

VISOA Bulletin - NOVEMBER 2021

Can I Spend The Money?

By *Shawn M. Smith*



The proper categorization of common expenses can be one of the more difficult things to navigate when it comes to strata corporations. The *Strata Property Act* (SPA) provides for two different funds from which common expenses can be paid: the Operating Fund and the Contingency Reserve Fund. Both are for different purposes as identified in s.92 of the SPA:

- (a) an **operating fund** for common expenses that
 - (i) usually occur either once a year or more often than once a year, or
 - (ii) are necessary to obtain a depreciation report under section 94, and

- (b) a **contingency reserve fund** for common expenses that usually occur less often than once a year or that do not usually occur.

Where the distinction between the two becomes most difficult is when it comes to repair and maintenance expenses. Not all strata corporations properly recognize the distinction. The Civil Resolution Tribunal (CRT) has been very strict in its application of the distinction to expenditures.

In *Stevens v. The Owners, Strata Plan KAS 2490*, 2021 BCCRT 492 the CRT considered whether expenditures in relation to a parking project and a tool storage shed were properly handled. The strata corporation ran into

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modest cost overruns (\$747) in relation to the first two projects (the cost of which had been approved to be paid from the CRF). The strata council decided to simply pay the extra amount from the Operating Fund even though such expenses were not included in the Operating Budget.

The CRT held that the strata council had no authority to do so. The amount exceeded the limit for unapproved expenditures set out in s.98(2)(b) of the SPA (being 5% of the Operating Budget – which in this case was very small). The costs also could not be considered an emergency expenditure under s.98(3). As such, there was no authority to spend the money without going back to the owners at a general meeting.

An emergency expenditure under s.98(3) of the SPA must have an urgent nature, not merely a prudent nature. The need to act must be immediate. In other words, there is no ability to wait 20 days to call an SGM. When a strata corporation decides to justify an expenditure as an emergency based upon the advice of the professionals; that advice must convey a sense of urgency. Strata corporations will not have grounds to draw funds from either the CRF or the Operating Fund if the professional's advice did not say the matter should be addressed immediately - *Perry et al. v The Owners, Strata Plan LMS 180*, 2017 BCCRT 135. Further, an immediate emergency expenditure must be based on evidence which clearly shows that the expenditure is necessary to ensure safety or prevent significant loss or damage - *Hodgson v The Owners, Strata Plan LMS 908*, 2017 BCCRT 66. The fact that something has been in need of repair for a long time and there is increased urgency, does not mean it is an emergency (in fact, it can indicate the opposite) - *Fournier v. The Owners, Strata Plan LMS 768*, 2017 BCCRT 11.

S.98(5) limits the amount that can be spent. It provides that the expenditure must not exceed the minimum amount necessary to ensure safety or prevent significant loss or damage. This provision is often overlooked. The question to be asked is: what is the "band-aid" solution? That is all that is permitted. Even if an expense qualifies as an emergency expense, a

strata corporation must ensure that it does not lump unrelated and/or non-urgent expenses together with a legitimate emergency expense - *Stevenson v The Owners, Strata Plan VIS 1419*, 2017 BCCRT 70.

The strata corporation in Stevens was also faced with needed repairs to a dock. A resolution to approve the expenditure from the CRF failed, so the council paid for the repairs from the Operating Fund on the basis they were an emergency. In determining the expenditure was contrary to the SPA the CRT said:

As mentioned above, the strata argues that the dock expenditures were necessary to prevent significant loss or damage, and therefore authorized by section 98(3) of the SPA. I disagree. This is because section 98(3) is for immediate expenditures that cannot wait for formal owner approval. The strata was aware of the dock flooding as early as April 2020 and did not make the purchases until August 2020, after it unsuccessfully sought owner approval at the AGM. While the strata suggests the docks were unsafe, aside from some undated photos of some of the docks and a single sentence in a council report, there is no other supporting evidence of an immediate safety issue.,

In *Greene v. The Owners, Strata Plan KAS 1244*, 2021 BCCRT 291 the CRT considered a number of repairs including several that were paid for from the Operating Fund. Those repairs involved:

- a fire system inspection (paid from the CRF as part of fire system upgrades)\
- security system replacement and upgrade;
- the installation of locks on attic access hatches;
- screens over dryer vents;
- replacement of exterior door;
- installation of attic venting;

The CRT held that the fire inspection costs could not have come out of the CRF because fire inspections occur annually. The \$500 expense should have been separated from the rest of the project and paid for from

Continued on page 3

the Operating Fund. It then determined that the other repair expenses from the list should have been paid from the Contingency Reserve Fund since they are things that the strata corporation did not do every year.

Similarly, in *Dirks v. The Owners, Strata Plan EPS2744*, 2021 BCCRT 127 the CRT considered the costs to re-key locks and determined that “the money should have been taken from the CRF (or alternatively, a special levy under SPA section 108)”; notwithstanding that all the owners at the AGM approved the budget containing the expense. This was because lock rekeying was not an annual event.

In *Kazakoff v. The Owners, Strata Plan KAS 880*, 2018 BCCRT 12 the CRT reviewed the issue of using a line item entitled “grounds and landscaping” for alterations to the landscaping itself (converting grassed areas to rock and planted shrubs). In doing so the member noted that they “cannot agree that landscape alteration

expenses to a specific area of the landscaping can be expected to occur once a year or more often than once a year.” As such, they should have come from the CRF.

