

# SO YOU WANT TO BE A COUNCIL MEMBER?

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Well, terrific, and thank you. It is always great to have volunteers to run their strata corporations. In many respects it can be a rewarding challenge but in many respects it can also be quite a hassle. The politics within strata corporations can be significant and the requirements of the new *Strata Property Act* are substantial and place a great burden of responsibility on council members' shoulders. Many strata council members are now considering very carefully whether or not they want to remain as council members given the onerous duties and responsibilities that flow from the *Strata Property Act*.

It might seem like a bit of a cliché but if you act honestly, in good faith and reasonably in the fulfillment of your duties, you should have nothing to worry about. That will not stop lawsuits, arbitrations and other similar aggravations but you should not be too concerned about your personal liability if you act properly. In most cases, strata corporations have insurance policies that include errors and omissions insurance and this is an extremely valuable element to your insurance policy. It affords you legal protection which means that the very expensive cost of hiring lawyers to defend is picked up by the insurance policy. If you lose, in most cases the insurance policy will pay the settlement costs.

All of this legal stuff aside, what exactly are the new requirements of the *Strata Property Act*? Here are some extracts from my book *The New Condominium Concept (Revised)* which outlines the subject areas:

## **32. Disclosure of Conflict of Interest**

***Under Section 32, a council member who has a direct or indirect interest in a contract or transaction involving the strata corporation must now fully and promptly disclose the nature and extent of that interest and abstain from voting on***

*the contract or transaction. Further, the individual must leave the council meeting while the contract or transaction is being discussed and voted upon. The council member may, of course, be in attendance for a portion of the meeting to provide information to the remaining council members. This section is an excellent provision to the new condominium concept.*

### **33. Accountability**

*Under Section 33, if a council member fails to meet the provisions of Section 32, either the strata corporation or an owner may apply to the courts to have the contract or transaction set aside if no significant injustice will be caused to a third party. Further, if the court finds that the contract or transaction was unreasonable or unfair to the strata corporation, it has the power to require that council member to compensate the strata corporation or any other person for a loss arising as a result of setting aside the contract or transaction. Additionally, the court may require the council member to pay to the strata corporation any profit the council member makes as a consequence of the contract or transaction. All of this should send a very clear message to those individuals who are on strata councils and who fail to disclose any potential or real conflicts of interest. A developer in a new strata corporation should be cognizant of this section since developers typically “wear two hats” in the embryonic stages of a strata corporation, although an owner developer is exempt from the provisions<sup>1</sup> of*

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<sup>1</sup> 6 Owner Developer’s Standard of Care

(1) In exercising the powers and performing the duties of a council, the owner developer must:

- (a) act honestly and in good faith with a view to the best interests of the strata corporation, and
- (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

(3) Sections 32 and 33 do not apply to an owner developer exercising the powers and

*Sections 32 and 33 while the owner developer is the council, i.e. before the first AGM. Other types of examples would include council members who have private business enterprises that could potentially provide services such as landscaping, handyman repairs or other general trade services to strata corporations. The Act is not saying that these people cannot provide these services: it is saying that they must, as council members, fully and promptly disclose any material conflict of interest that may arise as a result of the contract or transaction.*

*The Act does, however, provide a parachute to such an owner that, if a conflict of interest circumstance develops, the owner may avoid an application to a court of competent jurisdiction if the contract or transaction giving rise to the conflict is ratified by a resolution passed by a 3/4 vote at an Annual or Special General Meeting. In other words, the owner may prevent a court action by having the general ownership approve of the contract even though it was entered into in violation of the conflict of interest guidelines. A bit complicated but, nevertheless, workable.*

#### *34. Approval of Council Member Remuneration*

*The Condominium Act did not address the concept of having council members paid for being members of council. Although it was quite rare to see this happen, there was actually nothing wrong or illegal with council members being paid or receiving honorariums in the course of their duties. In fact, the owners of some strata corporations are so appreciative of the hard work and efforts of their council members that they reward them by either making honorarium payments or*

