

**Condo Smarts**

Headline: Who has the Authority to Represent the Strata?

Topic: Sections

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**Dear Condo Smarts:** We have been reading the columns on sections and have discovered we may have some troubles of our own. Our 84 unit strata is both townhouses and an apartment style building. For the past four years, the two sections could not agree on many issues, so we have basically divided everything into separate sections, including our management services. Your column has made us realize that we do have one significant problem, we have never adopted a bylaw that created the separate sections, although we seem to be operating well within the requirements for exclusive expense. This does raise a serious question for our strata council of the apartment section. If we have not legally created the sections, then how is it possible for one section to enter into contracts and services without the permission of the other section? Is it even possible for a separate section to have separate management services? Henry M. Richmond

**Dear Henry:** You have certainly grasped the basic problem in your question. Sections are only created when the bylaws have been amended either by the owner developer at the beginning of a new development or the strata corporation and the proposed sections at a later date, but they must be established through a bylaw. Only then are they a constituted legal entity that has the ability to separately maintain exclusive operations and administration. Generally the operations are limited to expenses, bylaw and rule enforcement exclusive to that section, to enter into service agreements & contracts for that section, the creation of operating and contingency reserve accounts, the collection of strata fees and special levies, to sue or arbitrate in the name of the section, and to maintain and repair limited common property designated for the exclusive use of all the strata lots in that section. Without a bylaw that has created separate sections, the strata is still functioning only as the strata corporation and if either party enters into a contract, it is likely a contract of the strata corporation, all 84 strata lots. There is also a greater underlying problem in the relationships of the service agreements and contactors. It is possible for properly created sections to hire separate management companies and enter into separate

agency agreements, but without the creation of the sections there are some serious complications around the issue of who has the authority to represent the strata corporation. The agent is generally contracted to conduct the general administration and financial duties of the corporation. This will include the provision of documents such as a Form B information certificate and a Form F payment certificate frequently requested for real estate transactions. So if the sections are not properly formed, who has the legal authority or agency representation to disclose the requested information and assign the documents? Likewise, if a contract is entered into for a new roof on the apartment style building, and there is a special levy for repairs, how would it be possible to create either a division of expenses or enter into the contract without the legal constitution of the sections? If the contract runs into troubles, and there are builder's liens filed, they will likely be against every strata lot, because the sections do not legally exist. The other issue that the strata should address immediately is the insurance. The strata corporation maintains the insurance on all common property and common assets, and the corporation retains its powers and duties in matters of common interest to all owners after the creation of sections, so the insurance continues as a singular policy of the corporation. The series on sections, has generated a surprising number of emails from strata corporations who have not properly constituted sections, but continue to operate independently without authority. It's never too late to adopt sections bylaws to reflect your community needs. I strongly recommend that you have legal advice on the creation and ratification of new sections bylaws, and avoid copying bylaws from another strata corporation.

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