Along similar lines, in *Meybodi v The Owners, Strata Plan EPS869*, 2021 BCCRT 89 the CRT held that the cost of repainting fences was not something that could be included in the Operating Budget.

However, in *Strata Corp. LMS 509 v Andresen*, 2001 BCSC 201 the court held that building envelope repairs and associated investigation expenses could be paid for through the Operating Fund since they were occurring on an ongoing basis each year. They were no longer unusual or extraordinary.

Practically, these decisions mean that in order to properly deal with repair and maintenance expenses, strata corporations need to carefully consider how often the particular expense (not merely the general type of expense) occurs. If the particular type of expense is not one that occurs annually, the strata corporation must either call a Special General Meeting when the repair in questions arises or else plan very carefully for the AGM to ensure that resolutions approving the work are presented for approval. Even then, not every repair will be known in advance. It will also mean lower repair and maintenance line items and higher CRF contributions in the Operating Budget.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn.



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The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.

Editor's Message



Welcome to our final Bulletin of 2021. On page 6 you'll find an article by a new member, Mariette West. Mariette started out writing a "Letter to the Editor" with her thoughts on our August Bulletin, and it evolved into an article that we hope you'll all find interesting. It contains her opinion and suggestions for legislative changes. Please let us know what you think, and if you feel strongly as Mariette does, write to your MLA or the Minister Responsible for Housing.

VISOA's President, Wendy Wall, has been actively working with local

government and others on the topic of EV charging for stratas, and her article on page 21 provides information on upcoming webinars as well as the newest rebate programs. With BC having the highest rate of electric vehicle sales in North America, we'll all need to know about this topic eventually!

Wendy also wrote an article suggested by another letter to VISOA – on page 9, she cautions us to think before we speak. If, as a council member, you've ever been on the receiving end of harsh words from an owner, you'll understand the inspiration for this article.

Lawyer Shawn M. Smith has contributed two articles for this issue – page 12 gives us the scoop on vaccine passports in our stratas, and

our cover article from Shawn will help strata councils decide "Can we spend the money?". Understanding whether a project can be paid from the Operating Fund or the CRF, and when a separate vote of owners is required, doesn't have to be confusing, as Shawn explains. Of course, as retired strata manager Gerry Fanaken always said, "Just follow the law and you can't go far wrong."

Finally, on page 18, our business member Paul Stein gives us some tips for saving time and money with our interior painting projects.

Thanks to all our contributors this issue, and as always, if you have an idea for an article or a comment on one in this issue, please write to us.

Sandy Wagner, Editor

What is a heat pump?


What do councils need to know before approving requests from owners?

VISOA Webinars:

January 15: Cooling Systems for Strata Owners
with engineer Christy Love and architect Grant Laing, RDH

January 22: Heat Pumps: Strata Bylaws and more
with Paul Mendes, Lesperance Mendes Lawyers

See VISOA's webinar schedule at: www.visoa.bc.ca



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Did you know?

The BC Government's Strata Housing website has been updated.

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- Changes to Legislation
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YOUR PAGE: Letters to VISOA



Legislative Changes Needed

By Mariette West

Just a note to express appreciation for the article you published in your most recent journal, by Shawn Smith, of Cleveland Doan on “Document Requests Under the *Strata Property Act*”. As usual, Shawn has provided very comprehensive coverage, except one point that is missing this time. He forgot to mention that a strata corporation may share almost any document. It doesn’t need to restrict itself to Section 35 documents which list what a strata must provide. In my opinion, transparent stratas will, for example, share all financial information openly including invoices. There is no way to “follow the money” without seeing invoices and many stratas are posting them along with general ledger and other information, on their own web portals. Why not encourage this? It allows owners to assist with providing important oversight and it demonstrates a willingness on the part of the strata council to be transparent. It also builds trust rather than suspicion. Section 35 of the *Strata Property Act* needs to add to the list of documents stratas must provide to include, for instance, that the sign-in sheet at AGMs is attached to the minutes; and Section 36 needs to include penalties for stratas that delay or refuse to share documents. Owners expect openness, full transparency and the opportunity to provide feedback and oversight. Also,

often more heads are better than one or a few. Many councils leave the job of providing all the checks and balances to a single council member, creating a burden for that person. All council members should assist with scrutinizing invoices and owners who wish to do so should be encouraged, not told “We don’t have to provide this so we won’t”. It is much more inclusive to simply post all on a secure web portal that can be accessed by owners using a secure login process.

Secondly, thanks to Wendy Wall for the cover page article in the August *Bulletin*. I could not agree more. Neglecting repair and maintenance of the common property and most especially for major structural components, windows and doors and other items that protect us from the elements, is irresponsible and indeed results in the outcomes we have seen at Surfside in Miami Dade. We have had our own building collapses in Canada, recently and in the past, including the recent horrific incident in North Vancouver that resulted in at least one death and several injuries, the collapse of a mall in Ontario resulting in several deaths, and the collapse of a Save On Foods outlet in Surrey years ago. We need to learn from these lessons and remember the basics, such as spending a dime now to save \$10 later, and importantly that neglect and/or negligence can and does result in loss of life or life-changing injuries. When the father of one or several children is badly injured, the lives of his wife and children are forever

changed. The “collective” apathy, or sometimes the goals of a few, is often the “cause” of this neglect. Changes will need to be multi-pronged.

