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Increased Regulation of Strata Management Services *under the* **Real Estate Services Act**



Since January 1, 2006, Strata Management Services have been governed by the *Real Estate Services Act*, which sets out extensive requirements for the licensing, education, and conduct of individuals and organizations providing strata management services.

The *Real Estate Services Act* defines strata management services, as follows.

Strata management services means any of the following services provided to or on behalf of a strata corporation:

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

- negotiating or entering into contracts on behalf of the strata corporation; or
- supervising employees or contractors hired or engaged by the strata corporation.

It does not include an activity excluded by regulation.

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Anyone providing defined strata management services for remuneration now requires a licence unless specifically exempted by the Act or regulation and only to the extent specifically exempted by the Act or regulation.

Pursuant to regulation 2.6, Notaries in good standing are exempted from licensing requirements for trading services such as negotiating the price of real estate or the terms of a trade in real estate and/or receiving deposit money paid

in respect of real estate, where those tasks are part of the provision of services authorized under section 18 of the *Notaries Act*.

No specific exemption applies to a Notary providing strata management services, therefore a Notary may not negotiate a contract on behalf of a strata corporation or charge for other services defined as strata management services unless licensed to provide strata management services or captured by one of the other exemptions under the *Real Estate Services Act* or regulation.

Among the other licensing exemptions, the following are particularly noteworthy for the provision of strata management services:

- lawyers providing services in the course of their practice;
- a person acting under the authority of the court;
- strata lot owners with respect to participating in the governance of the strata corporation in which they own a strata lot;
- strata caretakers or building managers, provided their services do not exceed specified boundaries; and

- the owner/developer of the strata corporation, only up until the time the strata corporation begins self-government.

The *Real Estate Services Act* grants the Real Estate Council broad investigative and disciplinary powers against licensees who violate the *Real Estate Services Act*, the regulations, and/or the bylaws and rules of the Real Estate Council. The *Real Estate Services Act* also permits the Superintendent of Real Estate to investigate and impose discipline for misconduct by licensees and persons providing strata management services for remuneration without a licence.

The *Real Estate Services Act* has a number of implications for strata corporations generally. Different standards now exist for self-managed versus professionally managed strata corporations. For example, the *Strata Property Act* has no requirement that a strata corporation obtain an annual audit. The *Real Estate Services Act*, however, requires that strata managers have their trust accounts for managed strata corporations audited on an annual basis. Although no audit of the strata corporation's financial statements or transactions is required, the resulting accountant's report does provide some security with respect to appropriate accounting of the strata corporation's funds by the strata manager.

Strata Management Agreements

Drafting a strata management agreement now requires that the drafter consider the requirements of the *Real Estate Services Act* as well as the provisions of the *Strata Property Act*.

Under the *Real Estate Services Act*, strata management agreements must be in writing prior to the start of services and must specify what types of funds are to be held on behalf of the strata corporation, as well as what authority the strata manager will have to transfer funds, sign cheques, enter into contracts, or invest funds on behalf of the strata corporation. The agreement must also specify the

nature and frequency of accounting statements to the strata council.

There must be a description of the records, pursuant to section 35 of the *Strata Property Act*, that the strata manager will keep on behalf of the strata corporation and there must be specifications as to the use and disclosure of personal information by the strata manager. These requirements are transitional and are required to be in place by January 1, 2007.

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Accounting and Reporting Requirements for Strata Managers

In addition to the audit requirement and those accounting terms that must form a part of all strata management contracts, the *Real Estate Services Act* formalizes other accounting and reporting requirements for strata managers. For example, separate trust accounts must be maintained for the operating fund and for each contingency reserve fund or special levy fund for each strata corporation.

There are also specific rules regarding reporting to the strata council with respect to financial transactions and with respect to trust accounting. The strata manager must provide each strata corporation he or she manages with a copy of the bank statement for each trust account held on behalf of the strata corporation within 30 days of receiving it from the savings institution. These explicit reporting requirements will increase the ability of the strata council to monitor the financial circumstances of a managed strata corporation.

Another example of where the *Real Estate Services Act* provides a more stringent requirement than the *Strata Property Act* is with respect to the transfer of financial documents when a strata corporation changes management companies or themselves take over management of the strata. Under rule 8.7, the transfer of financial records must be completed within 14 days. Section 37 of the *Strata Property Act* only requires that the person providing strata management services return the strata corporation records within 4 weeks of termination of the strata management contract.

Educational Requirements and Licensing Requirements for Strata Managers

The *Real Estate Services Act* and the rules under the Act each set out requirements for qualification of strata managers. Whether a prospective licensee must take a full course or an exam depends upon the circumstances of the broker firm and the individual strata manager. All prospective strata managers are also subject to a criminal-record check.

Long-Term Implications

For the purchaser of a strata lot, whether a strata corporation is self-managed or professionally managed, is likely to become a more significant issue with respect to the decision of whether or not to purchase a particular strata lot. The increasingly stringent requirements with respect to strata management under the *Real Estate Services Act* will almost certainly have the effect of significantly increasing the cost of delivering strata management services, which will likely translate into higher strata fees.

On the other hand, the increased accountability of professional strata managers provides additional security for the strata corporation's funds. ▲

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