



BULLETIN

News and resources for BC strata owners, councils, and industry professionals



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Vancouver Island Strata Owners Association

VISOA Bulletin

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The Bulletin is a digital magazine published by the Vancouver Island Strata Owners Association (VISOA) four times per year.

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VISOA is an independent, non-profit, member-funded society. Formed in 1973, it is the longest-running organization of its kind in Canada. VISOA provides education, support, and advocacy for British Columbia strata owners and strata corporations. As part of its mandate, VISOA meets with government and industry associations, and sits on advisory panels to advocate for BC strata owners and strata corporations.

Membership is open to any resident of BC, strata corporations (such as condominiums, townhouses, bare land, and commercial stratas) and businesses that provide goods and services to stratas. Visit our website or contact us for more information about membership.

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In This Issue

- 5** Editor's Message
- 14** Introducing New Business Members
- 15** Business Directory
- 19** You Asked
- 27** President's Message
- 28** Photo Contest

Featured

- 3** Are Maximum Occupancy Bylaws Enforceable?
by Shawn M. Smith
- 6** Electrical Planning Reports for Stratas
by Wendy Wall
- 10** A Four-Step Guide to Strata Evictions
by Oscar Miklos
- 12** Fire Safety Systems for Townhouses
by Kathleen Nicholas
- 22** Handling Requests for Legal Opinions
by Shawn M. Smith
- 25** Asbestos Abatement Licences Now Required
- 29** New Form B Information Certificate

On the cover: Lions Cove in View Royal is a 66-unit condo strata that celebrates being a fun, friendly community with weekly gatherings, card games, a walking group, line dancing, BBQ's and more. It's a great place to enjoy neighbours and live. - Terry Seney

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

■ Are Maximum Occupancy Bylaws Enforceable?

by Shawn M. Smith

Many strata corporations (particularly since the ability to restrict the rental of strata lots was taken away) want to limit the number of people who might take up residence in a strata lot. This desire can stem from a variety of concerns; unequal use of shared resources such as water; strain on limited parking; the potential for more noise; too many people coming and going. But can they actually do that?

Unenforceable bylaws

The first thing to consider in answering that question is [s.121\(1\)](#) of the *Strata Property Act* (SPA) which provides:

- (1) A bylaw is not enforceable to the extent that it
 - (a) contravenes this Act, the regulations, the *Human Rights Code* or any other enactment or law,
 - (b) destroys or modifies an easement created under section 69, or
 - (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

On the face of it, an occupancy bylaw isn't captured by any of those. It is not contrary to the SPA since [s.119](#) of the SPA permits bylaws which regulate the use and enjoyment of strata lots. Nor does it expressly prohibit something which is protected under the [Human Rights Code](#). Lastly, since it addresses occupancy in general it does not (any more than any other bylaw restriction does) restrict an owner from freely selling, leasing, mortgaging or otherwise disposing of their strata lot.

In addition, so long as the limitation applies to strata lots which are both owner-occupied and those which are rented, it would not be viewed as a restriction on the rental of a strata lot contrary to [s.141](#) of the SPA.

Discrimination on the basis of family status

However, it is in the application of an occupancy bylaw that it can become problematic. [S.8](#) of the *Human Rights Code* prohibits discrimination on a number of grounds, including family status. A person's family status includes the size and composition of their family: [Fakhoury v. Las Brisas Ltd \(1987\)](#), 1987 CanLII 8549 (ON HRT), 8 CHRR D/4028 (Ont. Bd. Inq), [Cha v. Hollyburn Estates Ltd., 2005 BCHRT 409](#). It can also include having a baby: [Valdez v. Bahcheli and another, 2020 BCHRT 41](#).

The enforcement of an occupancy bylaw was discussed for the first time in the recent case of [James and Rowland v. The Owners, Strata Plan VR1120, 2023 BCHRT 220](#). The bylaw in question limited the number of persons who could reside in a strata lot based on the size of the unit; i.e. two people in a one bedroom, three people in a one bedroom and den, etc. The complainants lived in a one-bedroom unit with their two children (who were both born while their parents were living there). The strata corporation sought to enforce the bylaw and the owners argued that doing so amounted to discrimination on the basis of family status.

