

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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It often seems like a good idea to hire an owner, tenant or occupant of a building to perform a job required by the strata corporation whether it be as resident manager or caretaker, construction manager, bookkeeper, painter, roofer, plumber, electrician, gardener, etc. After all, these individuals have an interest in the building; they are likely to do a good job; they know the building and it is convenient for the strata corporation. However, there are several considerations that should be addressed before the strata corporation decides to hire an owner, tenant or occupant.

By hiring a person who is an owner, tenant or occupant of the building, the strata corporation, in most cases, is entering into an employer-employee relationship. This is a considerably different situation than when a property management company directly employs an individual to provide services for the building or the strata corporation retains the services of an independent contractor.

Some of the concerns that a strata corporation may have in entering into an employer-employee relationship are: (1) the strata council's capacity to enter into an employment contract; (2) who can be hired; (3) whether there should be a written employment contract; and (4) the potential liabilities of the strata corporation that result from the employment relationship. This article will address all four of these issues.

Capacity to enter into an Employment Contract

The *Strata Property Act* provides that the strata council has the capacity to enter into a contract on behalf of the strata corporation with respect to the strata corporation's powers and duties as provided under the *Strata Property Act*. The *Strata Property Act* also provides that the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation. Accordingly, the strata council has the capacity to enter into employment contracts for managing or maintaining the common property and common assets of the strata corporation.

Prior to entering into an employment contract, the strata council must have the necessary authorization. Although the strata council does not require authorization from the owners to enter into a contract, it does require authorization from the owners, by a resolution passed by a 3/4 vote at a general meeting, to pay the employee pursuant to the contract unless the amount has been authorized in the budget, is an expense authorized by the bylaws or is an emergency expense. (s.98 of the *Strata Property Act*)

Therefore, before any employment offers are made, the strata council should meet and decide whether a resolution passed by a 3/4 vote will be necessary. If a resolution is necessary and the annual general meeting is not going to occur in the near future, a special general meeting will need to be held. At this meeting, a resolution should be passed allowing the council to spend up to a certain amount of money to hire an individual for a particular position.

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Who can be Hired?

There is nothing in the *Strata Property Act* that prevents the strata corporation from hiring an owner, tenant or occupant of the building to provide services required by the building or that prevents the strata corporation from hiring a strata council member as employee of the strata corporation. However, the strata council member must abide by the standard of care and disclosure requirements set out in the *Strata Property Act* (ss. 31 and s.32).

Section 31 of the *Strata Property Act* requires a strata council member to “act honestly and in good faith with a view to the best interests of the strata corporation.” Accordingly, the strata council member cannot be hired if they would be in violation of this section.

Section 32 of the *Strata Property Act* requires a strata council member who has a direct or indirect interest in a contract with the strata corporation to disclose fully and promptly the nature and extent of the member’s interest, to abstain from voting on the contract and to leave the council meeting when the contract is discussed and voted on. Obviously, in most employment contract arrangements the interest in the contract will be apparent, however the council member should still comply with this requirement in order to prevent the strata corporation from obtaining an order to set the contract aside.

If full disclosure does not occur and there is a failure to comply with s.32, the strata corporation or an owner may apply to the Court to do any or all of the following: (1) set aside the contract; (2) require the council member to pay compensation to the strata corporation; and (3) require the council member to pay any profits made from the contract to the strata corporation. An alternative is to ratify the contract, after the fact, by a resolution passed by a 3/4 vote at an annual general meeting or special general meeting.

Generally speaking, anyone can be hired by the strata corporation to perform the duties of managing or maintaining the common property and common assets of the strata corporation.

Should there be a written contract of employment?

If the strata corporation is going to hire an individual who is an owner, tenant or occupant of the building, or anyone for that matter, the strata corporation should enter into a written contract of employment. This is true even for smaller contracts. By entering into a written contract, the terms of the contract are clear and discernable in the event of a dispute between the employee and the strata corporation. A written contract also confirms, for both parties, the nature of the relationship and their respective liabilities.

At a minimum, the employment contract should address the following issues: (1) the employee’s duties; (2) salary and benefits; (3) vacation; (4) expenses; (5) term of employment (i.e. 1 year, etc.); and (6) termination.

Potential Liabilities of the Strata Corporation

A strata corporation who enters into an employer-employee relationship has potential liabilities to the federal and provincial governments, the employee and third parties who may suffer damage at the hands of the employee. Also, it is important to note that simply designating someone as an independent contractor does not necessarily relieve the strata corporation from any of the potential liabilities discussed in the following paragraphs. *[The issue of independent contractor versus employee is a topic for a future article.]*

As an employer, the strata corporation has obligations to the government and the employee including the requirement to withhold statutory deductions, such as income tax and contributions to both the Canada Pension Plan and Employment Insurance Commission. Also the strata corporation is required to pay premiums for

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Workers' Compensation pursuant to the *Workers Compensation Act*, which provides protection in the event an employee is injured or killed on the job.

The strata corporation also has obligations to the employee under the *Employment Standards Act* (British Columbia) (i.e. payment of wages, providing a statement of wages and maintaining employee records). Even after the employment relationship has ended, the strata corporation may be liable to the employee for further compensation, such as holiday pay, overtime, or even work performed by the employee's spouse.

It is after the employment relationship has ended that the strata corporation is most likely to be sued for breach of the *Employment Standards Act*. Accordingly, it is important for the strata corporation to keep detailed records of the employment relationship, the hours worked, holidays taken, etc. in order to comply with the *Employment Standards Act* and to have adequate records in the event there is a dispute between the employee and the strata corporation.

The strata corporation may be liable for a breach of the *Human Rights Act*, if it has discriminated against the employee on the basis of sexual preference, religion, gender, race, disability or age. If the employee was a tenant, the strata corporation may have to deal with potential liabilities under the *Residential Tenancy Act*.

Lastly, and perhaps the least obvious, is that the strata corporation can be held vicariously liable to third parties for the acts of its employees, including statutory violations, breaches of contract, negligence and physical and sexual assault. Accordingly, great care should be taken in selecting and supervising employees. As a result of the foregoing, a strata corporation should ensure that it has appropriate insurance coverage to address all potential liabilities. For the most part, a judgment against the strata corporation is a judgment against all the owners.

In summary, the strata council has the capacity to enter into a contract of employment on behalf of the strata corporation, however it may be necessary to obtain a resolution from the owners to authorize payment of wages pursuant to the contract. The strata corporation can enter into an employment contract with an owner, tenant or occupant of the building and it may contract with a council member, provided the council member acts in good faith and in the best interests of the strata corporation and the council member discloses to the strata council the member's interest in the contract.

The strata council should always ensure that it has authorization to enter into an employment contract and whenever it does enter into an employment contract it should be in writing setting out the terms of the employment. This will confirm with both parties the relationship between the parties and the liabilities that may ensue. Further, a strata corporation cannot necessarily escape liability by simply designating an individual as an independent contractor.

If the strata corporation is ever in doubt as to whether entering into an employment contract is advisable, they should contact legal counsel for an opinion in this regard. An early opinion could save the strata corporation a lot of time, money and effort.

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