

Condo Smarts

Headline: Council Members' Liability
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Dear Condo Smarts: Our strata council is struggling with getting anyone to agree to a council position at our March meeting. We have never had any law suits, but an owner has recently read a web site that alleged council members are personally liable for the decisions of strata council. The online information goes on to suggest that no one should ever consider sitting on strata council because of all of the personal liability they hold. This web page was distributed to all of our owners in the strata and now everyone has declined a nomination for 2011. We have been a model strata and in 38 years have never had to fine an owner for bylaw violations or insurance claims, so why would there be so much risk for our council members? After all, aren't we volunteers like every other strata owner? The Glen Ayre Council

Dear Glen Ayre Council: Our legislation in BC, the Strata Property Act, The Regulations, The Standard Bylaws and amended Bylaws of each strata corporation provides a reasonable amount of protection for strata councils. Technically speaking, yes it is possible for any council member to be named in a law suit; however, council members, along with any owners and strata managers, should have little to worry about if they have acted honestly and in good faith, with respects to their actions and decisions as council members. Sadly however, I think it is important to try and define honestly and in good faith. As a council member this means: no stealing, no fraud, no personal interest first, no collusion with 3rd parties, clear disclosure of conflicts, removing yourself from council meetings if there is a matter that you have a direct or indirect interest in a contract or transaction with the strata, or a matter that is subject to council making a decision that materially conflicts with your duties or interest as a council member. The simple basics of ethical and lawful behaviour apply, and they apply as a standard to a reasonably prudent person in comparable circumstances: a volunteer.

As council members there are simple steps to keep yourselves out of trouble. Comply with all enactments of law, including the Strata Property Act. Comply with the bylaws and rules of your strata, and enforce them

fairly and equitably against all owners, tenants and occupants, including council members.

Be honest and disclose all material information of potential conflict to the strata corporation. Know when it's time to call in help. As volunteers you are not expected to understand everything, and it is a reasonable expectation to consult with professionals when in doubt. Insist upon additional insurance coverage for Director's & Officers liability. While many insurance companies automatically include D&O insurance, it is optional, so don't assume you are covered.

Don't let emotions control your decision making. Confirm information in writing and make decisions based upon facts. Web sites can provide valuable resources, but they may also apply to another province or country, and they may contain information that is fictional. Verify the credibility of the site.

Maintain an open and clearly defined relationship between the strata council and manager/employees. The strata manager is an agent of the corporation and the strata may be liable for their actions as well. It is difficult to manage risk, if you don't know what's going on.

Finally, budget for continuing education and resources for consulting to assist council. The better education and resources you can provide for your strata council, the better they are equipped to deal with the day to day operations. The strata council will have a difficult time acting in the best interest of the owners if there is no money in the annual budget for support or operations. The province-wide CHOA seminars including the Kootenays, Northern BC, The Okanagan, Vancouver Island and the Lower Mainland are posted at www.choa.bc.ca and open to any council member, owner, tenant and strata manager in BC.

**For more information on CHOA resources and benefits visit www.choa.bc.ca
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