

Condominium Home Owners' Association

Serving BC's Strata Property Owners since 1976

Bulletin: 300-339

Condo Smarts

Headline: Strata Agency Agreements

Topic: Contracts

Publication date: July 19, 2009

Publication: The Province

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Dear Condo Smarts: Our strata owners terminated our strata management agreement in April and as of July 1 we have a new company. The new company presented a new contract to the council in May with a direction that they must sign it as a standard agreement and cannot make any changes. One of the clauses in the contract is a serious concern to our strata, and until we fully understand the implications, we do not want to sign the agreement. The clause basically says that if the strata agent does anything that results in our proceeding with court action against them or filing a complaint against them with the regulators, that we will be responsible for all of their legal, court costs, and any losses they incur. Is this part of a standard contract agreement in the management industry? Fairfield Strata Council

Dear Council Members: Before you sign any contract that directly affects your property or services ask yourself: WHY would you enter into a contract with a service provider or contractor if you are somehow going to end up paying their bills for breaching the contract or breaking the law? As would be in the case in any type of contractual agreement I would strongly recommend that you take the contract to a legal professional familiar with agency agreements and have it reviewed for your protection. There is no such standard contract for management services that cannot be negotiated. Everything from termination provisions, terms and conditions of the services, reporting requirements, and schedules of fees may all be negotiated. There are some parts of the contract that are required by the Real Estate Service Act

(RESA), Regulations and Rules of the Real Estate Council that are required; however, the provision to cover court costs or disciplinary actions is not one of them. In the event that your strata corporation did file a complaint with the Real Estate Council, along with the delivery and gathering of evidence, section 123 of RESA limits the liability or actions that the contractor may take.

RESA Communications privileged

123 (1) Subject to subsection (2), all information supplied and all records and things produced to the real estate council, a hearing committee, the superintendent, the insurance corporation or the compensation fund corporation with respect to a licensee, a former licensee or an applicant for a license are privileged to the same extent as if they were supplied or produced in proceedings in a court, and no action may be brought against a person as a consequence of the person having supplied or produced them.

(2) Subsection (1) does not apply to a person who supplied information or produced records or things maliciously.

Remember as your agent it is important that the strata manager is indemnified and protected to act as your agent. In the event of court actions or lawsuits managers are frequently included in claims, and they need to ensure they too are covered for costs and liability insurance, but it doesn't imply that you would forfeit your own protection. Likewise, if a contract is not compliant with the relevant legislation, the enforceability of the contract may also be called into question.

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