

# Real Estate Council of British Columbia – Working With A Strata Management Company



## Working With A Strata Management Company

### What is the Real Estate Council of British Columbia?

The Real Estate Council of British Columbia (“RECBC”) is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and strata manager/brokerage conduct requirements of the Real Estate Services Act (“RESA”). RECBC is responsible for licensing individuals and brokerages engaged in trading services, rental property management services and strata management services. RECBC also enforces entry qualifications, establishes ongoing education requirements, investigates complaints against strata managers and brokerages, and imposes disciplinary sanctions under RESA.

### Strata Management Services Provided through a Brokerage

All services that require licensing under RESA, including the provision of strata management services, must be provided through a brokerage.

In most cases, strata management services are provided by a company, partnership or sole proprietorship which is licensed as a brokerage. The brokerage engages licensed individuals to carry out the specific strata management activities. Such individuals are usually referred to as strata managers.

Every brokerage must have a managing broker who is responsible for the activities of the brokerage and who supervises the individual strata managers. Although an individual strata manager is usually assigned to provide services to the strata corporation, the strata manager is providing the services on behalf of the brokerage. During the term of the contract between the strata corporation and the brokerage, the brokerage may assign different strata managers to provide services to the strata corporation. In addition to engaging licensed individuals to provide strata management services, the brokerage will also hire other employees, such as clerks, accountants and other unlicensed individuals who will provide services on behalf of the brokerage to the strata corporation. Such individuals cannot, however, provide any services for which a licence is required.

The brokerage may also coordinate service providers whose services are contracted by the strata corporation, e.g. plumbers, electricians, caretakers, landscapers, etc. All other services provided by the brokerage should be specified in the management contract.

A brokerage that provides strata management services is commonly known as a strata management company, and that is the term that will be used in the rest of this document.

## Introduction

The *Strata Property Act* (“SPA”), which is the legislation that governs the operation of a strata corporation, imposes numerous duties on a strata corporation, such as managing and repairing common property, presenting an annual budget and collecting strata fees, obtaining insurance, maintaining specific documents and records and enforcing the corporation’s bylaws. The SPA requires that the duties of the strata corporation be carried out by an elected strata council.

Knowing what duties to perform and how they should be performed can be a complicated and confusing task for many of the individual volunteers on a strata council. The duties require knowledge of financial and accounting principles, building maintenance, contract law, the SPA and other statutes.

Many strata corporations choose to contract with a company licensed to provide strata management services which can assist strata councils in fulfilling the duties of the strata corporation and to assist with complex legislative requirements.

It is important for strata councils to understand the role that a strata management company can play in assisting strata councils with their duties, the relationship between the strata management company and the strata corporation, and the significance of the contract entered into by the strata corporation for the provision of strata management services.

### How to Choose a Strata Management Company

There are many ways to find a strata management company with a reputation for providing helpful, reliable strata management services. Members of the strata council can ask friends and coworkers who own strata lots in other strata corporations for recommendations. Additionally, many strata management companies providing strata management services identify their services, and other information about themselves, through websites found on the internet.

The RECBC’s website ([www.recbc.ca](http://www.recbc.ca)) provides a search function which can be used to determine if an individual or brokerage is licensed to provide strata management services.

After receiving recommendations by others or identifying strata management companies that provide strata management services in the area, the strata council may wish to obtain quotations and proposals, and interview representatives from a number of strata management companies.

The strata council may wish to discuss with each potential strata management company the range of services, knowledge and other matters, such as the following, before choosing to contract with a strata management company:

- years of direct industry experience of the strata management company and the proposed strata manager;
- any professional memberships or additional certifications;
- number of strata corporations being managed by the strata management company, each strata manager engaged by the company, and, specifically, by the proposed strata manager;
- administrative staff available to support the proposed strata manager;
- whether contractors/service providers engaged by the strata corporation will be replaced by those typically used by the strata management company/strata manager, if different;
- format/style of financial reports, minutes and other documents being prepared by the strata management company on behalf of the strata corporation;
- references from other strata corporations being managed by the strata management company/proposed strata manager; and

- whether any disciplinary actions have been taken by the RECBC against either the strata management company or the proposed strata manager.