Sometimes a strata council is determined not to raise the monthly fees by even a penny and it is council that decides which resolutions, including resolutions for special levies or CRF expenditures, make it to the AGM agenda. What I see is that owners at our strata, and likely at many others, vote the way their council wants them to and significantly, a large number of votes by proxy, held by a few, often determine the outcomes. There is only a minimal process for certification of proxies, and it is mostly an honour system, again creating a lot of suspicion instead of trust that will allow for the positive changes most want. These are not issues that should be left to strata corporations to include in their bylaws, but things that require changes to the legislation to enhance legal certainty and encourage consistency province wide such that moving from one strata to another does not mean needing to step very carefully to avoid stepping on a landmine.

A group of owners at our strata attempted to create a bylaw for more transparency and clarity about certification of proxy assignment documents. The proposed bylaw did not see the light of day, and those who did the work were oppressed by those in control, who used

Continued on page 7

their questionable, definitely “farmed proxies” to control the vote on all motions, resolutions and the election. A 20% petition is redundant when a single person acting as proxy for a tremendous number of owners (who may not even know they are voting by proxy) overwhelms any hope of positive change. In the best interests of the public (the 2 million strata dwellers in BC) the provincial government should replace voting by proxy with secure remote voting accompanied by a detailing of solid checks and balances in the *Strata Property Act*.

Replacing voting by proxy with secure, remote voting options would allow for Zoom, Teams, or other electronic meeting formats, as well as in-person meetings, to connect to a truly independent and secure automated system when any vote is called. These systems, now available, allow also for a truly secret ballot and for very reliable automated counting. This change would preserve the right to vote for all owners and resolve the existing problems with “proxy farming” that currently allow a few owners to steer important decisions, circumventing other longstanding priorities; and it would even allow for referendum style input by the collective on certain decisions that need to be made during the year.

As well as changes to the *Strata Property Act*, legislation also should require a few changes to the BC Building Code to compel developers to construct buildings that are designed to last, not ‘age-out’ prematurely and be sent to the

landfill. They should be required to: include heat pumps and other simple energy saving systems such as light pipes; install floors that are very slightly sloped, with improved waterproofing and central floor drains in all “wet rooms” (kitchens, bathrooms and laundry rooms) to prevent floods that disrupt lives due to extensive damage and huge insurance claims. These floods often result in damage to the envelope that are not fully discovered, and result in the cumulative and long-term problems Wendy Wall has addressed in her article.

Prevention needs to be triggered by owner-recommended changes to the building code, and the *Strata Property Act* and its accompanying *Regulations*. Owners generally want to prevent special levies, so this should mean changes to the Act to compel annual Major Asset Management Plans so owners know what to expect in the budget, and to make sure the plans committed to are executed properly and in time. Leaving such requirements to individual strata bylaws is not in the best interests of strata home owners who deserve more legal certainty and consistency from one strata to the next. The requirements to have depreciation reports also need to provide more certainty. Many stratas get one, going with the least expensive quote just to get the report done to meet the only current legal requirement, and then annually and forever waive doing another one, again with the voting by farmed and perhaps fraudulent proxies determining the inevitable

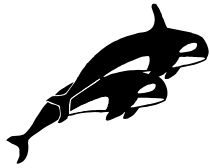
outcome.

In addition, the *Strata Property Act* should amend the Contingency Reserve Fund (CRF) provisions to require the collective to save and use their CRF, specifically and perhaps only for maintenance, repairs and replacements. And provisions are also needed to require applicable science-based standards such as CSA (Canadian Standards Association), ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers), BCCDC (BC Centre for Disease Control), WorkSafeBC, Health Canada, etc., for both regular and periodic maintenance, repairs and replacement of major building systems and components. Maintenance done to standards will save tremendously on energy and prevent the early demise of costly assets such as HVAC systems.

Perhaps most importantly, the *Strata Property Act* needs to review, add to and improve the governance provisions to better protect the principles of democracy and due process without which any positive changes are next to impossible.

In summary, the legislature needs to create new and stronger provisions in the BC and other building codes and in the BC *Strata Property Act* to better protect our homes and investments, and to improve the quality of life for the 2 million British Columbians living in stratas.

Mariette West is a VISOA member from Vancouver. This is her first contribution to the Bulletin.



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Think Before You Speak

By Wendy Wall, VISOA President

Growing up, you might have often been told to think before you speak. There have been times while living in a strata that I have been reminded of that sage advice. If you have ever heard owners accuse council members of conflict of interest, negligence, incompetence, misconduct, fraud, or malfeasance, I offer the following food for thought.

In my experience, words like these are uttered when someone is upset. Heightened feelings are certainly understandable when an owner is going through a stressful time such as experiencing a water leak into their unit. But it does not help the situation to make accusations. Naturally, the people being accused will feel slandered, and tensions will mount between an owner and council members.

I'm not saying that all actions by councils are done correctly. It's easy for even well-intentioned council members to make a mistake. But I encourage you to take pause, before making serious accusations.

Much of the time, the situation is exacerbated by a lack of understanding and education. No one expects you to memorize the legislation and bylaws; however, before jumping to conclusions, it would be a good idea to make sure you understand how the law applies to the situation you're upset about.

The *Strata Property Act* (SPA) says, "The strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners". "The powers and duties of the strata corporation must be exercised and performed by a council." And "In exercising the powers and performing the duties of

the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances."

The B.C. Supreme Court has stated that the standard is not perfection.

