

Condo Smarts

Headline: Strata Management Agreements

Topic: Management Contracts

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Dear Condo Smarts: We have just completed our second Annual General Meeting (AGM) and had our first council meeting. The strata manager brought a new contract to us and advised that we had to sign the contract after the AGM as the newly elected council. We were not provided with enough time to review the contract or seek legal advice, and the president felt very pressured about the possible loss of the manager, so the council agreed to sign it at the meeting. In retrospect, it was not a wise decision. We have now discovered a number of unfair/unclear conditions that we wanted to renegotiate. The strata manager told us we would need a three quarters vote as required by the Act at a general meeting to terminate the contract, and good luck with that. In addition to the pressure, and the attitude of the manager, we feel the legislation is very imbalanced in favour of the strata management industry. How do we fix this problem?

Colleen, Richmond

Dear Colleen: There are many myths when it comes to negotiating a strata management agreement. The reason your manager pressured you to sign the contract after or even before the second AGM, is that the contract automatically terminates 4 weeks after the second AGM if the strata corporation does not ratify the continuance of the contract by majority vote at the meeting. Section 24 of the Strata Property Act (the Act) says that " *regardless of any provision of the contract to the contrary (of section 24)*" the contract itself cannot undo section 24. It requires a new contract to be signed. The three quarters vote termination is not a requirement of the Act. It is only a default requirement in the absence of any other termination provision in the contract. Other than the provisions of the contract complying with the Real Estate Services Act, Regulations and Rules of the Real Estate Council, the entire negotiation is left up to the strata corporation and the strata management company/brokerage you are hiring. The strata management contract is one of the most important decisions your strata council will ever make. If you are being pressured to sign a contract without legal advice, seriously, ask yourselves why?

There is no urgency for the strata corporation to sign the contract. It is important for a contract to clearly articulate the responsibilities, duties and reporting obligations of the strata management company for annual and monthly duties, and establish a clear understanding on termination provisions, assignment of authority and schedules of fees. There is no standard form of contract, and no standard form of provisions. If the strata corporation wants to negotiate a termination provision that requires a majority vote at a general meeting, then it is up to both parties to agree to the conditions.

Here is a perfect argument for legal advice on contracts. I was copied on a contract last month that has a payment clause relating to investments of the strata, that does not comply with the Strata Property Act. The provision has the strata corporation agreeing to a set investment return rate for contingency funds, and any amount over that rate to be retained by the management company as a fee. While a fee for the management of the contingency fund may be negotiated, the management company cannot retain any part of the interest. The Act requires that the interest earned on reserve funds must be deposited back into that fund. Also, the strata corporation cannot expend reserves funds, except for an emergency or three quarters vote of the owners at a general meeting. The additional retainer fee would have to be identified in the schedule of fees in the contract, and would have to be approved by the owners as part of the annual operating budget.

Look at this from a business perspective. If you live in a 50 unit apartment building, it is likely a \$15,000,000 asset value. To protect your asset, isn't it worth \$2,500 to ensure you have a balanced contract with predictable costs, a reasonable termination process, and a clearly defined scope of duties and services? In my experience, a well negotiated contract that is balanced for both parties, yields a long term relationship with a management service to the benefit of both the strata corporation and the management company.

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