Human Rights Tribunal: Rowland case

In considering whether or not to dismiss the claim against the strata corporation, the Tribunal accepted that "family status" was a factor at play given that the owners only ran afoul of the bylaw after they had their first child.

The Tribunal in Rowland recognized that a bylaw which is discriminatory can be justified if the strata corporation is able to show that:

- (1) it adopted the bylaw for a purpose rationally connected to what it aims to achieve;

continued on page 4

Are Maximum Occupancy Bylaws Enforceable?

(2) it did so in an honest and good faith belief that it was necessary for the fulfillment of that legitimate purpose; and

(3) the bylaw is reasonably necessary to the accomplishment of that legitimate purpose;

The duty to accommodate

The last step, however, involves a duty to accommodate an individual adversely affected by the bylaw to the point of undue hardship. In other words, to be able enforce the occupancy bylaw the strata corporation would need to show that having a family of four in a one-bedroom unit would cause the strata to suffer an undue hardship. In the view of the Tribunal the strata corporation might meet the first two steps but likely wouldn't meet the last one.

In reaching its decision the Tribunal noted that:

“enforcing bylaws equally can result in discrimination, and stratas must be careful not to strictly enforce a bylaw in a way that might have a discriminatory effect. In the housing context, the protection from discrimination based on family status “exists precisely to protect families, and others who may be screened

out of tight housing markets, from being unjustifiably excluded from safe and secure housing.”