[Back to top](#)

## Engaging a Strata Management Company



When a management contract is entered into, it is the strata corporation, as a separate legal entity, that is entering into the contract. Although the strata council may negotiate and sign the contract, the strata council is doing so on behalf of the strata corporation and its owners.

The strata council, acting on behalf of the strata corporation, may choose to have the strata management company carry out many of the duties of the strata corporation. Only a few of the duties, relating to the enforcement of bylaws, cannot be delegated. Alternatively, the strata council may determine that only a limited number of services, such as collecting strata fees, paying bills and preparing financial reports, should be provided by the strata management company. The management contract should set out the services that the strata management company is required to perform.

Even though a strata council may delegate duties to a strata management company, the strata council continues to be responsible and accountable to the strata lot owners for ensuring that the duties under the SPA are performed. When duties have been delegated to the strata management company, it must perform those duties honestly and with reasonable care and skill, but the strata council must ensure that the delegated duties are being performed.

Although in order to contract with a strata management company, the owners must approve the payment of the management fees, the selection of a strata management company is a decision of the strata council unless the owners have specifically directed the strata council in this regard. Usually the fee is included in the budget as approved by the owners at the Annual General Meeting (“AGM”), or as an additional expense at either the AGM or at a special general meeting.

### *Real Estate Services Act* Licensing Requirement

RESA requires those who provide strata management services for a fee to be licensed, unless they are specifically exempted by the Real Estate Services Regulation (“Regulation”). Under RESA, ‘strata management services’ means any of the following services provided to or on behalf of a strata corporation:

- collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the Strata Property Act;*
- exercising delegated powers and duties of a strata corporation or strata council, including*

- i. *making payments to third parties on behalf of the strata corporation,*
- ii. *negotiating or entering into contracts on behalf of the strata corporation, or*
- iii. *supervising employees or contractors hired or engaged by the strata corporation*

RECBC has established educational requirements for those wishing to be licensed to provide strata management services.

Although the definition of strata management services in RESA is very broad and would include acting as a strata council member or a member of a section executive, the Regulation includes an exemption which means that licensing is typically not required for strata lot owners who serve as members of a strata council or a section executive<sup>1</sup>. Additionally, the Regulation contains exemptions from the need for licensing for caretakers/managers employed by a strata corporation, owner developers and, in limited circumstances, an owner who provides strata management services for a fee to a strata corporation in which that owner owns a strata lot.

RESA regulatory provisions, including the exemptions, are available on the RECBC's website at [www.recbc.ca/licensee/legislation.html](http://www.recbc.ca/licensee/legislation.html).

[1] Section 2.17 of the Regulation effectively permits an unlicensed strata lot owner to provide strata management services to a maximum of 2 strata corporations in which that individual is a member by reason of being an owner of a strata lot.

[Back to top](#)

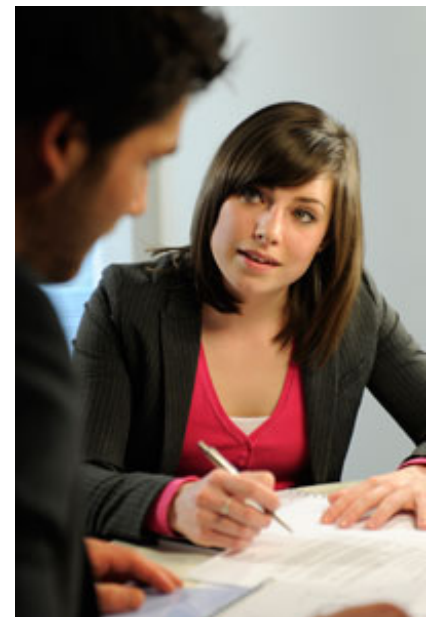
### The Strata Corporation's Relationship with the Strata Management Company

An agency relationship exists between the strata corporation, as the principal, and the strata management company, as the agent. The essence of the agency relationship is that the strata management company has the authority to represent the strata corporation in dealings with others and to enter into contracts on the strata corporation's behalf.