Conflict of interest?

A phrase often thrown about is that a council member is in conflict of interest. In a strata setting, what constitutes a conflict, and what steps are required, are commonly misunderstood. Under the *Strata Property Act*, a council member only has to disclose the nature and extent of the interest, abstain from voting and leave the council meeting while the matter is discussed and voted on. For example, the other council members could vote to award a contract to a company that a council member has an interest in. But that council member has to leave the meeting and cannot vote on the motion.

Negligence to maintain and repair?

How often have you heard an owner say "council is doing nothing" because it's taking a while to repair something? Before throwing around words like incompetence or negligence, perhaps read the minutes or ask if there's a reason for the delay. Is it something that falls outside of the operating budget? Does it require a vote of the owners at a general meeting? Is there a problem finding a contractor? Is an owner denying access?

Even everyday repairs are not always straightforward. Consider water leaks. Some water leaks can be identified fairly easily, repaired, and the resulting water damage dried out within a few days. Other water

leaks can be tricky and investigation can result in a finding that the source cannot be determined. Or investigation may require destructive methods such as cutting into a ceiling, removing exterior cladding, and testing by an engineer. These things take time and money. Not to mention that, since the onset of the pandemic it has been increasingly difficult to find professionals, contractors and trades who have the capacity to take on work on short notice.

While a repair may not be completed right away, a strata corporation would not normally be found negligent if the council started the investigation in a timely manner and made reasonable attempts to get the repair done. Councils may also reasonably rely on professional advice, even if that advice is later found to be wrong. Determining negligence is complicated. To understand if there has been negligence in a particular situation, it would be prudent to get more information and legal advice.

Poor workmanship?

A common complaint is dissatisfaction with the work of contractors, particularly for large, expensive projects. While I hope that stratas will always hire qualified contractors and be happy with their work, there are a few factors to consider before declaring that the council is incompetent.

The underlying decisions and authority for the project might have been the decision of the owners, not the council. Did the owners approve enough funding to hire good contractors? Did the owners support a professional bidding process with a defined scope of work, specifications, and drawings if applicable? Or did

Continued on page 10

the owners want to skip that process because they thought they would save money? Did the approved budget include enough funds to pay for a project manager and inspections?

Frugal stratas don't actually save money. If there is insufficient funding and/or a poor process don't be surprised if you get poor workmanship, or the work needs to be redone. If the quality of workmanship is in fact below industry standards, the contract may provide recourse for the strata corporation to get the contractor to rectify the problem.

Incompetence?

You may think that the council is incompetent because, in your opinion, there was a better way to conduct a repair. Remember that your solution is not necessarily the only reasonable approach. The B.C. Supreme Court has stated that a strata corporation must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities. There can be "good, better or best" solutions available. Choosing a "good" solution rather than the "best" solution does not render that approach unreasonable.

Unauthorized spending?

Another common remark is that a council or a property manager did not have the authority to spend money. A statement like this is often made without a full understanding of

the SPA, bylaws and budgets. What expenditure has upset you? Or is it for something that usually occurs either once a year or more often than once a year (these are operating fund expenses) or usually occurs less often than once a year or that does not usually occur (contingency reserve fund or special levy expenses). Look at the notice package and minutes of your most recent annual general meeting (AGM). Check the approved operating budget. Check the exact wording of any resolutions to spend funds from a special levy or the contingency reserve fund (CRF).

If owners approved the expenditure in the operating budget or in other resolutions, then council has been given the authority to make the expenditure. If you still think they didn't have authority, read the minutes to see if it was made under section 98 of the SPA, which allows the council to make unapproved expenditures under certain circumstances.

What can you do?

Get informed

Visit VISOA's website for resources and frequently asked questions. To get more information from the strata council or property manager, an owner can make a written request under section 36 of the SPA for copies of records or to inspect those records. This could include certain financial information and correspondence. Check section 35 for a list of the records that you are allowed to request.

Get involved

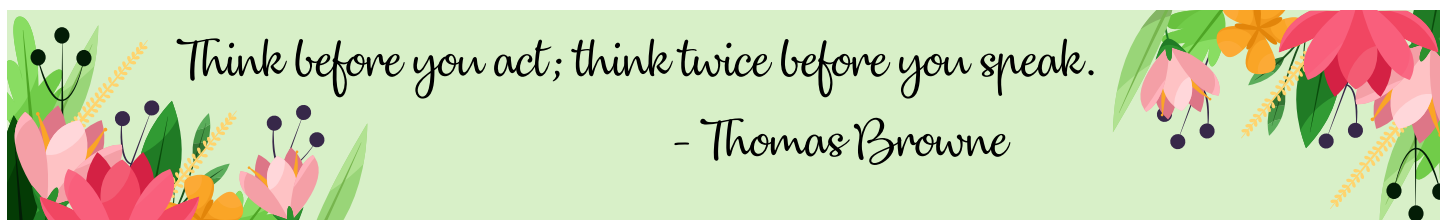
If you are not happy with your

strata council, consider running for council at the next AGM. Engage your neighbours. Encourage owners to read the minutes of meetings and to read the AGM notice package. It's important for owners to exercise their vote and make informed choices. If they don't participate in AGMs, then they really should not be complaining about which council members were elected.

File a complaint

If your concern is not addressed to your liking and you think the council has violated the *Strata Property Act*, bylaws, *Personal Information Protection Act* (PIPA) or Human Rights Code, then you could pursue your complaint. You may want to get legal advice first.

