

Condo Smarts

Headline: Negotiating Management Fees
Topic: Management Agreements
Publication date: December 12, 2010
Publication: The Province
Written by: Tony Gioventu

Dear Condo Smarts: Since the beginning of our strata corporation in 1984, our strata has retained a management company. For the most part our services have been satisfactory, and our fees have always been very inexpensive. We hired a new company in 2008 and were very pleased with the services we have been receiving, especially in light of the ongoing pressures of more and more legislation. We negotiated a contract, which we were instructed was an agency agreement, along a specific scope of fees for a five-year period. Now in 2010 we have received a notice from the company requesting that we sign a new amended schedule of fees. One of the fees is for a mandatory trust audit, but our strata corporation did not approve the funding for an audit for our accounts. We asked the manager what the cost was related to, and were advised as follows: "this is a requirement to charge back the costs of the annual trust audit as required under Real Estate Services Act." So our question relates to the Real Estate Services Act. How can an unrelated piece of legislation that does not apply to strata corporations apply to our strata, and how could it impose a funding requirement? Devon T, Burnaby

Dear Devon: There is no such requirement under the Real Estate Services Act (RESA), the Regulations or the Rules of the Real Estate Council (RECBC). What each strata corporation negotiates in terms of strata management fees and services to be provided by a strata management brokerage is up to the discretion of the two parties negotiating the contract, the brokerage and the strata corporation, represented by the strata council.

The service (agency) agreement is a contract, and the term agency, defines the specific nature of the agreement. The agency agreement forms a

representative link between the brokerage, its related strata manager(s) and the strata corporation as the client. When the strata manager is doing business on behalf of the strata corporation they are conducting that business as the agent of the corporation as if the strata is conducting the business.

A brokerage can collect fees from two sources. They may charge the strata fees for services, and they may collect fees from third parties on behalf of the strata. For example, third party collected and retained fees often relate to the provision of real estate documents and records. In order for the brokerage to collect fees from third parties (i.e. realtors, notary publics, lawyers) or charge for services provided on behalf of the strata corporation, and to be permitted to retain any of those fees, the brokerage requires the consent of the strata corporation through the terms set out in the service agreement or in a schedule attached to the agreement, which must be agreed to by the strata corporation. The service agreement and a schedule of fees, if separate, must be in writing and must be approved by the strata council on behalf of the strata corporation. While RESA, the Regs or Rules may require that specific clauses be contained in the written service agreement, this is still basic Contract Law 101, and the written service agreement and terms and conditions of the service agreement are negotiable.

Under section 7-7 of the Council Rules under RESA, (1) *A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the council (a) financial statements for that fiscal year, (b) an accountant's report respecting that fiscal year, completed in accordance with the bylaws, and (c) a brokerage activity report respecting that fiscal year,*

**For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.**

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

completed in accordance with the bylaws. (2) The financial statements must (a) be audited by an accountant, in the case of a brokerage that is a public company as defined in the Business Corporations Act, or (b) in any other case, have been subject, at a minimum, to (i) a review engagement by an accountant, or (ii) if authorized under subsection (2.1), a notice to reader prepared by an accountant.

The audit or review is a requirement of the brokerage each year, not a requirement for the strata corporation. The audit or review is generally a test of random accounts to ensure the accounting practices and principles meet the requirements of the Rules. It is quite possible your strata accounts may not be viewed at all. However the requirement is valuable for the benefit of all strata corporations. The specific requirements of review and reporting are set out on the Real Estate Council's web site.

The licensing of strata managers has been an important consumer protection decision. Strata corporations in BC retain over a billion dollars in the operating, reserve funds and special levy accounts at any time. The audit or review process was created to provide a level of scrutiny and increased level of protection for consumers. However, this does come at a cost to the brokerages and is eventually either passed down through management contracts or additional fees set out on an agreed schedule. Whether your strata corporation is hiring a new company or amending your schedule of fees or services, you

are basically negotiating a contract. Due to the high values of strata funds, the value of your strata property, the complex wording of agency agreements, and the nature of the services provided by the strata brokerage, it is advised that strata corporations seek legal advice on management agreements before they sign. It is also important for a strata council to seriously review the real scope of services, the obligations of the strata manager and set a realistic compensation value for those services. If your strata is a 100-unit high rise and you are paying \$12.00 per door per month, you are basically just paying for financial administration and basic record keeping, yet there may be an expectation that this is "full" management. The most common question about strata management I receive always relates to the cost of services. How much should full management cost? There is no way of assessing that without assessing the scope of services being provided by the manager, but those services once agreed upon need to form part of the contract, and the contract has to be supervised/reviewed by the strata council to ensure the contractor is meeting the expectations. As each strata corporation has different needs and expectations, try creating a job description of what you expect your manager is going to provide each year for your strata, and then try to establish a realistic rate for those services. Don't generalize, be specific by the day/week/month/year, and you will be surprised at the number of hours each strata can demand every month.

For more information on CHOA resources, and member benefits, please visit the website at www.choa.bc.ca. Questions may be directed to the Advisor by phone at 1-877-353-2462 or email your questions to advisor@choa.bc.ca.

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.