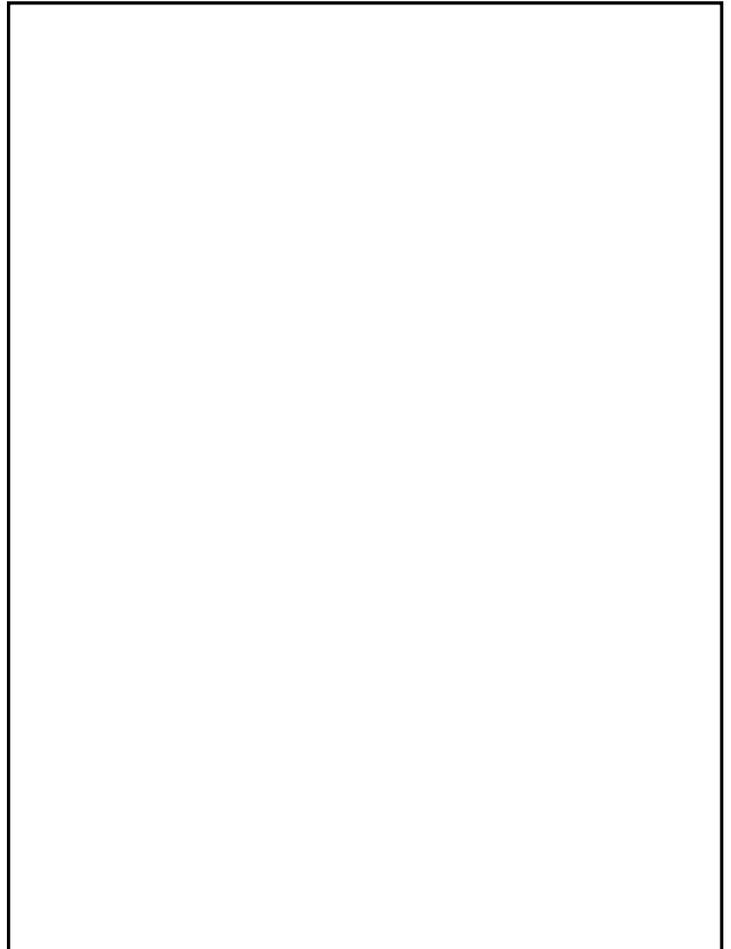
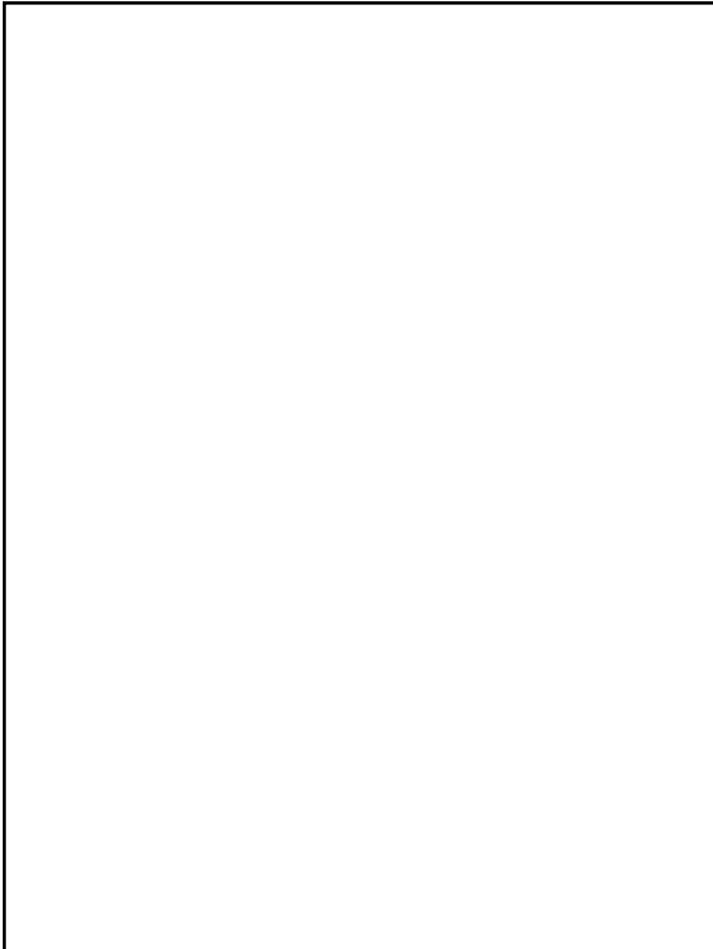
Since the Tribunal decided to deny the strata's application to dismiss, the Rowland claim will be heard by the Tribunal for a final decision.

When can an occupancy bylaw be enforced?

It was not the bylaw that was the problem but the decision to enforce it against the owners which created a potential breach of the *Human Rights Code*.

From the decision in Rowland, it is clear that occupancy limit bylaws have their limitations. While such a bylaw will apply to limit the number of roommates living together in a strata lot, it will not necessarily limit the size of families. A strata corporation which enacts an occupancy bylaw needs to be prepared to consider accommodation requests where the number of family members exceeds the limit. That must be done on a case-by-case basis, done objectively, and any refusal must be based on a verifiable undue hardship to the strata. It is not enough to say that owners as a whole don't want large families.

continued on page 5



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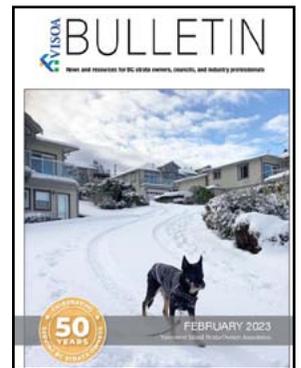
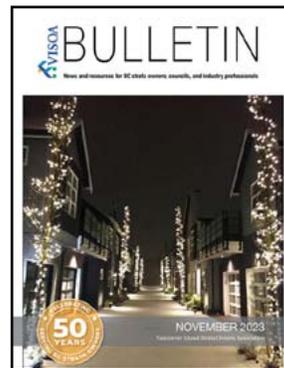
Strata corporations considering occupancy bylaws will need to weigh whether or not there is any utility in having such a bylaw and, if so, what number of occupants might be justifiable on the basis of undue hardship. Those numbers may not be as low as the owners wish. 

