

Headline: Writing the Strata Management Service Agreement: How to Start, And What to Include

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Self-manage, or contract out? It's a question that many strata corporations face. Frequently, the strata councils of larger and mid-sized strata corporations decide that, rather than manage their strata corporation themselves, they will contract out some of their responsibilities to a licensed strata management brokerage.

It's a logical decision for many strata councils, and one that can have many benefits and advantages for the strata corporation, but it does come with challenges as well – including the challenge of developing a service agreement that clearly sets out the duties of the strata management brokerage.

How to Start Developing a Service Agreement

Once a strata council has selected a brokerage to work with, they should identify the services they would like the brokerage to provide. CHOA provides a Checklist to help strata councils identify the different roles and responsibilities that a strata corporation may have on a day to day basis. Using this list, the strata council can identify the tasks they will continue to handle, and the duties they will require the brokerage to undertake.

The strata council can then ensure that these services are clearly articulated in a written service agreement, so that both parties have a clear understanding of the role and expectations of the strata management brokerage.

What Needs to be in the Service Agreement?

The Real Estate Council of BC does not provide a standard service agreement for strata management companies to use when entering into a contract with their clients, as the nature of the contractual obligations are a matter of negotiation between the parties. However, there are certain provisions that must be included in all service agreements:

- The legal name of the strata corporation (such as "The Owners, Strata Plan BCSxxxx").
- The licensed name of the brokerage providing the strata management services.
- The actual physical address (or addresses) of the strata corporation.
- The date on which the agreement is effective, and its duration.
Note: Duration can be either a fixed end date, or be identified as an indefinite period of time.
- How the agreement may be terminated, in addition to those circumstances identified in sections 24(1) and 39 of the *Strata Property Act*.
- A general description of the services to be provided by the brokerage to the strata corporation.
Note: This is what the brokerage will be paid for, so if a particular service that the strata council wants the brokerage to provide isn't identified in the agreement, it may be difficult to prove at a later date that the brokerage was obligated to provide it to the strata corporation.
- A description of the records that are to be kept by the brokerage on behalf of the strata corporation. This should include an indication of which, if any, of the records required under section 35 of the *Strata Property Act* the brokerage will retain on behalf of the strata corporation.

While the *Strata Property Act* identifies certain requirements for a strata corporation to keep certain documents relating to the strata corporation, a strata management brokerage is not responsible for the retention of any of these records unless the service agreement establishes this responsibility.

- The remuneration to be paid under the agreement and the circumstances in which it will be payable.

Note: strata councils should be aware of any extra charges in addition to the monthly "strata management fees". These additional charges are likely to be identified in a Schedule to the agreement. Some of these charges (such as the charge for the provision of a Form B or F; or for photocopying) may be approved upon execution of the service agreement. In order for other less frequent charges to be effective (such as "special projects") a further negotiation between the brokerage and the strata council, followed by a written signed approval (to form an addendum to the agreement) by the strata council may be required.

- Provisions regarding the use and disclosure of personal information respecting the strata corporation, including the use and disclosure of personal information of owners who are the members of the strata corporation.

What Provisions Regarding Trust Funds Must be Included?

- Any funds that a brokerage holds on behalf of a strata corporation must be held in one or more brokerage trust accounts. If the brokerage is going to hold the strata corporation's funds, then this must be clearly outlined in the service agreement, along with an indication of whether the brokerage will be holding,
 - operating funds
 - contingency reserve funds
 - special levy funds
 - any other amounts on behalf of the strata corporation
- If the brokerage is going to hold strata corporation funds and be authorized to withdraw funds from a brokerage trust account, or to transfer funds between brokerage trust accounts, then this must also be clearly identified in the service agreement.

If the brokerage is going to be signing cheques, or is authorized to make expenditures on behalf of the strata corporation, the scope of this authority must be clearly identified in the service agreement. As well, if the brokerage is authorized to enter into contracts or to invest the strata corporation funds, specific authority must be provided in the agreement.

Section 7-9(7) of the Council Rules requires brokerages to provide a copy of the bank statement(s) and the bank statement reconciliation to their client within 6 weeks of the end of the month to which the statement relates. However many strata corporations require other financial documents to be provided to them on a frequent basis. The service agreement must identify the nature, the timing and the frequency of the receipt of these other financial documents.

Conflict of Interest Provisions

Section 3-3(i) of the Council Rules requires brokerages to avoid any conflict of interest, and section 3-3(j) requires that in the event that a brokerage is in a conflict of interest, it disclose that conflict promptly.

There are times when a brokerage may be providing services to more than one client, where they cannot provide the full duties to clients that are required by section 3-3 of the Council Rules to both clients at the same time. For instance, when the brokerage's clients include a strata corporation and a rental client, or a strata corporation and a section, or even two neighbouring strata corporations where there may be a common interest (e.g. a shared recreation centre, or perhaps a boundary). In these cases, the brokerage must disclose the potential conflict of interest at the outset, and identify how they will be avoiding it. An example of this is to choose a primary and a secondary client, where the primary client always gets the full agency and the secondary client doesn't.

Making the Service Agreement Clear and Comprehensive

It is a requirement of the Real Estate Council's Rules that the terms and conditions of the service agreement - including those identified as mandatory inclusions - are clearly stated.

All service agreements must be signed by authorized signatories of both the strata council and the brokerage. A copy of the agreement must be provided promptly to the strata council upon execution of the agreement. This ensures that the strata council has a copy of the agreement and can review the services being provided by the brokerage, and the charges made by the brokerage against the strata corporation.

In the event that there are any modifications or amendments to the service agreement these must also be signed by the strata council and an authorized signatory of the brokerage (and then a copy promptly provided to the strata council). If the strata corporation approves an increase to the strata management fees in the budget, the strata council must still approve the amendment to the service agreement in order for the brokerage to collect the increased amount.