Strata management companies and their strata managers are legally obligated to protect and promote the interests of their strata corporation clients. Specifically, the strata management company and the strata manager have the following common law and statutory duties:

- undivided loyalty to the strata corporation;
  - to obey all lawful instructions of the strata corporation;
  - to keep the confidences of the strata corporation;
  - to exercise reasonable care and skill in performing all assigned duties;
- and

to account for all of the strata corporation's money and property which is held or received on behalf of the strata corporation by the strata management company or its related strata managers. In addition to the general duties imposed on an agent by common law, RESA and the RECBC Rules establish additional conduct requirements for those who are licensed to provide strata management services.



As an agent of the strata corporation, the strata management company and its strata managers are obligated to act on the instructions of the strata corporation which are given by the strata council.

It is up to the strata council to give clear direction to the strata manager or strata management company on an on-going basis, whether it be at a regularly scheduled strata council meeting or between meetings. In order to avoid possible confusion, it is recommended that these instructions be given in writing to the strata manager through a designated strata council member and be properly recorded in the minutes of the next strata council meeting.

### Strata Lot Owners and the Strata Management Company

Although strata lot owners may have participated in the decision to retain a strata management company, the owners are not party to the management contract. The contract is between the strata corporation and the strata management company. Because owners often communicate directly with a strata manager, they sometimes believe that a strata manager is able to act solely on their instruction or request. Such a belief is incorrect. The strata manager acts under the direction of the strata council; therefore, an individual strata lot owner wishing to have their needs or concerns addressed should present them in writing to the strata council or through the strata manager, to be addressed by the strata council.

[Back to top](#)

### The RECBC Rules

RESA and the RECBC Rules, current versions of which are posted on RECBC's website ([www.recbc.ca/licensee/legislation.html](http://www.recbc.ca/licensee/legislation.html)), govern the conduct of those who are licensed to provide strata management services. These requirements do not place any obligations on strata corporations or the strata councils which represent them; strata corporations, strata councils and section executives are governed by the SPA.

Examples of matters addressed in the RECBC Rules include the general responsibilities of strata managers and strata management companies, advertising, relationships with their clients, disclosure requirements, accounting and financial requirements, and record keeping.

Strata managers have a general duty to act honestly and with reasonable care and skill when providing strata management services. The RECBC Rules also establish that the strata management company and its strata managers have a duty to:

- act in the best interest of the strata corporation;
- act in accordance with the lawful instructions of the strata corporation;
- act only within the scope of the authority given by the strata corporation;
- advise the strata corporation to seek independent professional advice on matters outside the expertise of the strata management company;
- maintain the confidentiality of information respecting the strata corporation;
- disclose to the strata corporation all material information respecting the company's strata management services and the strata property itself;
- take reasonable steps to avoid any conflict of interest; and
- if a conflict of interest does exist, promptly and fully disclose the conflict to the strata corporation.



The strata corporation and the strata management company may agree, in the written service agreement, that one or more of the above duties is modified or made inapplicable, either altogether or under certain circumstances.

[Back to top](#)

## The Strata Management Contract

Section 5-1 of the RECBC Rules requires a strata management company to have a written strata management service agreement with the strata corporation unless the strata corporation waives that requirement. The RECBC Rules also require that the written strata management service agreement with that strata management company is entered into before the services commence.



[Section 5-1](#) of the RECBC Rules lists items which the parties must address when establishing the level and nature of services to be provided. [Section 5-1](#) of the RECBC Rules requires that written service agreements include specific content, including the following:

- the legal name and actual address of the strata corporation;
- the name of the strata management company providing the strata management services;
- the date the agreement takes effect and its duration;

*The duration of a service agreement is a matter of negotiation between the parties. A service agreement may have a fixed end date or be for an indefinite period of time. Having said this, regardless of the duration set out in the service agreement, the SPA allows for cancellation on 2 months' notice either by the strata manager, or by the strata corporation if approved by a  $\frac{3}{4}$  vote.*

- all the terms and conditions clearly stated;
- a general description of the services to be provided;

*The service agreement should clearly specify what services will be performed by the strata management company and what duties will remain the responsibility of the strata corporation.*

- the remuneration to be paid and the circumstances in which it will be payable;

*Strata councils should pay particular attention to any schedules attached to the service agreement which may require payment of additional amounts. The requirement for additional payments should clearly specify what additional work will be performed by the strata management company and any additional fees.*