- The Civil Resolution Tribunal has free legal information on their website in the Solution Explorer. After learning more about your strata issue, you can decide if you want to file a claim.
- B.C. Supreme Court. There are some strata issues that only the court can decide such as appointment of an administrator.
- The Office of the Information and Privacy Commissioner. Contact OIPC for violations of the *Personal Information Protection Act* (PIPA).
- BC Human Rights Tribunal. This tribunal can decide matters related to the Human Rights Code.
- BC Financial Services Authority. BCFSA is now the regulator for complaints about strata property managers under the *Real Estate Services Act*, Regulation, and Rules.



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Strata Corporations and Vaccine Passports

By Shawn M. Smith

Since the introduction by the Province of vaccine card requirements there have been many questions regarding their application to strata corporations. Combined with capacity restrictions on indoor gatherings, this has given strata corporations much to think about. The most recent Provincial Health Officer's Order ("PHO Order") has clarified some of those (and changed other requirements).

Vaccine card requirements potentially apply to the following strata corporation activities:

- General meetings (AGM's and SGM's);
- The use of common rooms for social gatherings;
- The use of gyms and other recreational facilities such as pools;

General Meetings (AGM's and SGM's)

When it comes to the first category, the PHO Order requires all persons attending most indoor gatherings at which there are more than 50 people, to be fully vaccinated. If the meeting has less than 50 people, vaccine cards are not required. Certain requirements such as remaining seated and having washroom facilities and hand sanitation supplies available still apply regardless of size.

Except in certain regions (currently Interior Health, Northern Health and Fraser East) there is no longer any capacity restriction on the number of participants (i.e. if a common room has a capacity of 100, there

can now be 100 fully vaccinated attendees).

If a strata corporation intends to hold an in person general meeting at which more than 50 people will attend then it, as "organizer", is required to ensure that only



persons with a vaccine card enter the meeting. This means having someone check both the person's identification and the vaccine card against the owner's list. Those persons who do not meet the vaccine card requirement cannot be permitted entry to the meeting. They will need to give a proxy to a vaccinated person who can attend in their place.

Unfortunately, a strata corporation cannot, of its own initiative, limit attendance in order to keep the number of attendees (owners, tenants, spouses, strata managers and guests) below 50. Every owner has the right to attend if they wish. Owners cannot be forced to give a proxy simply because a certain number of attendees has been reached. Only in the case of a hybrid meeting (i.e. a combination of in person and virtual attendance)

might that be possible.

Use of Common Rooms for Social Gatherings

The current PHO specifically refers to social gatherings at which the participants are not required to be seated. This means that if the strata corporation or a resident were to host an event in the common room or clubhouse and more than 50 people attend, all persons 12 and older who are attending must be fully vaccinated. The PHO Order requires that the owner of the place at which the event is being held "be satisfied that the organizer is aware of the conditions and requirements in [the order] and has the capacity to fulfill them." This means that the strata corporation will ultimately be responsible for ensuring compliance at non-strata events.

A requirement to enforce vaccine cards will undoubtedly create logistical issues in terms of verification and control of access. That may in turn lead to a desire to close amenity facilities. If that is the wish of council, that decision can only be made by a $\frac{3}{4}$ vote of the owners. Most issues regarding controlling the use of such facilities can be addressed through the passage of Rules.

Use Of Gyms And Other Recreational Facilities

The current PHO Order specifically exempts "fitness facilities which are located... in a residential building for the benefit

Continued on page 13

of residents”. The prior one did not. This change means that vaccine cards would therefore only be required in the case of use by visitors and non-resident owners. Pools are generally exempt from the vaccine card requirements unless they are being used to host an event for more than 50 people.

The status of recreation facilities which are shared with other strata corporation(s) is not entirely clear. However, given that the PHO Order also specifically exempts such facilities when located in a work place or a hotel, the “residential” exemption would seem to apply to such facilities as well.

A strata corporation may want to enact a bylaw imposing its own requirements for vaccination in order to access services and facilities not captured by the mandatory requirements of the PHO Order. However, great care and a good deal of thought and planning need to go into such a decision. There are several potentially problematic legal issues to navigate, such as:

- S.71 of the *Strata Property*

Act which prohibits a significant change in the use of the common property without a ¾ vote (which means a Rule cannot be used to impose the requirement);

- S.164 of the *Strata Property Act* which provides for relief against significantly unfair decisions and actions of the strata corporation (where those are burdensome, harsh, unjust, etc.);

- Privacy issues arising under the *Personal Information Protection Act* regarding the need to disclose vocational status (the Office of Information and Privacy Commissioner has said that “the necessity, effectiveness and proportionality of vaccine cards must be established for each specific context in which they will be used.”);

- The obligations owed to owners and others under the Human Rights Code (the Human Rights Commissioner has said that “vaccination status policies should be justified by scientific evidence relevant to the specific context, time-limited and regularly reviewed, proportional to the risks they seek to address,

necessary due to a lack of less-intrusive alternatives and respectful of privacy to the extent required by law.”);

While strata corporations must comply with vaccine card requirements in certain settings, they should be cautious to implement them in others (and perhaps not if other procedures, such as mask mandates, would provide sufficient protection). Legal advice should be sought before enacting any such bylaw or rule.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn

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PROXY FARMING

Q. How many votes are needed to oblige council to accept a designated proxy process? At present proxy fishing, intimidation and blind allegiance have been used over the past several elections. Would such a petition bring about change?

