

Condo Smarts December 7th – 10th, 2016

What is a Conflict of Interest?

Dear Tony: Our strata corporation is over 100 units and we are about to start some major construction. Two of our council members have construction back grounds and both have ongoing working relationships with the consultants, potential contractors and the suppliers we might eventually end up using. The issue of conflict of interest has been raised by a number of owners in the strata because of these relationships, but these council members feel they have no conflicts because they are owners like everyone else and were elected by the owners knowing they work in the industry. How do we resolve this issue and maintain a level of good will with these council members that will be important to our projects? John

Dear John: In addition to the possible conflicts that you have identified, it is crucial strata councils, strata managers, consultants and contractors understand they have a duty to disclose and manage potential conflicts before they are a problem. This is not the time where you want to live by the motto “it’s only cheating if you get caught.” All my red flags go up when a person or contractor insists there is no conflict of interest. The potential for conflict exists in almost any business relationship, the key is how it is managed.

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, or potentially gains from a personal benefit or interest in a decision, they cannot be a part of that decision making process. For the protection of the council member and to ensure full disclosure of the potential conflicts, the direct or indirect interest of the council member should be disclosed to the strata council, minuted, and when a decision is required on this matter, the council member is required to leave the meeting, and the minutes should show when the council member has left the meeting and they did not participate in the decision. 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. Even though owners voting rights due to conflict are affected as council members, they are not affected at Annual or Special General Meetings.

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