- provision respecting the use and disclosure of information respecting the strata corporation, including information respecting owners who are the members of the strata corporation;
- an indication of whether the strata management company will be holding one or more of the contingency reserve fund money, operating fund money, special levy money, and any other amounts;
- the circumstances, in addition to those established by the SPA, in which the agreement may be terminated by either or both the strata corporation and the strata management company;

*When considering the termination of the service agreement, the strata council should keep in mind the termination provisions set out in the SPA as described above in the discussion about ‘duration’. The strata corporation and strata management company may negotiate alternate termination provisions; for example, a shorter termination period, or a lower than  $\frac{3}{4}$  vote threshold, but an ‘agreement’ which lengthens the termination notice period beyond 2 months, or increases the percentage vote required to more than  $\frac{3}{4}$  would not be appropriate.*

- any authority for the strata management company to transfer money between the trust accounts it maintains on behalf of the strata corporation;

*The strata council should consider whether approval of the strata council will be required before the strata management company may transfer funds from the contingency reserve fund to cover a temporary shortfall in the operating fund.*

*Note: The SPA specifies the conditions under which the strata corporation has authority to spend monies from the strata corporation’s Operating Fund and/or Contingency Reserve Fund (“CRF”). The RECBC Rules require that, unless already specified in the written service agreement, a strata management company must obtain authorization from the strata council to make a specific expenditure on behalf of the strata corporation, or to transfer funds between strata management company trust accounts held on behalf of the strata corporation.*

- the scope of authority of the strata management company or a related strata manager to act on behalf of the strata corporation, including any authority to
- sign cheques or make disbursements on behalf of the strata corporation,
- enter into contracts on behalf of the strata corporation, and
- invest money held by the strata management company on behalf of the strata corporation;

*The service agreement should specify the extent to which the strata management company and its strata managers may make decisions and enter into contracts on behalf of the strata corporation. The service agreement may provide significant latitude for the strata management company and its strata managers to make decisions without consulting the strata corporation. In other cases, the service agreement may require that the strata management company and strata managers only act on instructions and with the approval of the strata council.*

- the timing, frequency, and nature of accounting statements and other records to be provided by the strata management company to the strata corporation; and
- a description of the records to be kept by the strata management company on behalf of the strata corporation, including which if any of the records required by the SPA that the strata management company will retain on behalf of the strata corporation.

RECBC does not mandate how strata corporations and strata management companies address these issues, nor does it endorse any particular form of service agreement. The two parties are free to come to an agreement that best suits their respective needs so long as it incorporates the matters identified in [section 5-1](#) of the RECBC Rules.

In addition to the matters identified in [section 5-1](#) of the RECBC Rules, there are other matters that the parties may wish to address in their service agreement.

Because of the importance of the strata management service agreement in defining the duties of the strata management company, strata councils may wish to obtain legal advice at the time the initial contract is negotiated.

The strata council members should be familiar with the terms of the service agreement as it is the basis for the services that will be performed by the strata management company and it sets out the contractual agreement between the strata corporation and the strata management company.

For more information, strata councils may wish to consult [Instruction Guide 24: What to Know about Contracting with a Strata Manager](#).

[Back to top](#)

What will a Strata Management Company Charge?

[Section 5-1](#) of the RECBC Rules requires the service agreement to identify “the remuneration to be paid under the agreement and the circumstances in which it will be paid”. Strata corporations should ensure that their service agreement clearly addresses these important components. What are the fees? What services are provided for these fees? When are the fees payable? Are there extra fees identified for additional services if and when provided?

While service fees are often negotiable, a particular strata management company may have set fees and may not be prepared to negotiate those fees. In the strata management industry, different strata management companies charge different amounts for different services.

The fees for strata management services usually form part of the strata corporation’s annual operating budget which is funded through the monthly collection of strata fees. Unless the original contract specifically provides for a percentage or dollar increase at set intervals, any changes in management fees must be approved in writing by the strata council before they can take effect.

Any changes to the service agreement, whether requested by the strata management company or the strata corporation, must be agreed to by both parties. The RECBC Rules require these changes to be in writing. Therefore, the time when a particular change to the service agreement is being discussed may also be an appropriate time for both parties to consider whether other modifications or clarifications of the service agreement are appropriate.

