

Condo Smarts

Headline: Regulating Agencies

Topic: Contracts

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Dear Condo Smarts: Our strata council have a serious problem with a consultant we hired two years ago. The consultant was a professional engineer and a member of the Association of Professional Engineers in BC (APEG). The consultant was responsible for setting the specifications of the repairs, inspecting and certifying the work throughout the course of construction. Throughout the major repairs to our buildings we were advised of a number of change orders required, that related to additional costs of damages to the structure of our buildings around the deck areas. The strata council and the owners agreed to a specific colour scheme, a specific balcony railing design, and a change of gutters and down spouts that would be attached them to the exterior of the building for easy access. Instead of following our agreed and approved conditions, the consultant approved a number of changes, including placing the down spouts back in the false pillars that form the corner of each of our balconies. In a recent heavy rain, one of the downspouts either came disconnected or was not properly installed and now we have a major disaster on our hands. There are also a number of other circumstances where the consultant disregarded our written directions, resulting in delays and additional costs. We have retained another engineering company and are sorting out the mess, but we also want to have this consultant disciplined so no one else has to experience the same problems. We have spoken to our lawyer and to the new consultant and were told not to bother as it would end up costing us more money and it was unlikely that any complaint we filed would have much benefit. If you have any thoughts on where we went wrong and how we could have protected ourselves better, we would appreciate your insight. How can consumers rely on any level of self-regulation or licensing if the industry sentiments undervalue their purpose? We have been threatened with legal action if we file a complaint, so we would appreciate keeping our names and strata number confidential. Greater Vancouver

To strata councils everywhere: Never assume that hiring a licensed professional guarantees that you will obtain good service, ethical behavior and legal business

practices. It's always the troublesome few who create a black eye for an industry, but we all have to protect ourselves from those few individuals whose business practices and ethics are questionable at best.

Here is the most common question we get about strata managers regulated by the Real Estate Council of B.C.: "Can you refer us to a good company with no complaints?" While most strata management companies strive to provide good services and practices, the potential for a contract dispute or errors always exists. It may have been the result of a staff person's actions, errors and omissions, or understaffing and over loading, a rogue strata council or any other similar circumstance, but the real protection is in having an equitable contract that protects both the service provider and the client. In such a contract, duties and services are clearly identified, costs of services and products are itemized and the nature and definition of the relationship is understood. Before the strata council signs the contract, councilors should get their lawyer to review the contract.

In the past ten years in our office, I can think of only two instances of a strata council having to cope with a contractual disaster after the council had a legal review of the contract before signing. Due to the prior legal review, which included breach and dispute provisions, both of those disputes were resolved to the satisfaction of the strata corporation. The review is to ensure the client's interests are protected, the scope of service is clearly defined, the financial relationships are clearly established and, if there are regulatory provisions such as the Real Estate Services Act, the Legal Professions Act or the Engineers and Geoscientists Act, or any of their related regulations, bylaws or rules of the respective organizations that the terms and conditions of the contract do not violate those rules and regulations. It is important for contracts to be in regulatory compliance. Terms and conditions in contracts that are contrary to the regulators legislation could void the insurance you might be relying on in the event of a claim. The legal cost of pre-contract negotiation and review is negligible compared to the legal costs of remedying failures or losses. Well negotiated, reviewed and supervised

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contracts are good business for everyone, including the contractors.

So what if you file a complaint with a regulating body? What can you expect to see happen? The purpose of the regulatory body is to ensure the licensee, consultant or practitioner has complied with the legislative prescriptions for his profession, complied with the bylaws or rules of the licensing body, and has complied with the ethical practices and codes of the organization. The regulating body does not settle civil losses or disputes. If the engineers' association receives a complaint, the registrar first determines that the complaint falls within the jurisdiction of the act. Then the registrar must designate a member to review the complaint. That person determines if the complaint should be closed or sent to the association's investigation committee for more detailed investigation. After completing its investigation, the committee will either close the file or, if warranted, will send the complaint to the association's disciplinary committee. The disciplinary action could involve a reprimand, the imposition of conditions on the continued membership of the member, suspension of the membership, cancellation of the membership or fines (up to \$25,000) to be paid to the association.

While the failures of a regulated member could lead to a loss of livelihood, licence cancellations, disbarment and loss of membership, this rarely satisfies or compensates the client. The offended strata council may still have a list of grievances, and council might have to go through the courts. Some professions carry mandatory insurance or compensation in the event of a loss of trust funds, but there are limitations to those amounts, and some professions (architects and engineers) are not obliged to take out insurance. As a result, the wronged client may be successful in the courts, he may not be successful in securing any funds for the settlements.

The complaint process is similar with the Real Estate Council. The complainant, usually the strata council as the legal representative of the strata corporation, would vote at a council meeting to file a complaint of professional misconduct. The real estate council may conduct an investigation to determine whether a licensee has committed professional misconduct or conduct unbecoming to a licensee within the meaning of the Real Estate Services Act. The basic purpose of the

investigation is to determine whether a licensee has done something that contravenes the legislation, a licence restriction or condition; demonstrates incompetence in performing any activity for which a licence is required; misappropriates or wrongfully converts money or other property entrusted to or received by the licensee. The investigation may also consider conduct unbecoming of a licensee, if it is contrary to public interest, undermines public confidence in the industry or brings the industry into disrepute. But here we are still wondering why you filed the complaint.

The best consumer protection is to get legal advice before you enter into agreements for services with regulated professionals. Never make assumptions and confirm every agreement, condition and instruction in writing. Self-regulated professions are an integral part of our professional licensing system. While professional associations may not always appear to serve the best interest of the public, we must remember they are empowered to regulate most of our professionals, and their powers of enforcement are limited by government legislation and by their membership bodies. If a professional has committed misconduct, breach of ethics or breach of legislative obligations, it is critical that consumers gather data and evidence and file complaints. Repeated complaints will identify chronic problems for government and the regulating bodies. They will press for higher standards and licensing requirements, and hopefully the chronic bad players will at some point no longer be licensed to practice.

Most organizations will, if a complaint has been successful, post it in the complaints and disciplinary decisions sections of their websites, and most organizations employ a compliance officer to contact for further assistance or instructions. A successful complaint will be a beacon for the next consumer. About half of all complaints to the Real Estate Council are closed administratively, so with credible documentation and evidence, a complaint within the council's jurisdiction will likely proceed.

Most information regarding complaints proceedings can be found on the websites of licensing bodies. Look for apeg.bc.ca (engineers); recbc.ca (real estate); lawsociety.bc.ca; and aibc.ca (architects).

For more information on CHOA resources, and member benefits, please visit the website at www.choa.bc.ca. Questions may be directed to the Advisor by phone at 1-877-353-2462 or email your questions to advisor@choa.bc.ca.

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