A. To clarify, the strata council is not obligated to follow any process unless it is stated in a bylaw or required by the *Strata Property Act* or *Strata Property Regulation*. A bylaw amendment requires a $\frac{3}{4}$ vote of the owners at a general meeting. We'll discuss bylaws in more detail below.

Discussions about "proxy fishing", "proxy farming" or "proxy harvesting" have become more prominent, especially due to COVID-19, but this practice has been happening for some time and is frustrating for many strata owners.

In the *Strata Property Act*, there is nothing preventing some owners from gathering enough proxies to be able to sway the vote on any particular issue to their own way of thinking. A proxy form is a contract between the owner and the person they are assigning as their proxy. While the person acting as the proxy should follow any voting instructions provided, they often vote their own way. The strata has no authority to enforce voting instructions.

During COVID-19's restrictions on attendance at gatherings, some stratas have attempted to reduce the number of people at an AGM or SGM by trying to mandate that

an owner select a proxy from just a few people (often current council members). The SPA does not permit such restrictions. The owner can choose any person they wish to be their proxy. The council must also make arrangements to have a room large enough to seat all participants or to ensure there is an electronic method for attendance.

Some stratas have tried to make a bylaw that restricts the number of proxies any person may hold, but this is likely unenforceable because it denies the requirement of SPA s.56 that allows an owner to appoint anyone they choose.



On the other hand, there are many strata owners who would like to see stratas have options. A possible solution could be replacing SPA s. 56 with something like Section 85 of the BC Societies Act, which provides that a voting member may appoint a proxy holder, only *if permitted in the bylaws* of that society. One society we are aware of has included a clause which not only restricts proxies to members only but also prevents the member from holding more than one proxy at a time.

For stratas the quandary remains between balancing the owner's rights and responsibilities to appoint a proxy while avoiding control by a few.

There will always be some owners who "proxy harvest" in order to get business done their way. Some of these people may be intimidating. But the real problem is, as you said, blind allegiance.

Proxy farming is only successful if owners assign their proxy without any thought. Just because someone knocks on their door and asks for their proxy does not mean they have to give it to that person.

It takes work to encourage more owners to pay attention to the notice for an AGM or SGM. Conversations can help bring their attention to matters of importance. The more engaged they are, the more likely they will either attend the general meeting or give thought to whom they name as their proxy. Concerned owners could circulate throughout the strata, without intimidation, to offer to be a proxy for those who cannot attend.

Change is often slow. It may take years to shift the culture of your strata to a higher level of engagement of owners. But it's worth the effort to ensure a varied turnout so everyone's views can be represented. You might also be less likely to end up with the same people elected to council year after year.

If you would like to advocate for changes to the *Strata Property Act*, you can write to the Honourable David Eby, Attorney General and Minister Responsible for Housing at AG.Minister@gov.bc.ca, to recommend replacing Section 56 of the *Strata Property Act* with something similar to Section 85 of the Societies Act.

Saving Time and Money - Interior Painting and Maintenance Tips for Stratas

By Paul Stein

Painting the interior of your strata common areas can be expensive, especially if you need all surfaces painted all at once.

Knowing what you need to paint, versus what you think you should paint can help minimize costs and let you maintain a beautiful appearance in your common areas. Knowing how to get the most out of your money can also extend the value of your interior painting.

Here is a list of paint tips and ideas that will help you budget your next painting project so that you don't break your bank.

1. MAINTAIN HIGH-TRAFFIC AREAS

Most of the time, you don't need to paint everything when you hire a painting contractor. That being said, there's a few areas in your strata that take more of a beating than others.

For example, your front lobby or parking area entrances. These rooms have high traffic from all the residents in the building.

People with bicycles, carts and other items can ding the walls and trim which present an unattractive appearance. However, having a small annual maintenance plan to upkeep these areas not only keeps it looking good, but it shows your strata members and guests that you care about first impressions and the rooms you all share.

It's a small cost that maintains a big image!

2. USE DURABLE PAINT

Not all paint products are the same. Some paint products are contractor grade, while higher-end products can deliver much better longevity and finish over a greater period of time.



For example, when painting trim and doors you want to use a durable Semi-gloss trim product like Benjamin Moore Scuff-X, Sherwin Williams Emerald or Dulux Diamond paint - all 3 products deliver a durable finish that helps prevent scuffs and makes it easy to clean.

For wall finishing, flat paint sheens can present a warm and soft look. However flat (or matte) sheen finishes tend to be less durable. So using an Eggshell finish, and in some cases a Satin or Semigloss finish can extend the life of your walls.

Try to avoid applying cheap paint - you might save a little on the products but you'll likely pay more in labour costs (and in the appearance of the finish) in the long run.

TIP: Flat sheen paint is easier to touch-up over time as it has less glossy shine and touch-ups tend to blend a lot better.

3. APPLY WASHABLE PAINT TO THE WALLS

A simple tip for improving the look of the wall finish is to wipe away marks as they appear. This can be achieved by using a mild cleaning detergent and a wet rag.

As mentioned in tip #2 - not all paint products are the same. Many stratas use "washable" or "scrubbable" paint products because they tend to be more durable and resistant to constant cleaning.