Disclosures that Strata Management Companies and Strata Managers Must Make

#### *Disclosure of Remuneration*

The RECBC Rules require a strata management company or strata manager who anticipates receiving remuneration from a party other than the strata corporation, as a result of providing strata management services to or on behalf of the strata corporation, to disclose to the strata corporation the source and amount of remuneration to be received, as well as all relevant facts relating to the payment. The term “remuneration” is very broadly defined in RESA and includes any commission, fee, gain or reward.





---

There are three situations that commonly arise where a strata manager or a strata management company would need to make such disclosure. The first is when the strata management company intends to retain payments from owners, buyers, real estate licensees, lawyers, or notaries for providing forms and/or copies of strata documents on behalf of the strata corporation. Before retaining such payments, the strata management company must first disclose to the strata corporation the amount to be received or, if the amount is not known, the likely amount or the method of calculation of the amount. The disclosure is not required each time the strata management company collects such fees. For example, the strata management company's disclosure that it intends to charge and retain these fees, and the fees to be charged and retained, is often made and agreed to as part of the service agreement; however, if the amount or method of calculating the amount is to change, this change must also be disclosed and agreed to by the strata corporation.

The second scenario where disclosure must be made to the strata corporation is where the strata management company or strata manager anticipates receiving remuneration for recommending a service provider to a client. If, for example, a strata management company anticipates receiving a fee for recommending a company to do work for the strata corporation, the strata management company is obligated to disclose this to the client before the remuneration may be retained by the strata management company. The purpose of this disclosure is to enable clients to make informed decisions about services that are being provided to them. Disclosure in these circumstances must be made in a separate written document.

The third situation requiring this type of disclosure is when a strata management company anticipates receiving remuneration as a result of referring a client to a service provider. For example, if the strata management company refers a strata corporation to a particular accounting professional for financial advice and anticipates receiving a fee for doing so, this must be disclosed to the client. Again, the purpose of this disclosure is to enable clients to make informed decisions. This disclosure must also be made in a separate written document.

#### *Disclosure of Benefits*

A further disclosure is required if the strata management company or individual providing strata management services anticipates receiving a benefit (whether monetary, gifts, points or any other type of benefit) from making an expenditure on behalf of the strata corporation. Typically, the need for such disclosure would arise where the strata management company or strata manager hires contractors on behalf of the strata corporation that are related to the strata management company, the strata manager or to parties associated with the strata management company or strata manager.

Disclosure must be made in writing and in a document separate from the service agreement. The specific circumstances for which disclosure must be made can be reviewed at sections [5-7](#), [5-8](#), [5-11](#) and [5-12](#) of the RECBC Rules.

#### Potential Conflict of Interest

Some strata management companies may also be licensed to provide, in addition to strata management services, rental property management and/or trading services. There is the potential for a conflict of interest to arise if a strata management company, for example, provides rental property management services on behalf of a strata lot owner who rents out a strata lot located in a strata corporation which the strata management company manages. The interests of the strata lot owner with respect to the rental of the unit may be different than those of the strata corporation, and the strata management company providing the strata management and rental property management services may not be able to act in the best interest of both clients in providing both of these services.

Before brokerages provide rental property management and/or trading services to individual strata lot owners within strata corporations they manage, they must first have the agreement of the parties as to how the strata management companies will deal with a conflict, should it arise. If the strata management company intends to limit its services to either or both of these clients if a conflict arises, they must first have the consent of any client whose services are to be limited.

Additionally, a conflict of interest can arise where a strata management company is acting for the strata corporation and sections within the strata corporation, multiple strata corporations that share recreational facilities, or multiple strata corporations in multiple air space parcels. In all such cases, the strata management company and the affected clients must consider how potential conflicts of interest will be addressed. Where the strata management company wishes to limit its services, the service agreement may need to be amended and the consent of the client must be obtained.

The strata council or section executives may wish to obtain legal advice where the strata management company is acting or proposes to act for more than one party and a conflict arises between those parties.

