a general meeting.

As this fee is part of a contract, the strata corporation would have an obligation to pay the amount; however, they would also be required to have the owners at a general meeting by 3/4 vote resolution, ratify the expense of the contingency management fee negotiated with the strata management company. The essence of the payment and approvals is: the strata council cannot waive mandatory provisions of the Act. While the council in 2013 may have signed this agreement, the current owners will still be required to vote on this part of the fees as a contingency expense.

For strata councils who are newly elected or negotiating strata management service agreements, it is important to review the schedule of fees closely. Your monthly rate may seem to be

a real bargain, but when you look closely at the details of service costs and fees that are published in the service agreements, you may be paying a much higher rate for fewer benefits. Your strata corporation is always in a position to renegotiate or terminate the agreement. Before you sign a strata management services agreement, have a legal review of the contract so your council fully understands the implications of the fees and services being provided.

A fully disclosed and fair strata management services agreement will go a long way to creating a harmonious relationship between your strata corporation and your strata management company. Likewise, council members who are fully informed are empowered to make prudent and responsible decisions on behalf of the owners. Every council member should have an operations binder or on-line platform that makes all service agreements and contracts, bylaws and rules of the strata, and all financial and operational information available.