

Condo Smarts June 9th – 12th, 2016

Council Confidential

Dear Tony: Our strata manager and council president have insisted that every council member has to sign a confidentiality agreement or resign from council. We were told this is a requirement of the Act, but a few council members have challenged the intention of this policy and now everyone is back pedaling. It does raise a serious matter for strata council members. What type of standards do we have to maintain regarding confidentiality around the business of our strata corporation? Satinder

Dear Satinder: There is no such requirement for a confidentiality agreement in the Strata Property Act, the Regulations or the Standard Bylaws. It is possible that your strata corporation has adopted a bylaw relating to such agreements, but even then, is it an enforceable bylaw? Is it wise to attempt to censor or silence your council members which may conflict with their duties to the strata corporation? The Act & Standard Bylaws provide sufficient requirements for the behavior of council members, the types of meeting conditions where observers are not permitted, and what information is reported in the minutes. There are also the provisions of the Personal Information Protection Act and the application of common law principles.

The standard of care requires that every council member act honestly and in good faith with a view to the best interests of the strata corporation. There are 3 separate occasions where the strata council meets without any observers (in-camera or off the record). They are when the council deals with a matter relating to bylaw contravention hearings, hardship rental restriction applications, and other matter's if the presence of observers would interfere with an individual's privacy. The decisions that follow those types of meetings are still minuted, to provide the owners and future strata council with a record of what was done. For example, "the owner of strata lot 15 has been granted a hardship exemption from the rental restriction bylaws for a period of 2 years". Throughout the hardship application process the owner may have provided confidential financial or medical records. The council has a duty to protect the personal information and would not have published anything other than the final decision, although a strata council may have retained personal information that would have supported their decision in the event of a claim. There are also conditions that may apply to common practices such as procurement. If a strata corporation has issued a request for bidding on a construction project or for services, they are going to be bound to the conditions they have set up in the request for proposals. Many companies see their bidding information and pricing as proprietary and cannot be released to any other parties without their explicit consent. For large construction projects, protecting bids is often a necessary condition to guarantee contractors and suppliers will provide quotes.

Strata councils must heed the advice of their lawyers when dealing with law suits and claims. During the course of a law suit or insurance claim, shared information could be detrimental to a court action and harmful to the strata corporation's best interests. The best practice for strata councils is to remind council members when a matter is confidential, the reason, and their obligations to protect the information. Attempting to gag council members with a confidentiality agreement at the risk of expulsion may be contrary to the Act, your Bylaws and the best interests of your strata corporation. If you have an indiscreet council member, deal with them openly and directly at a council meeting.

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