

Condo Smarts February 28 to March 3, 2018 Confidentiality Agreements

Dear Tony: I recently put in a request for some routine documents owners are permitted to have copies of. Two of those documents included a copy of the Air Space Parcel Agreement and the Strata Management Service Agreement. We understood we could be charged 25 cents per copy and included a cheque for the total amount of the copies. Before the strata manager released the documents they insisted we had to sign a confidentiality agreement. We were appalled by the agreement as it prevented us from talking to anyone about the content of the documents and that we could not disclose these documents to any other strata owner in our building. The manager told us this was a normal practice and if we wanted the documents we would have to sign. Something seems very fishy? Is this normal? Geraldine J.

Dear Geraldine: You are correct. Something is fishy. While there may be some provisions in the legislation to manage some documents differently, there is no provision allowed in the Strata Property Act or Regulations that permits a strata corporation to withhold these documents. Under section 35 of the Act, other than the payment of the documents the strata management company cannot add any such conditions. The air space parcel agreement is a public document filed in the Land Title Registry and the strata management contract is a service contract under section 35 of the Act. The strata corporation must provide copies of the documents within 14 days of receipt of the request and you may consent to either receiving them in a print or digital form for convenience. The demand for a confidentiality agreement is not a normal practice and you should notify your strata council and advise them immediately.

Only the strata council has the authority to determine if there are documents that contain personal or privileged information and whether the information needs to be managed or protected for the best interest of the strata corporation. There are circumstances where a confidentiality or non-disclosure document may be required. In several recent strata corporation wind up proceedings where a strata corporation is negotiating with a buyer to confirm the details of an offer to deliver to the owners to be considered, or where there is a legal proceeding underway that requires confidentiality, there is a reasonable argument that the strata council has to act in the best interest of the strata corporation and that means all owners and interest holders at time. This does not imply the strata corporation has the right to withhold information but it may require the strata corporation to release and manage the information in a different manner. If this is the case the strata corporation normally directs their legal representative to speak directly to the owner requesting the information to determine the best method to resolve the issue. In those circumstances non-disclosure or confidentiality agreements may be necessary to protect privileged or proprietary information. We know there are already some reasonable restrictions within the legislation to protect everyone's interests. For example, if a strata corporation is suing an owner, that owner is not an eligible voter and is not entitled to be present at the portion of a general meeting where the vote to commence the lawsuit is being debated or voted on and no, they are not entitled to be aware of the discussions or documents generated from that vote. If your strata corporation and strata manager are not cooperating you may obtain an order for the documents by filing a claim through the Civil Resolution Tribunal of BC. Go to www.civilresolutionbc.ca to start your claim.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
website: www.choa.bc.ca