These washable paint products tend to be Kitchen and Bath products, due to the nature of wet rooms which contain high levels of moisture. Bathroom walls need to be cleaned regularly, so selecting Kitchen and Bath specific products throughout your common areas is a great idea to help with the regular maintaining of the walls.

TIP: Using Mr. Clean washing pads can take away a lot of the stains on paint. However, what most homeowners don't know is that these cleaning pads can also wipe away the paint finish, possibly resulting in slightly different sheen levels over the areas you wipe - leaving your walls with a "polkadot" finish. If you use these cleaning products on your walls and trim, try not to scrub too hard and always test it on an inconspicuous spot prior to starting in the middle of the wall.

Continued on page 19

4. APPLY CORNER GUARDS TO PREVENT DAMAGE

Although it may make your hallways look a little more ‘institutional’ applying corner guards on the outside edges of your hallways (or around doorways) can help maintain the integrity of your corners and save you money over the long run.

As residents move in and out, and with daily traffic down the hallway it’s common to damage the corners of your hallway. And when this happens it not only makes it look shabby, it can be difficult to repair.

When residents hit corner guards it generally just chips the paint without damaging the actual drywall corner. This makes it easy to maintain with a quick swipe of a brush or roller with the paint to bring it back to its original look.

You can find slim or wide peel-and-stick corner guards at most hardware stores - they are inexpensive and can even be painted the wall color to help make them disappear. Installing stainless steel corner guards for extra longevity is an option - however these can be more costly.

5. DETERMINE WHAT YOU NEED TO PAINT.

Painting can be expensive. And painting areas that really don’t need to be painted can add to the cost quickly. So it’s important to analyze exactly what you need painted so that you can budget accordingly.

For example, ceilings tend to get very little damage and can be a big

part of your painting costs. If you don’t need to paint them, it could save you a tremendous amount of money. Painting stairwells, closets and other unused rooms adds to the overall costs when getting painting quotes from professional painters.

Lastly, while it’s best to paint all the walls on a floor so that there’s fresh continuity throughout your strata, sometimes there are certain walls that take more abuse than others. Sometimes it’s less than half of the walls on a floor that actually need to be painted, so assessing this can save you money. However, keep in mind that this option can take more time, and communicating these details could create confusion.

6. CHOOSE FEWER COLORS.

Stratas that have many wall colors throughout each floor create more work in the long run. While it may look trendier, it can make maintenance more complicated and costly.

Not only do you have to record each color/product/sheen and store more paint cans in your storage room, but it can present difficulty if you need to do simple touch-ups.

Having similar colors (half-tints or similar shades) can take extra prep time for your maintenance worker or painter, especially if you haven’t recorded the color scheme and if the lighting is poor.

Remember, if you no longer have the actual paint stored away, it’s likely you will need to “colour-match” the existing color - which will never be exactly the same color, especially if it’s a different brand of paint.

If touched-up without much thought, you could create more of a headache - creating more work by applying the wrong colors on the walls which only draws more attention to the problem.

When you’re hiring a painting company for a complete interior repaint throughout your strata, you might want to consider choosing downsizing to a simple color pallet so that it make it easy for future maintenance and touch-ups.

TIP: Make sure to always have left over paint once you update with a new wall color. Never recycle the old paint until you know it’s no longer used. This will save you hours of speculation, mental calories and possible color matching if you simply need to perform general touch-ups.

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Paul Stein is CEO of Trusted House Painter Ltd.

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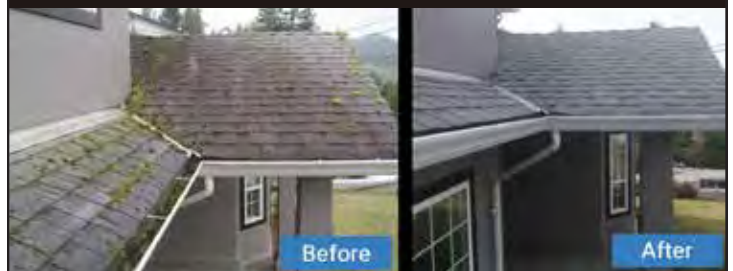
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EV Charging Webinar Series

By Wendy Wall

With the growing popularity of electric vehicles, strata owners and councils have a lot of questions about how to install and manage charging stations in their stratas. We're happy to announce the launch of VISOA's webinar series that will help you learn about the steps involved, rebates available, and what you need to know about ongoing operating costs and management of these systems in the years that follow.

This series dives deep into the details of the *CleanBC - Go Electric EV Charger Rebate* program by dedicating separate webinars to each of the four rebates that apply to stratas. One of these webinars will be dedicated to townhouses as the rebates available to townhouses work differently. Additional webinars will focus on other important topics such as understanding parking (Is your strata parking stall really yours?), EV Charging Bylaws for Stratas, User Fees for EV Charging, and more.

There is a great deal of information about electric vehicles, charging stations, and systems online. However, there is a need for complete and accurate information for stratas. VISOA's goal is to provide information that considers how all the parts fit together: legal, property, electrical, human, and financial.