[Back to top](#)

### Complaints about a Strata Manager or Strata Management Company by the Strata Council

If a strata council has a concern about the strata management services being provided, the strata council should consider the following:

- Discuss the concern with the strata manager.
- If the matter cannot be resolved between the strata council and the strata manager, discuss the concern with the managing broker of the strata management company.
- If appropriate, if certain matters or concerns are not addressed in a timely fashion, the strata council may wish to consult with the owners.
- If no resolution is achieved by taking the previous steps and the strata council considers its concerns about the services being provided by the strata manager and/or the strata management company are serious, the strata council may submit a complaint to the RECBC. It is recommended that a strata council member contact a RECBC compliance officer prior to filing the complaint to confirm whether the issues fall within the RECBC's jurisdiction.

Should the matter fall within the RECBC's jurisdiction, in most cases the RECBC will require the complaint to be submitted by the strata council accompanied by a copy of the minutes of the council meeting where this course of action was approved.

The complaint should be in writing, signed by an authorized representative of the strata council and accompanied by the RECBC's complaint form and any relevant supporting documentation. The complaint form is available from the [RECBC's website](#) or from the RECBC's office by calling **604-683-9664**

or toll-free in BC at **1-877-683-9664**. A brochure regarding the RECBC's Complaint and Discipline Procedures is also available on the website.

The RECBC does not have jurisdiction to adjudicate contract matters or to enforce the SPA. The RECBC's jurisdiction is limited to the strata management company's and/or strata manager's compliance with RESA and the RECBC Rules. A strata corporation or strata council wishing to formally resolve contractual matters may pursue a civil remedy through legal proceedings.

### Complaints about a Strata Manager or Strata Management Company by an Owner

On occasion, owners may disagree with the decisions or actions of the strata manager. Because the strata manager is acting under the direction of the strata council, the owner should address their concerns to the strata council. It will be up to the strata council to consider the owner's concerns and take action if appropriate, which may include submitting a complaint to the RECBC.

Because the strata management company and strata manager take their instructions from the strata council, in most cases the RECBC will not investigate a complaint by an owner that is not supported by the strata council. For more information, owners may wish to consult with [Instruction Guide 25: What to Know about Resolving Complaints](#).

There are, of course, exceptions to this general policy. For example, the RECBC will investigate complaints of the misappropriation of funds by a strata manager regardless whether the complaint is made by the strata council or an individual. In cases where several individual owners make complaints about a single strata manager or strata management company, the RECBC might conduct an investigation to determine whether the strata manager has failed to act with reasonable care and skill or has acted incompetently.

[Back to top](#)

### Termination of the Written Service Agreement

After the effective date of the termination of a strata management service agreement, the strata management company must promptly transfer control of the strata corporation's money to the strata corporation or, if the strata corporation engages another strata management company to provide strata management services, to the other strata management company. The strata management company may retain sufficient funds to pay outstanding and anticipated invoices related to expenses incurred on behalf of the strata corporation before the termination of the service agreement.

If requested, the RECBC Rules require the strata management company to provide the following records to a former strata corporation client, or if the strata corporation engages another strata management company, to that strata management company, by the later of the date that is 4 weeks following the date of termination or the date that is 2 weeks following the date of the request:



- banking records relating to account transactions of all trust accounts held on behalf of the strata corporation, including bank statements and cancelled cheques;
- other source documents confirming deposits or withdrawals;
- a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance;
- monthly reconciliations of banking statements of all trust accounts held on behalf of the strata corporation; and
- unless they have already been provided, invoices for expenditures incurred on behalf of the strata corporation.

Additionally, the SPA also contains provisions regarding the return of a strata corporation's records when a strata management contract ends. It is important to note that the strata management company has an obligation under the RECBC Rules to retain certain records prepared on behalf of the strata corporation, as originals or as copies of the originals, for at least 7 years after their creation. The following is a list of those records which the strata management company must retain:

- any accounting statement prepared by or on behalf of the strata management company that are provided to the strata corporation;
- invoices for expenditures incurred on behalf of the strata corporation;
- monthly banking statements from the savings institutions for all trust funds held on behalf of the strata corporation; and
- monthly reconciliations of banking statements of all trust accounts held on behalf of the strata corporation.

### **Further Information**

Questions can be directed to the Real Estate Council of British Columbia at 604-683-9664

, toll-free in BC 1-877-683-9664 or by email at [info@recbc.ca](mailto:info@recbc.ca).

[Back to top](#)