

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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When the strata council for your strata corporation has found a management company that it wants to work with it's time to review the standard form contract proposed by the management company to ensure that it meets the needs of the strata corporation. As we know from going through the bylaw review process "one size fits all" does not apply to strata corporations. Just as different strata corporations have different requirements for their bylaws, they also require different services from their strata managers. In my experience, most strata managers are willing to agree to reasonable changes to their standard form contracts.

Some smaller strata corporations retain strata managers on a very limited basis. For instance, some strata corporations retain a strata manager to do the accounting and perhaps take minutes at the annual general meeting. On the other end of the spectrum, I am familiar with one large strata corporation in downtown Vancouver that has an on site office for the strata manager, and the strata manager is in attendance there on almost a full time basis. CHOA has developed a very helpful checklist that can be used by your strata council when the council is deciding on the extent of the management services the strata corporation will require. The strata council needs to decide what services will be performed by the strata manager and what services will be performed by council members.

There should also be some thought put into ensuring that the strata management contract is consistent with the provisions of the *Strata Property Act*. Strata managers should not be responsible to perform tasks that the strata council must perform. For instance, a strata manager cannot fine an owner for a bylaw violation. The decision about whether to fine an owner or tenant must be made by the council. However, a strata manager, as the agent of the strata corporation, can advise owners or tenants that they have been fined. A strata manager is also not able to decide whether or not an owner is under hardship and thus able to qualify for an exemption under a rental restriction bylaw.

Conversely, there are certain responsibilities that the strata council should seriously consider delegating to the strata manager. For instance, under section 35 of the *Strata Property Act*, a strata corporation has an obligation to prepare certain records and maintain copies of certain documentation. The strata corporation also has an obligation to, upon request, make the records and documentation available for inspection by certain individuals, including owners, as well as to provide copies if requested. Often times the organization and storage of records and documentation is best done by the strata manager. If a council member attempts to perform these duties it can be very difficult to ensure that the records will be available on a consistent basis and that there will be an orderly transfer of the records when the strata council member responsible for them changes from time to time.

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Another example of a duty that is likely best performed by the strata manager is the completion of forms required when one of the strata lots in the complex sells. If a council member takes on the role of doing the accounting for the strata corporation and completes these forms on behalf of the strata corporation, it can be very difficult for the strata council to provide the forms if that owner is out of town when the forms are required.

Another important consideration is that many of the contracts provide that the strata management company can assign its interest in the contract without permission from the council. After working hard selecting an appropriate strata manager it is important that the strata council has the right to refuse the assignment of the contract to another company. The strata council may be able to negotiate a provision in the contract that the assignment of the contract by the strata manager can only take place if the strata council agrees to it.

A strata council may also want to include a term in the agreement that a specific manager will be assigned to the strata corporation and that another manager will only be substituted if the strata council agrees to the change. The contract may also contain provisions relating to conflict of interest. For example, a provision can be included that the strata management company must not act as a rental agent for those owners in the complex contemporaneously with managing the strata corporation.

Section 39 of the Strata Property Act provides as follows:

Cancellation of strata management contracts

39 (1) A contract entered into by or on behalf of the strata corporation for the provision of strata management services to the strata corporation may be cancelled, without liability or penalty, despite any provision of the contract to the contrary, (a) by the strata corporation on 2 months' notice if the cancellation is first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or (b) by the other party to the contract on 2 months' notice. (2) The strata corporation does not need any prior approval to cancel the contract in accordance with its terms or to refuse to renew the contract when it expires.

Keep in mind that a strata management contract, like any other contract, can be terminated by either party in accordance with the terms of the contract. For instance, the parties can agree that the management company or the strata council acting on behalf of the strata corporation can terminate the contract on 2 months' notice. Contracts can also be terminated without notice by one party because the other party has fundamentally breached the contract.

Whether the contract is being terminated by the strata manager or the strata corporation, it is important to ensure that the notice period is not too short, because the transfer of financial records and other documentation needs to be done in an orderly manner.

After you have reviewed the standard form management contract that is being proposed by the strata management company, as well as the checklist regarding management contracts prepared by CHOA, a lawyer can assist you in negotiating a revised contract with the strata management company. After all, besides a contract for major building repairs, a contract for strata management services is the most important contract of all for your strata corporation.

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