

## Condo Smarts October 10, 2018

### Strata Wind Up Procedures

Dear Tony: I am writing to you as a commercial broker (CB) concerned about a recent problem that is occurring for strata owners considering a wind up and liquidation of their corporation. Our office was recently approached by a strata manager who indicated a strata client was looking for an opportunity to wind up their corporation. We were requested to submit a proposal to the manager, with a specific deadline and copy of the terms of our representation agreement. A week before the deadline, we were contacted by the strata manager who indicated we could be on the short list if we were prepared to confidentially split our commission 50/50 with the management company in the event the wind up was successful. Up to this point we were never informed of the identity of the strata corporation, other than the number of units. Our concern relates to two problems. The first is every location is different and requires a unique level of assessment in detail and marketing. As a result, the rates may vary depending on the projected work or site studies that may be required. The second is a greater concern. If the strata management company are demanding a split commission in exchange for a short list result, it is obvious this is not condoned by the strata corporation, otherwise we would have been told the name and location of the strata and the contact information for the strata council members. Clearly the company is withholding critical information to leverage an undisclosed commission or fee on behalf of their client which is both unethical and in violation of the Real Estate Services Act. At this time, we informed them we would not pay any commissions or submit a proposal without the explicit consent and details and their client. CB

Dear CB: Thank you for coming forward. A serious flaw in our real estate legislation is that there is no whistle blower protection so many violations in the industry go unreported for fear of recrimination. I urge you to file a complaint with the Real Estate Council of BC on behalf of consumer interest and the reputation of the industry. Strata managers are not contracted as brokers or as the liquidator for the purpose of winding up a strata corporation. They are contracted to provide services for operations, maintenance, financial management and general administration. They are contracted under an "agency" agreement, which conveys the authority of the strata corporation to enable your manager to act on your behalf for the purposes of operations. Unless otherwise agreed in your agency agreement, they act solely for your strata corporation and any fees, commissions or benefits they receive that are not directly from the strata corporation must be disclosed to the corporation. Undisclosed fees and commissions are a growing problem within the strata management industry and strata councils have a right to demand their strata management companies inform them of any fees or commissions they have received. A simple disclosure in the service agreement that a company "may" receive fees from time to time does not meet the requirements of disclosure. The company must disclose the amount of the fees, percentage of a gross fee or other interests where they receive a benefit. While they are acting as your agent, they are not acting as an agent for other parties unless you agree.

When an agent of one party pressures a third party service provider to provide a fee in exchange for the undisclosed privilege of an awarded contract, it is a form of racketeering. Unlawful on many levels and certainly not in anyone's interest but the agent. In all of the windup proceedings I have been involved with, the strata managers play the least role. The lawyer acting solely for the strata corporation will provide the greatest level of service and continuity as they will review the commercial agency contract, notices and resolutions for meetings that will authorize the strata council to engage a broker and proceed with a marketing or negotiation process, attend information meetings and meetings with council to negotiate the terms of any of the offers, and finally the preparation of the notice package including the resolutions for the 80% vote, the court

application to approve the wind up and the appointment of the liquidator. Your commercial broker plays a significant role and negotiates the sale of your property. It is their contracted responsibility to assess, evaluate and market your property to the broadest audience in the effort of obtaining you the best price for your property. Your strata manager will have additional work ahead of them as the strata corporation moves through the windup process and they should be compensated as set out in the schedule of fees for the cost of additional meetings and an hourly service. A strata management agreement signed by a strata council that pays a commission to a strata management company in the event of a wind up still requires the approval of the owners at a general meeting. If you want to pay an additional fee or commission to your strata manager it must be disclosed and approved by the owners as you will be paying out part of their proceeds of sale. Finally, if anyone advises a strata council against a lawyer experienced with strata windups they are likely protecting their own interests.

Consumers deserve the best price and terms of sale for their property. Keep your strata corporation in control of the windup process where your strata council works directly with your lawyer and the commercial broker, and all stages of progress are reported to the owners.

Tony Gioventu, Executive Director CHOA

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