There are a number of factors that combine to make every strata corporation unique. This begins with your strata plan which determines how strata legislation and bylaws apply to your strata

specifically. This will affect the decisions that your strata owners make such as who will maintain and repair the infrastructure and charging stations. Other factors include the types of parking areas such as underground parking or surface parking, the layout of your property, and the location and capacity of your electrical systems. Then there are financial pressures. Your strata corporation may have high insurance premiums and deductibles. Your owners must also consider how to balance and prioritize repair and renewal projects that you need to fund from your contingency reserve fund or by special levy. There is also a human factor. Every strata has a unique make-up of owners. One might have a lot of seniors, another might be mostly young couples and families, while some might have a higher proportion of investors who are renting out their units. A levy of \$1,000 might be easy for some stratas and a hardship in others. Some might have a higher proportion of vehicle owners while others have many residents who rely on public transit. Regardless of the demographics, the values of the ownership can vary from one strata to another. Climate change might be very important to the residents in one, whereas property values might be a top priority in another. The decisions that are right for your strata owners could be very different from other stratas for many reasons.

To get you started, VISOA has a new page on our website

called *Electric Vehicle Charging for Stratas*. There you will find information and our upcoming webinars. We will be adding resources and worksheets over time.

For stratas with condominium-style buildings, watch the recording of our first webinar that took place on November 20, "***EV Ready Plans for Condominium Stratas***". An EV Ready Plan is a valuable tool to create a roadmap for your strata. It is a professional document that includes details of how your strata will provide each residential unit with at least one "EV Ready" parking space. This is a great time to get your plan completed. You can apply to receive a rebate of up to 75% of the cost of the plan, to a maximum of \$3,000.

Our webinar on December 11 is called "***EV Electrical Infrastructure Rebates for Condominium Stratas***". This explains the next steps after you have an EV Ready Plan. If you decide to implement the plan to provide each residential unit with at least one "EV Ready" parking space, you can apply for a rebate of up to 50% of the cost of the project up to \$600 per parking space, capped at \$80,000 per strata corporation. This project is to install the electrical infrastructure but not the charging stations.

A webinar called "***EV Charging Stations: Rebates for Stratas***" (date to be decided) will explain the rebates available for the

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charging stations. This rebate is available to stratas whether or not they participated in the first two rebate programs. To qualify for this rebate the charging stations must be networked for a minimum of two years. Our experts will explain what networked means,

There may also be rebates from your local government or district. For example, the District of Saanich recently announced top-up rebates that provide an additional \$1,000 for an EV Ready Plan and an additional \$100 per parking space for the Electrical Infrastructure program. Learn more at www.saanich.ca/ev

Confused? Don't be. Our

webinars feature guest speakers who will explain electrical concepts, provide tips, and ensure that you comply with the *Strata Property Act* every step along the way.

You will also be interested to know that, in October, the provincial government announced that they are committing another 10 million dollars to the CleanBC - Go Electric EV Charger Rebate program. The announcement came a day after the province announced its CleanBC plan which details a series of actions for BC to achieve its greenhouse gas emissions targets. Part of that plan is to switch BC to 100 per cent zero-

emission vehicles by 2035.

We hope that this article has motivated you to attend our webinars, but don't worry if you miss one. You can watch the videos later on our YouTube channel.

VISOA gratefully acknowledges the financial support of the Province of British Columbia through the Minister of Energy, Mines and Low Carbon Innovation.

On behalf of VISOA, Wendy works with governments and community stakeholders to facilitate an understanding of how strata corporations function and to establish best practices to facilitate successful EV charging installations.

Saanich is taking climate action

Get your condo building ready for electric vehicles with new "top-ups" to the CleanBC Go Electric Rebate Program!



Learn more at saanich.ca/ev



VISOA with the support of



presents a free webinar series

EV Charging for Stratas

Learn about rebates and so much more.

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President's Message



WE ARE STRATA OWNERS TOO

- By Wendy Wall

At VISOA, we understand that while living in a strata is usually pleasant and enjoyable, sometimes there are rough patches. We have all seen news stories about conflicts and difficult situations in stratas. Not surprisingly, our Strata Support Team is most often contacted by people who are upset, angry, or frustrated about something that is happening at their strata or not being done the way they think it should be.

And if you frequently read Civil Resolution Tribunal (CRT) decisions, you will often see disputes where it's obvious that there is a long history of people not getting along, years of disagreements over governance and maintenance decisions, and sometimes behaviour that only serves to aggravate the situation. It's easy to read between the lines

and see that, in some cases, there is a complex, deep-rooted history of conflict. You may have even noticed that some disputes have continued in B.C. Supreme Court. Are the people involved digging in on principle? Are they hoping for a decision that indicates they are right and the other is wrong? In the end, is anyone happy?

All of our VISOA board members live in stratas. We are strata owners too and we are not immune to the same difficulties that other strata owners face. This year, two of our board members made the difficult choice to sell their units and move to other stratas.

You may not like the choices in front of you, but you always have a choice. Will you dig in your heels and fight? Or do you think you will feel happier and healthier by deciding that it's time to move on?

My point is that I want to assure you that VISOA board members can relate to your experiences. We are strata owners too, and it's what drives us to help others. For 48 years our motto has been "strata

owners helping strata owners".

I hope that you never have a difficult time at your strata that makes you consider selling, but if you do, we are here for you. Sometimes all you need is the right information to help you resolve the problem. Other times you might need guidance to learn what the steps are in a process such as requesting a hearing with your strata council, or calling a special general meeting (SGM) by written demand. And, depending on the situation, you may want to consider getting legal advice.

We can't tell you whether to stay or go. That's a personal decision that you will have to arrive at on your own. It might be a difficult choice, but it's your choice.

I'm pleased to report that our two board members are settled into their new stratas and feel that they made the right choice for their health and happiness.

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