

Council Rules

Disclosure of Agency Representation and Relationship in Trading Services: Cannot provide services unless they disclose:

The nature of representation the licensee will provide.

are they providing re services to/benefit of any other person involved in the trade

remuneration (in trade) from other party

nature of relationship (in trade) with other party

Substantive Change in Disclosure terms: agent must disclose again

Advertising

owners must consent to ads

names of brokerage must be prominently displayed

prohibited: signage of personal office

prohibited: personal address/phone number to affiliate with brokerage

Tort of Deceit

similar to fraudulent misrepresentation, applies to law of contract

Pasley v. Freeman. lying about clients situation

Code of Ethics and Standards of Business Practice

MINIMUM as set out by real estate BOARDS (under BCRE Association)

Chapter 7: strata and coop

Unit Entitlement

schedule of entitlement displays each strata lot's proportionate rights and liabilities for the common property. Accessible through LTO

(unit entitlement of strata lot/total unit entitlement of all lots) x Total Contribution

Unit entitlement is also calculated through the total habitable area of strata lot

Limited Common Property

Chapter 7: strata and coop (cont)

common property designated for the exclusive use of the owners of one or more strata lots. Requires 3/4 votes, must file resolution at the LTO

Short Term Exclusive Use

the strata may give permission to exclusively use common property that is not designated LCP

Parking Lots/Stalls

strata corp will have allocated the use of space by license of lease. Corporation will have licensed/leased space to developer, who will partially assign/sell rights to individuals

Strata Corporation

a legal entity created by the deposit of a strata plan in the land title office. The corporation's responsibilities are set out in the Strata Property Act and include the duty to manage, repair and maintain and insure common property and common assets

The owners of the strata lots in the plan are members of the corporation.

All members are shareholders. NOT personally liable when someone obtains a judgement against corporation

Suing a strata Corporation

if the case is won each owner pays their share by unit entitlement

Principal Duties of Strata

manage, repair, maintain and insure common property and strata assets.

duty to keep records (renters 3+ years, owners, purchasers, have access)

licensees should check 2 preceding years of: council minutes, annual extraordinary or special minutes, budget and financial statements, bylaws and rules

Balance Sheet

ASSETS = OWNERS EQUITY
+
LIABILITIES

Current Assets

marketable securities, accounts receivable, inventories, prepaid expenses

Current Liabilities

accounts payable, property taxes payable, wages payable, income taxes payable (NA for partnerships), interest payable

Chapter 10

Binding Contract offer, acceptance, consideration, legal intention, capacity, legal object, genuine consent

Latent Defect concealed defect, cannot be discovered upon reasonable inspection

Patent Defect discoverable upon reasonable inspection

Breach of Contract failure to perform without legal excuse any promise which forms part or all of the contract

Breach of Condition allows the injured party to terminate the contract and/or sue for damages or specific performance

Remedies



Chapter 10 (cont)

Damages: COMMON LAW. anyone who can prove they suffered loss as a result of breach. Damage intended to put the parties in the position they would have been if the contract had been performed. Liquidated damages are pre-agreed upon when signing the contract and is enforceable if it amounts to a reasonable estimate of foreseeable damages (otherwise other amt is set)

Specific Performance: EQUITABLE LAW. court will order the terms of the contract to be carried out instead of awarding damages. Granted in a contract for the sale of property where the property is unique (ie. rare)

Injunction: EQUITABLE LAW. stops a party from doing something, or requires a party to do something (mandatory injunction)

Quantum Meruit: requests the services of another in circumstances in which it is reasonable to conclude that the services would be paid for

A voidable contract is a contract which has an option to be cancelled, at which point it becomes void

Disclosure Statements (in development)

Document prepared by the developer of a subdivision to ensure that investors or purchasers have adequate information upon which to base a purchasing decision.

Failure to Deliver Disclosure

Disclosure Statements (in development) (cont)

agreement becomes unenforceable and the purchaser does not have to complete the transaction

Disclosures should be amended when:

there is a misrepresentation

does not comply with REDMA regulation

amendment must clearly identify and correct any misrepresentation/deceits

NEW Disclosures should be filed when: there are MATERIAL CHANGES

identity of developer, court appoints a receiver, liquidator/trustee in bankruptcy over the development property, superintendent gives notice to file new disclosure

purchaser receives a new disclosure, they have 7 days to rescind

Rescission: unmaking or undoing the contract from the beginning

Chapter 7: Strata Council

made up of strata members

general meetings decided by majority vote unless bylaws/legislation require different voting

if two or more persons share one vote to a strata lot, only one of them may vote on a given matter, if they cant agree their vote doesn't count

votes which lack legal capacity to make a decision are made by someone who is acting on behalf of them (power of attorney)

bylaws are not enforceable if they contravene the Strata Property Act, regulations or any other code.