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a 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.

■ Editor's Message

VISOA wrapped up its 50th anniversary year by drawing the winners of our 2023 photo contest from the photos featured on the February, May, August, and November 2023 issues.

And the winners are: Sidney strata "Seahaven on Seventh" won first prize, a free one-year VISOA corporate membership. The photographer who captured a snowy day while walking his dog at Mariner Ridge won the second prize of \$50.



To enter the contest for 2024, submit a photo of your strata to: editor@visoa.bc.ca

As always, we welcome submissions from readers and subject matter experts. To suggest a topic or submit an article for consideration, contact us by email to: editor@visoa.bc.ca 

VISOA Bulletin and Suite of Services committees are Wendy Wall, John Grubb, and David Stinson with special thanks to volunteer Janice Foley, and Advertising Coordinator Cindy Young.

Electrical Planning Reports for Stratas

by Wendy Wall

The shift from fossil fuels to electricity is happening all around us. Driven by the need to address climate change and reduce GHG emissions, we are seeing changes in legislation, policies, and incentive programs on a regular basis. As we try to adapt to a changing world that includes heat pumps, electric vehicles, electrification of building systems, decarbonization, and net zero buildings, we have to ask ourselves “Does our strata property have enough electrical capacity to meet these changing needs?”

To help strata corporations answer that question, [section 94.1](#) of the *Strata Property Act* now requires strata corporations to obtain an “electrical planning report”. The report focuses on 3 core questions for the property as a whole:

- What are your electrical needs now and in the future?
- What are the limitations of your current electrical system?
- What options do you have to free up capacity or increase it?

If we, as owners, understand our strata’s electrical system, we’re more likely to make informed decisions.

Which stratas are required to obtain an electrical planning report?

All stratas of 5 or more strata lots are required to obtain an electrical planning report. This includes condo, townhouse, bare land, residential, commercial, hotel, industrial, and other types of strata corporations.

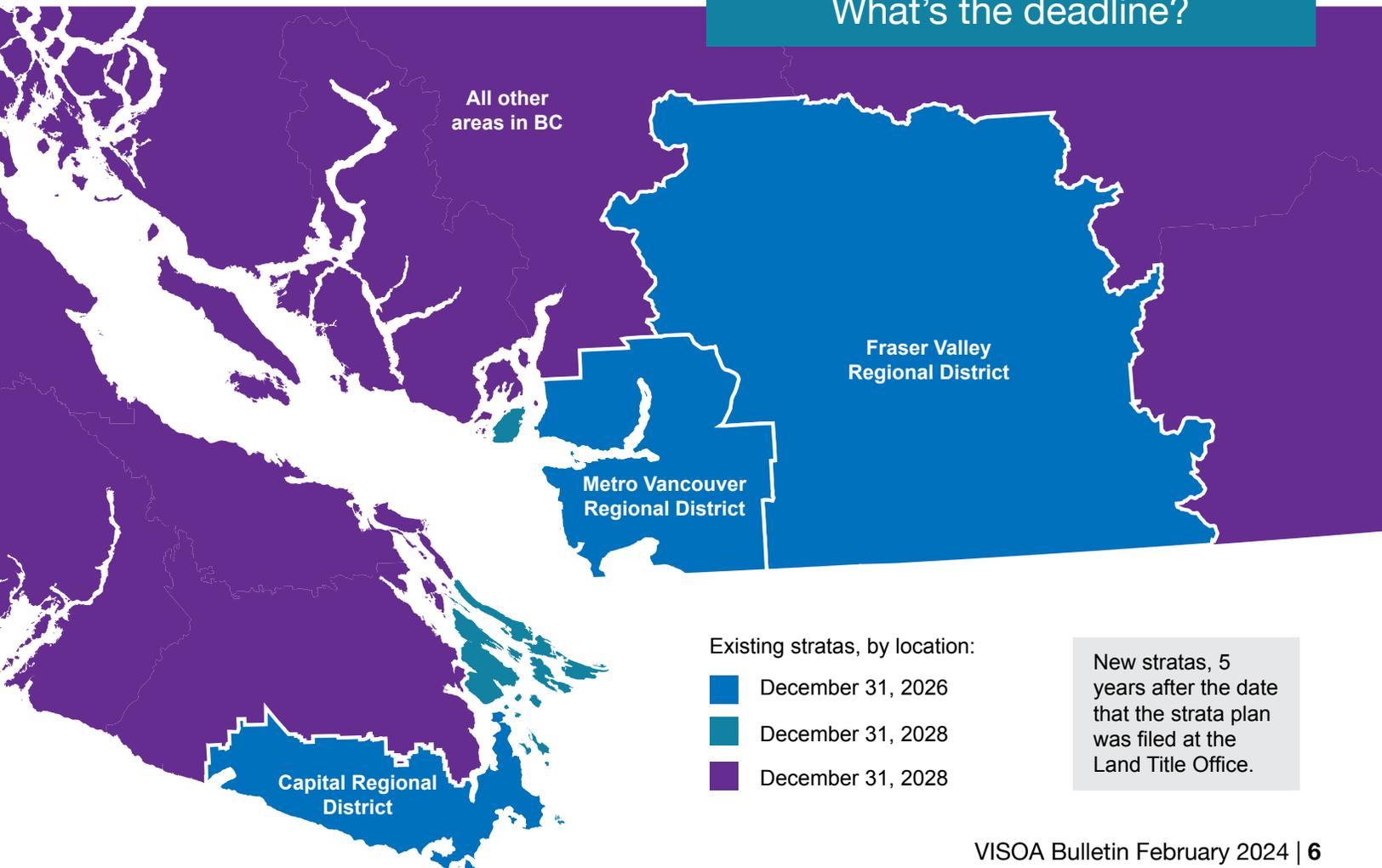
What’s the deadline?

