

Condo Smarts

Headline: Hiring Consultants

Topic: Consultants

Publication / Date: The Province, June 11, 2015

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Dear Tony: Our strata hired a consultant this year to act as our project manager on a roof and balcony job and the project turned into a bit of a disaster. The consultant has caused a number of delays on the project plus cost over runs and changes to the project that our owners had never approved, including a change in colour to the roofing materials. Our strata council have retained a lawyer to terminate the agreement and help us recover some of the costs, but our strata signed an agreement for the full payment of the contract regardless of completion and waived the consultant from any liability. We looked for some resources on hiring a consultant but found very little that was helpful and are now assessing whether it is worth legal action at all as it may cost more than the amount we paid the consultant. Please warn other strata corporations who are considering hiring a consultant to take all precautions before they sign their cheque book away.

DVW

Dear DVW: Anyone can call themselves a consultant and act as a project manager and there are some consultants who are exceptional and others who simply take advantage of their clients. There are no minimum standards or qualifications and the number of complaints our office receives about consultants far exceeds any other industry.

Certified professionals such as engineers, architects, and certified inspectors are licensed under their professional associations and credentials. These permit them to act as the official representative of the strata and they are bound to ensure that the conditions of the contractual obligations and standards are met. Individuals who identify themselves as "consultants" or project managers who do not have any professional accreditation rely solely on the conditions of a contract

and the indemnity that is contained within the contract. As a result, if a strata is going to protect themselves they must ensure the contractual agreement fairly represents their interests. If you sign an agreement with a consultant without having your lawyer review the contract in advance, you may be signing a blank cheque and surrendering your ability to control the project or to hold the consultant accountable when things go wrong. Consultants often cross boundaries of authority where a certified professional is required, or they act as the agent of the strata which requires licensing as a strata manager, or they undertake actions that are a practice of law such as writing of resolutions or contracts.

A simple checklist can help when considering a project manager/consultant.

1. Review and verify their credentials.
2. Request a copy of their professional liability insurance and verify with the insurance provider that it is current and will include coverage of the services performed on your project.
3. Request a copy of references of all projects the consultant has worked on, not just their favourites.
4. Closely review their scope of work and how they will be interacting with certified professionals, contractors and the strata council.
5. Clearly define how the decision making process happens.
6. Obtain a copy of their proposed contract and take it to your lawyer to review and negotiate the scope of liability the consultant will assume.

Sat Harwood, of Lesperance Mendes Lawyers explains, "A well drafted contract will clearly demarcate the services provided, limit the indemnity to services that fall outside of those boundaries, and provide for liability in the event the project manager is negligent in providing their contracted services. The bottom line is that a small amount of legal service up front will help avoid a future costly crisis."

Watch for warning signs. Bullying is a common tactic of unethical service providers. If the consultant is discouraging your strata from obtaining legal advice, consumer support, interacting with the contractors or certified professionals, or attempting to isolate your strata from consulting with a third party you have a problem. If the representation is legitimate there should be nothing to fear. Do not approve any work or services verbally. Maintain written confirmation of all meetings, instructions and questions. If the consultant is pressuring decisions without a written record you expose your strata to delays, cost over runs and risks that are costly to manage. If you want an indication on how ruthless this industry can be and why caution needs to be exercised, I was recently threatened by a consultant's lawyer for recommending to a strata council that they limit their relationship with a rogue consultant until they had spoken to their lawyer to address some of their concerns. The same consultant has also threatened to sue the council if they if they didn't pay additional work which was never authorized.