ANSWERS TO UNANSWERED QUESTIONS AT THE JUNE 13TH SEMINAR
Harvey Williams, VISOA Helpline

Most of the unanswered questions fell into two groups, strata finance and strata management companies and a couple of questions that did not fit those two categories which are addressed separately. Most self-managed stratas are under 30 units so these answers will be more applicable to them.

Strata budgeting: There are two quite distinct parts to a strata corporation budget, an **operating fund** and a **contingency reserve fund,** CRF. The two funds must be accounted for separately. The operating fund contains the funds that will be expended during the fiscal year. It is a real budget and must be balanced each year, that is, planned income must equal planned expenditures. (SPA s92, s96, s97, 98)

As a practical matter, most operating fund budgets include a line for minor maintenance items such as repairing minor damage to walls and touching up paint even though those are may not be required every year. Our strata budget contains a ***Building expenses*** line for that purpose. It includes such expenses as replacing light bulbs, paint touch up and minor plumbing repair.

The CRF does not have to be balanced annually and if properly managed should not balance. Some years income will exceed expenditures and other years expenditures will exceed income. (SPA s95)

The operating fund requires a majority vote at the AGM for approval including both income and expenditures. The vote required to approval the annual contribution to the CRF depends on the balance in the CRF and is explained below in the discussion of the contingency reserve fund.

Operating surplus: In an ideal world, the amount of money allocated to the operating fund would equal the amount of money spent, i.e. at the end of the year, the balance in the operating fund would be zero. If there is a surplus in the operating fund at the end of the year, it can be returned to the owners, added to the CRF, or placed in an operating surplus. Any other allocation would require a 3/4 vote at a general meeting. (SPA s105.1)

Accumulated surplus: I have seen annual financial reports showing large accumulated operating surpluses. Personally, I do not think that accumulating large operating surpluses is sound fiscal management. Operating surpluses have no explicit rules as to how they can be spent and often become slush funds for pet projects. My practice as strata treasurer is to recommend that any operating surplus be rolled over into the next year's operating fund thereby reducing strata fees for that year.

Operating deficit: If there is a shortfall in the operating fund, money can be borrowed from the CRF, but it must be paid back by the end of the fiscal year. I am treasurer of our strata corporation, and when bills are due near the end of the year and the balance in the operating fund is insufficient to pay them, the strata council instructs me to borrow from the CRF. Then when I draft the budget for the next year, I include a line item to repay the contingency fund. (SPA s105.2

Annual financial reports: Commercial accounting packages with their balance sheets, profit and loss statements, deferred earnings and the like do not comply with the requirements of the Strata Property Act and, owners who do not have bookkeeping experiences often find them confusing. Strata accounts are essentially a record of income and expenditures which can be done conveniently on a spread sheet. One spread sheet can be used for monthly deposits of strata fees and a second spread sheet can list expenditure categories and budgeted amounts in the first two columns amounts expended and in each category on the lines. (SPA Reg. 6.7)

A cheque register can be kept on a separate spread sheet and cheque numbers written on each invoice paid. Matching invoices with cheques and verifying cheques on the bank statements traces cash flow in a manner easily understood by strata owners who could not make heads nor tails of a profit and loss statement or a balance sheet. A committee of owners with little or no book keeping experience can review these records annually to assure owners that funds are being spent and reported properly.

If no owner is willing to be treasurer, a bookkeeper can be hired but should be instructed to produce annual financial statements that are comprehensible to all owners. No license is needed to keep books for a strata corporation so long as the bookkeeper does not having cheque signing authority. The bookkeeper can write the cheques and have authorized council members sign them. Unless there is suspicion of misappropriation, a committee of two or three owners can review the books and bank statements at the end of each fiscal year.

Audits: Audits must be performed by a qualified accountant and are expensive, $3,000 or more for a strata corporation. A simple review as described above should be sufficient unless there is reason to be suspicious of misappropriation of funds. The surest way to guard against misuse of strata funds is to examine the monthly bank statement. All owners have a right to examine monthly bank statements. (SPA s35, s36)

Contingency Reserve Fund, CRF: CRF expenditures are expenditures that occur less often than once each year. All CRF expenditures must be approved by a 3/4 vote at annual meeting. Such expenditures are often large which is why they are sometimes referred to as capital expenditures and the CRF as capital reserve fund or capital replacement fund. Because the Strata Property Act uses contingency reserve fund (CRF), it's best to call it by that name. (SPA s96)

Investment of contingency reserve funds: I share the questioner's concern that the insurance provided strata agents against loss of strata funds may be inadequate. The primary consideration in the management of CRF funds should be safety, not yield and given the other protections afforded strata funds in the hands of strata agents, I doubt that a strata council could manage them any more securely. There is always the risk that a self-styled investment expert, or worse, a slick talker on the strata council could talk the strata council into investing the CRF in a non-existent Caribbean bank. SPA Regulation 6.11 lists the permitted investments for CRF funds.

