

Condominium Home Owners' Association

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Bulletin: 300-248

Condo Smarts

Headline: Strata council in conflict?

Topic: Sections and Dual Agency

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Dear Condo Smarts: Our strata corporation is an apartment building and townhouses consisting of 107 units in Richmond.

We have two problems. The common expenses are divided differently between the two different types of buildings, and when we recently re-roofed the apartment building, the townhouses didn't have to pay the levy because they are a different type of construction, according to the property manager.

How do we find out what the right formula is? The other problem is more than 25 per cent of our units are rentals, and the property managers are also the rental managers. They exercise the votes for the rental units and prevent us from amending our bylaws or terminating our management agreement because they all require a 75 per cent vote.

Is there some regulation that prevents our contractors or agents from acting against the wishes of the majority of the owners? -- Andrea

Dear Andrea: The first question is easy to answer. All common expenses are based on unit entitlement that is included with your registered strata plan.

Sections bylaws may be created between townhouses and apartment-style buildings that separate expenses based on those sections, but I read your registered bylaws and no such sections or bylaws have ever been created.

The result is that your roof costs are a common expense of all the strata lots on the strata plan, including the townhouses.

The second part is difficult and is going to require that your strata council review the

contract terms and conditions with your strata managers.

What you have is a dual-agency situation where the management company is representing both the interests of the strata corporation and the investors they are managing rental units for.

If all the parties consent to the arrangement and the terms and conditions of the dual-agency agreements are clearly defined in the contracts, it can work quite successfully, but there is a problem that you are going to have to sort out with your managers. Who is their principal client? Are they the agent acting in the best interest of the strata or the investors? Take a theoretical example: In the case of bylaw violations by tenants, the managers may have to act in both parties' interest, creating a conflict in their roles.

The Real Estate Services Act permits dual-agency agreements, but it does require the consent of all the parties. The terms and conditions for such an agreement should be in writing. In some ways, holding proxies is the same issue. If the manager is holding the proxy of the investor and they are the agent of the corporation, how could they exercise a vote on a resolution of opposing interests, without being in a conflict of interest?

For this reason, strata property regulations do not permit an employee or strata manager of the corporation to hold proxies.

Due to the complicated nature of these agreements, strata councils should consult with their lawyers to ensure they protect the interests of the strata corporation and the owners in exercising a duty and standard of care.

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