

**Condo Smarts**

Headline: Leasing out Strata Property  
Topic: Alterations to common property  
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**Dear Condo Smarts:** We are a self managed strata corporation and our strata corporation is considering the installation of a communications tower on our building from a service provider. It would give our strata \$75,000 a year of revenue which would significantly help with our long term planning. The lawyer for the service provider has told us the council can sign the lease agreement without the need of a vote of the owners at a general meeting, but several council members are uncomfortable with this. What is the standard operating procedure for such agreements and installations?

*Cory J. Richmond*

**Dear Cory:** Strata corporations are permitted to sell, lease, mortgage, grant an easement over, grant a restrictive covenant affecting or otherwise dispose of a land that is a common asset. In your case the land is the roof top which is common property. This would also be a significant change in the use or appearance of common property or a common asset, and an amendment to the revenue of the annual budget, all of which the owners will be required to pass resolutions at an annual or special general meeting. There are a number of technical considerations that the strata corporation must consider such as: structure of the building and wind shear factors, fasteners and cable locations, the integrity of the roofing system and who will be responsible for future maintenance, repairs, and the any liability associated with the installation of the structure, sudden losses resulting in insurance claims, and any health or safety risks associated with the communications tower and devices. In addition to the technical conditions, there are also operational considerations. These include the cost of

electricity provided to the tower, additional insurance the strata corporation is required to provide, any permits, engineering, plans or drawings required. You should also insist upon the strata corporation retaining independent legal counsel to protect your interests. Those additional fees and services for the legal counsel and a special general meeting may also be negotiated. Don't assume there is any form of standard agreement. All contracts are negotiable and council members need to remember they are acting on behalf of all owners. You will have to negotiate terms of payment, whether the service provider is permitted to subcontract services on their tower, the length of the agreement, and the terms and conditions for renewal of the agreement. The strata corporation should also seek advice from a qualified accountant or tax lawyer because revenues from lease space are not generally tax exempt. Once the strata council has identified the technical requirements, has a draft agreement that they can recommend to the owners, and has addressed any secondary costs or liabilities, the next step is to convene a general meeting. It is helpful if the lawyer for the strata corporation can attend to explain the terms and conditions of the agreement and answer owners' questions. Don't forget the resolution will need to approve the terms and conditions of the lease and the alteration to the common property to permit the installation. Once the lease is executed the document is required to be delivered to and filed in the Land Title Office accompanied by a Certificate of the Strata Corporation in the prescribed form verifying the resolution has been passed and conforms to the document conforms to the resolution.

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