

Condo Smarts

Headline: What is a conflict of interest?
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Dear Tony: We recently had our carpets in our building replaced as part of our depreciation report schedule. Overall the job was a great success and everyone in the building is very happy with the new look. We do have one problem brewing though, that as a strata council we're unsure how we can address. When the carpets were replaced we managed to get a better deal than originally estimated and approved by the owners, but the final costs were the exact amount of the approved resolution. As a result of owners asking for copies of contracts, we have discovered that the pent house floor, which originally had the same carpet as every other floor had a significant upgrade to a far superior quality carpet. The president of council, who lives in PH 3 claims that the council approved the upgrade; however, there is no evidence that council were ever aware of this or made any decision. Owners are obviously angry and want the president to pay for the difference as it was his sole approval that authorized the upgrade. How do we prevent conflicts like this from happening?

Julia M Burnaby

Dear Julia: The underlying problem that you are trying to tackle is about conflict of interest. As volunteers, strata council members have very specific limitations imposed by the *Strata Property Act*, the bylaws of the strata corporation and common law. The act requires that whenever a council member has a direct or indirect interest in a contract or transaction with the strata corporation, or a matter that is or is to be the subject of a decision of council if the decision could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member that council member must: disclose the conflict, abstain from voting on the matter, and leave the council meeting while the matter is discussed and voted on. In simple language, if the council member somehow gain's from a personal benefit or interest in a decision, they cannot be a part of that decision making process. In the same manner, if a council member is alleged to have violated a bylaw, the council member has to leave the council meeting when a

decision regarding bylaw enforcement is considered. This doesn't mean that council members or their family members who own companies cannot bid on construction contracts or services, but they do have to ensure they are not part of the decision making process. .

Jennifer Neville, a lawyer in Vancouver with Hammerberg Lawyers LLP has experienced many situations where strata council members have made decisions that have required legal review. "A good example of conflict of interest is where a Strata Corporation approves a window upgrade project to be done in phases, and where the first approved phase is implemented in those units which are owned by members of the Strata Council, where the strata corporation have not consented " Said Jennifer.

Where the president of council approved an upgrade at the cost of the owners, without their consent and for his beneficial interest, the strata corporation has a valid claim. Not only did he approve the upgrade solely for his floor, but the resolution only approved a very specific grade and colour of carpet to be installed, which he breached by approving the changes. Council members can be liable for their self serving decisions. As the Civil Resolution Tribunal approaches, this will become a more significant issue for strata councils who are not declaring their conflicts and acting accordingly. It will be easy, inexpensive and quick for owners to access justice.

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