

What is a service contract?

A new committee may well ask what and who are we contracted to? What is and what is not a service contract?

An inherent problem with annual elections for a BC committee is that some continuity may be lost. Well there is a provision for that! Every document that comes before a BC committee becomes a BC record to be kept forever. This is the responsibility of the Secretary although will often be delegated to the BC Manager if there is one. When Secretaries or Managers change, the documents must be handed over to the new Secretary (I wish!).

Anyway the point to be made here is that contract information should be available and only a short dive into historical files is required. Why are we talking about this? Because there is in the BCCM Act* a distinction between a contractor and a service contractor. There are also wider contract law issues, best left to a lawyer.

However, we should be aware that the BCCM Act defines what a "service contractor" is so any contracts or agreements that are not within this definition generally fall outside the provisions of the BCCM Act. So, a service contractor:

- Is contracted to the Body Corporate;
- Is contracted for at least 1 year;
- Does not provide administrative services (eg BC Manager).

Examples of a service contractor might be, lift maintenance, fire equipment maintenance, building (residential unit) manager but not a body corporate manager as they provide administrative services.

Examples of contracts that are not service contracts are one off services such as pest control, plumbing repairs and sinking fund forecasters.

The key consequence is that the legislation for service contractors, who enjoy a longer term contract, must provide certain information under the appropriate regulation. That is, a service contractor must:

- Provide a contract in writing;

- State the beginning and end dates of the contract term;
- State any terms or options for extension or renewal;
- State the functions or services to be performed;
- State the basis for working out the payment for services.

A handshake, nod or a wink will not cut it and any such unwritten arrangement will be void. This ensures there is some protection for both parties (or at least opportunity for dispute) for those larger and longer contracts.

When entering into contracts and when considering the notion that BC Committees only last for 1 year, it needs to be understood that individuals can not be party to a contract. That is, any contract should not require a "director" to be liable nor should a contract have rollover provisions that might adversely affect the ability to cancel a contract. That is, the BC Committee should watch out for rollover conditions in the fine print that might inhibit a future committee.

Quotations that are valid for 30 days are normal in the business world but useless when a Body Corporate needs a full BC (general) meeting resolution. The meeting simply can not be arranged at short notice. Whilst the contractor will often accept approval outside the time limit, we don't want to encourage a revolt from owners because of the lapsed validity period. This could cause the general meeting vote to fail.

What does all this mean? Read potential contracts carefully and require modifications to suit BC needs. Seek assistance from your BC Manager and/or legal adviser where necessary.

Derek Payne FCPA, FGIA

Governance Mentors

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**The above refers to the BCCM Act but this reference and the contents of this paper are intended to include provisions in the various modules that are applicable.*

Disclaimer

The above article is advice relating to better governance practice and is not legal advice nor intended as a substitute for legal advice.