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*performing the duties of the council, as long as the owner developer complies with subsection (1) of this section.*

*by picking up the expense of an annual dinner. The new Act recognizes this but says that such remuneration must be approved in advance of payment either in the budget and in the by-laws of the corporation or alternatively by a resolution passed by a 3/4 vote at an Annual or Special General Meeting. Although unusual, if a strata corporation wishes to pay one or more of its council members for being council members, steps ought to be taken to comply with this new provision. Sometimes council members also get paid for doing other duties, such as janitorial or landscaping services. These contracts would not be included in this section of the new Act.*

*The strict application of this section would mean that minor honorariums or such goodwill gestures as sending a council out for dinner would, technically, have to meet those conditions which is highly unlikely. From a practical standpoint, it is reasonable to suggest that strata corporations could still do this in that the intent of the new section is to address ongoing remuneration of a significant nature. I would think it highly unlikely that a court would frown on council members going out for dinner if instructed to do so at the Annual General Meeting even though it is not in the budget and in the by-laws of the corporation. This might be considered as a technical error in the legislation and it may be corrected before proclamation.*

Many other sections of the *Strata Property Act* require the strata corporation (meaning the council) to do certain things which corporations never had to do before. They are too numerous to list in this article but suffice it to say that as you become familiar with the *Strata Property Act*, you will come across these duties and obligations. You must remember that, for the most part, the powers, duties and obligations of the strata corporation fall to you as a council member to fulfill. There are times, of course, when decisions cannot be made by the strata council: they have to be made by the general ownership and to that extent, there is less obligation on your part as a

council member, but these are few and far between. The vast day-to-day administration of your strata corporation really is your responsibility.

One of the assumptions that is often made by council members is that if they have a management company it is the management company that becomes responsible for the fulfillment of the statutory requirements of the legislation. This is not entirely true and, in fact, is a very dangerous assumption. The fact that a strata council hires a management company does not relieve it of its obligations to meet the strict requirements of the Act. If the management company makes a mistake, certainly the strata council would have the opportunity to litigate against the management company but in terms of fulfilling the requirements of the *Strata Property Act* that duty remains with the council. The following is a list of some of the typical things that council members do or don't do which, in my view, will leave them vulnerable under the new legislation:

- Failing to attend council meetings on a regular basis.
- Fostering a personal agenda rather than acting in the best interests of the strata corporation as a whole.
- Not reading the minutes of meetings or other correspondence or documents given to the strata corporation.
- Failing to read and reasonably understand the financial statements of the strata corporation.
- Applying policies and enforcing bylaws and rules in an uneven manner, particularly if it applies to one's self.
- Authorizing work (repairs and maintenance) in an uneven and discriminatory manner, particularly if it benefits one's self.
- Failing to seek professional guidance from engineers, lawyers, accountants, or to put it another way, either acting in that

capacity yourself or expecting the property manager to provide such guidance and advice.

- “Burying” bad news – such as in “Leaky Condos” – by denying the existence of problems and “Keeping it out of the minutes”.
- Manipulating engineering reports to take out the “bad stuff”.
- Editing the minutes to mask problems or misinform owners. Using the minutes as a vehicle to embarrass owners or tenants.
- Avoiding requirements of the *Strata Property Act* in order to save money.
- Not informing owners and tenants as required by the Act.

These are some common examples of the kinds of things that council members do. Any one of them by itself is not likely to give rise to big trouble and an occasional breach or accidental omission is likely no big deal. What you must remember, however, is that it only takes one disgruntled and persistent owner to make life difficult for you. Flagrant and consistent violations of these principles will surely lead you to major grief so think about your conduct very carefully. Yes, it's great to be a council member but the standard of duty, the demand for responsible and thoughtful decisions will be paramount from now on.

Good luck.

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This article is not intended to provide legal advice. Strata council members are encouraged to obtain independent legal advice from a lawyer of their choice.

To order our book, *The New Condominium Concept (Revised)*, return to the main Publications and Legislation page, and click on the book order form link.

Gerry Fanaken  
July 1/2000

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