Contingency reserve fund minimum: (Reg 6.1) The Act requires that the CRF be equal to at least 25% of the operating fund. If the reserve fund is below that amount at the time of the AGM, an amount equal to 10% of the operating fund must be contributed. This contribution must continue each year until the reserve fund is back up to the minimum 25% of the operating budget. The 25% minimum is clearly inadequate for apartment-type strata developments and probably so for townhouse developments.

This does not mean that the entire reserve fund can't be spent in one year, however. It can all be spent but the next budget must make a contribution equal to 10% of operating fund. This must be done each year until the reserve fund equals 25% of the operating fund.

Reserve studies: (SPA s94, Reg 6.2) A reserve study informs owners of how much money they must set aside each year in order to fund major maintenance without resorting to the special levies that are so often financially catastrophic to retirees living on fixed incomes.

Items that should be included in a reserve study are roofs, elevators, exterior and interior painting, water-proof membranes for roofs of underground garages, hall carpets and the like. The future replacement or repair cost of each item is divided by the number of years until the expenditure will be required. The sum of those amounts is the annual contribution to the crf required in order to have the cash in the bank when needed. (Reg 6.2)

Strata Agents: The operative terms here are principal and agent. An agent acts under the direction of, and on behalf of a principal. The strata corporation acting through the strata council is the principal and the "strata manager" is the agent. It is important that both the strata council and the strata agent understand and support that relationship. This requires some effort on both parts because strata agents usually have a broader range of knowledge and experience with strata management than do council members. The agency contract defines that relationship.

A strata agent can facilitate the work of a strata council but cannot replace the strata council. Nor can a strata agent always fix a dysfunctional strata council. The agent may even make it worse. The best way to fix a dysfunctional strata council is to elect a new council. A strata agent can, and my view should try to act as a mentor to the strata council. (s39)

What can be delegated to a strata agent? Duties can be delegated to a strata agent, but the council is the responsible body. The strata agent can draft the budget, but the council must review and approve the budget before submitting it to the annual general meeting. Similarly, the strata agent can draft the annual financial report, but it is the strata council that is ultimately responsible for its quality. If the strata council finds problems in the financial report, it can ask the agent to fix them.

The strata agent can collect and deposit strata fees. He/she can report delinquent fee payments to the strata council and advise the council on what action to take, but it is the council that must decide on the action and instruct the strata agent to take that action. In short, the buck stops at the council table.

Agency sidelines: Some management companies also provide other services such roofing, painting and insurance to stratas. It is an inherent conflict of interest for such companies to offer these services to strata corporations under their management. I recommend steering clear of such companies or at least of their sidelines.

Insurance in particular is a highly technical field, best left to an independent licensed insurance broker whom you trust. Being under-insured in order to save money on insurance premiums can be very costly when there is a loss, and a strata council that knowingly under-insures might be liable for the loss.

Keys: There are two kinds of keys, keys to units and keys to enter the building.

Keys to units: Some stratas have a bylaw requiring owners to provide keys to their strata council. Such a bylaw is unenforceable. Owners cannot be required to provide their key to anyone whom they do not wish to have a key.

Building entry keys: This is a more difficult issue because the security of the building is at stake. Neither the SPA nor the Standard Bylaws offer any guidance. All I can provide is my opinion with which I am fairly free.

The question was concerning owners who want more than two keys. In my view a limit of two entry keys per owner is too restrictive. Take the example of an elderly couple in shaky health. They might want a relative or friend to be able to look in on them if they don't answer the phone and they have a cleaning person who cleans when they are away.

A better way to control frivolous requests for keys would be to require a significant deposit for each key in excess of two. If a $50 or even a $100 deposit for each additional key were required, owners would think twice before requesting keys and would be motivated to return them.

In addition, owners could be required to sign an indemnity agreement to pay for rekeying the building if they lose a key.