Amendments are not enforceable if they restrict a persons right to sell, lease or mortgage their lot

if a rule conflicts with bylaws, bylaws prevail

Chapter 7: Strata Council (cont)

where a building is being converted into a coop, any residential tenants who are required to move will be entitled to the protections of the residential tenancy act

finances

reserve funds, budget process, special levies - refer to notes

Chapter 7: Cooperative Properties

created by incorporation of a company or cooperative association

company or coop has fee simple estate in building and lands, owner owns share in the coop or company, and is tenant of the association or company, on a long term lease

Governed by the Cooperative Associations Act, possibly also a shareholders agreement

To sell, the owner transfers shares and assigns the rights under his or her long term lease. Buyer may have trouble obtaining financing

Chapter 8: Principles

Cost Principle

when a business acquires an asset, the asset's historical cost (purchase price) is what should be recorded in the books, NOT the market value/fair price

Revenue Recognition Principle

when it is earned, not necessarily when cash is received

revenue from the sale of goods is considered to be earned over the period benefited by the cost. Recorded when INCURRED, not when paid

Matching Principle

expenses associated with revenue should be recognized in the same period in which the revenue is recognized.

Other expenses should be recognized in the period which the goods/services are consumed.

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Chapter 8: Principles (cont)

Costs which benefit more than one period should be recognized over the period benefitted by the cost.

recorded when INCURRED not when paid

Objectivity Principle

accounting information should be reported on objectively determined and verifiable data

Consistency Principle

accounting information should be reported on objectively determined and verifiable data

Consistency Principle

once a business enterprise adopts one generally accepted accounting principle, the enterprise should follow that same principle in subsequent years. They can change principles if necessary

Chapter 10: condition precedent

"subject to" clause

Calls for the happening of some event/performance of an act - binding on both parties

(for example: inspection and mortgage approval before completion of contract).

Waiver of s54 Law and Equity Act: benefits only that party: they may waive

Waiver of s54: benefits both parties - both parties must consent to waiver.

Subject clause is too subjective? court will declare the contract to be regarded as offer until the clause is removed.

Time Clause: period in which a condition precedent must be removed, or the contract will be cancelled

Lesson offer, callback about lesson/response, callback accepting: Callback = request for information. Response = counter offer

Doctrine of Privity: only the parties to a contract have the right to be sued.

Doctrine of Privity Exception: right to sue runs with the land (owners)

Chapter 10

Assignment: transfer over to another. Law and Equity Act states it must be: in Writing, Absolute amount, given to the original promisor

Vicarious Performance: it is legal to have obligations performed by someone else. It is not an assignment, but requires the substitution of one of the original contracting parties for another. The Subcontracting party can only be sued by the person they are in a contract with.

refer to notes for contract terminations, remedies

Chapter 5: Nuisance, OLA

private nuisance: prove damage, get injunction and replacement cost
remedy:

defences to private nuisance:

statutory authority (unavoidable),
damage is trifling

Occupiers Liability Act

does not extend to willing risks,
lesser standard of care to
trespassers

Common Law Distinction
Children --> Invitee --> Licensee --> Trespasser

Licensee: no contractual relation (social guest)

Invitee: contractual relation (contractor)

Occupiers Liability Act:

replaced the common law rules:
statute defines occupier as a person who has physical possession of the premises, or has responsibility for or control over the condition of the premises

OLA statute: occupier owes duty of care (condition, activities, third party conduct)

Chapter 5: Nuisance, OLA (cont)

the difference: there may be more than one occupier

Statute legislation
law aka:

Chapter 7: Fee Simple Strata Properties

created by strata plan which is filed in the LTO

owner owns a fee simple interest in strata lot plus share of common property as tenant in common with other owners

governed by the Strata Property Act, regulations, bylaws and rules

To sell, owner transfers a fee simple state to buyer, who can grant a mortgage secured by the fee simple estate

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Chapter 8: Financial Statements

Financial Statements

provide useful to present and potential stakeholders, in assessing the performance of those engaged to manage the assets and activities of the entity, provide information about economic resources of an enterprise

Comprised of

income statement: revenue/expenses over period

Balance sheet: assets/liabilities specific time sheet:

Income Tax Return



Chapter 8: Financial Statements (cont)

Statement containing list of all fixtures, goods, chattels, rights and other assets relating with the business

Income Statement

Depreciation is an expense

annual depreciation expense = (cost - salvage value) / estimated life (years)

Capital Cost Allowance:

the amount that the income tax act permits a taxpayer to deduct from income in determining taxable income.

Class 1 assets include most buildings acquired in 1988 and subsequent years, the rate of CCA allowed is 4% (at end of fiscal year)

Income Tax Act prohibits the deduction of depreciation expense but allows for CCA, adjustments must be made:

Net Income + Depreciation expense = subtotal - CCA = taxable income

Retained Earnings

Net Income + (-losses) - dividends

Comparatively:

assets - liabilities = owners equity

note: purchase of assets does not affect the amount of owners equity



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