

Condo Smarts January 3-7th, 2018

Agency agreements: Before you sign on the dotted line

Dear Tony: In October, our owners instructed our strata council to hire a commercial broker to market our strata corporation with the interest of selling the property to a developer if it's a good price. We retained a lawyer to review the contracts for the agent and to review any offers from potential buyers. We had our first meeting in December and while we did not have an official 80% vote we were close, with several opposed owners who expressed an opinion they would be willing to reconsider for the right price. This is what has caused a problem. Two owners have now admitted to working privately with the buyer and the broker we hired to negotiate a higher price to secure their yes votes. At least half of the owners are now furious and the objective of a collective sale is chaos. How can a broker represent one legal entity and at the same time act for other parties on the same deal? We thought the changes in real estate regulations would have changed this. It seems an awful lot like double ending on sales. Robert K.

Dear Robert: The term you are describing in relationship to real estate transactions in British Columbia is agency. This includes trading services, brokerage and licensee representation, rental management and strata property management. In broad terms, the law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, who is authorized to act on behalf of the principal (the party who hires them) to create legal relations or negotiations with a third party. In simple terms, your strata corporation hired the agent. Under the terms of the contract you signed they agreed to act as your sole and exclusive representative when working with a buyer or third party, and to act in your best/fiduciary interest which is the strata corporation. Whether an agent or brokerage has the ability to represent more than one party is determined by the consent of the parties through the representation or service agreement. This is one of the essential reasons CHOA recommends strata councils always have all agency or brokerage agreements reviewed before they sign them to ensure your council understands the impact of the agreement, and the consequences of multiple agency representation, the scope of authority being authorized, liability for services, the implications of fees, penalties that relate to termination clauses, and the requirement for consent and disclosure for all fees charged or earned directly from you the client or received from third parties that relate to your agency agreement.

Your agency or brokerage representation agreement did not permit the broker to act on behalf of individual owners, the developer, or any other party. You did not agree to a dual or multiple agency agreement. Yes, it is possible that an agent or broker may act for several parties or in conjunction with several parties in an agency agreement, but they may only do so in BC with the consent of the principle, which is your strata corporation, and the remaining parties. The infraction is a potential breach of your contract and a possible violation of the Real Estate Services Act, Regulations and Rules of the Real Estate Council in BC. I encourage your strata council to contact the Real Estate Council of BC and file a complaint. The changes in the legislation now permit higher fines, forfeiture of commissions and license sanctions or loss. Even if you discover after the transaction is complete that an agent has breached their obligations and some owners have received undisclosed compensations or benefits that were in breach of the agency or brokerage agreement, you can still file a complaint. Your complaint about irregularities is fairly common since the vote to wind up a strata corporation changed to 80%. The problem is not the legislation, the real challenge we are discovering is the unwillingness for anyone to come forward to file a complaint. The reason is simple. Profit. With a vibrant property market, everyone is making so much money they are just happy to walk away with their doubled or tripled values and ignore the violations.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
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