For existing strata corporations (the strata plan was filed on or before December 31, 2023), the deadline to obtain an electrical planning report is either December 31, 2026 or December 31, 2028. It depends where your strata is located. See the map below.

For new stratas (the strata plan is filed after December 31, 2023), the deadline is 5 years after the date that the strata plan was filed at the Land Title Office.

continued on page 7

What’s the deadline?



Electrical Planning Reports for Stratas

How often must the strata obtain an electrical planning report?

Most stratas will only be required to obtain one report. Many stratas that are built in phases will have to do additional reports as the number of strata lots increase. Whether another report is required each time a new phase is deposited at the Land Title Office depends on how many units are in the phase. See [Strata Property Regulation 5.9](#) for details.

Can we hold a 3/4 vote to waive it?

No. There is no provision in the *Strata Property Act* (SPA) that would allow the strata to waive the requirement or to extend the deadline.

Do we pay for the report from the operating fund or the CRF?

Just like a depreciation report, the cost of the electrical planning report can be paid from either the operating fund or the contingency reserve fund (CRF).

To pay from the operating fund, the expense must be included in the budget and passed by a majority vote at the annual general meeting. See SPA [section 92\(a\)\(iii\)](#).

To pay from the CRF, a resolution must be passed by majority vote at an annual or special general meeting. See SPA [section 96\(b\)\(i\)\(A\)\(IV\)](#).

Who can write an electrical planning report?

SPA section 94.1 says that the strata corporation must obtain an electrical planning report from a “qualified person”. [Regulation 5.10](#) provides the details. A qualified person is an electrical engineer or an applied science technologist. There is one exception. If all buildings on the strata property meet the definition of [part 9 buildings](#) under the Building Code, the strata could obtain the report from a licenced electrician.

The author of your report might work with other professionals, such as a mechanical engineer, to obtain information for the report.

What information must be in the report?

[Regulation 5.11](#) lists the information that must be included in the report. This includes the date of the report and information about the person from whom the electrical planning report was obtained such as their qualifications.

continued on page 8



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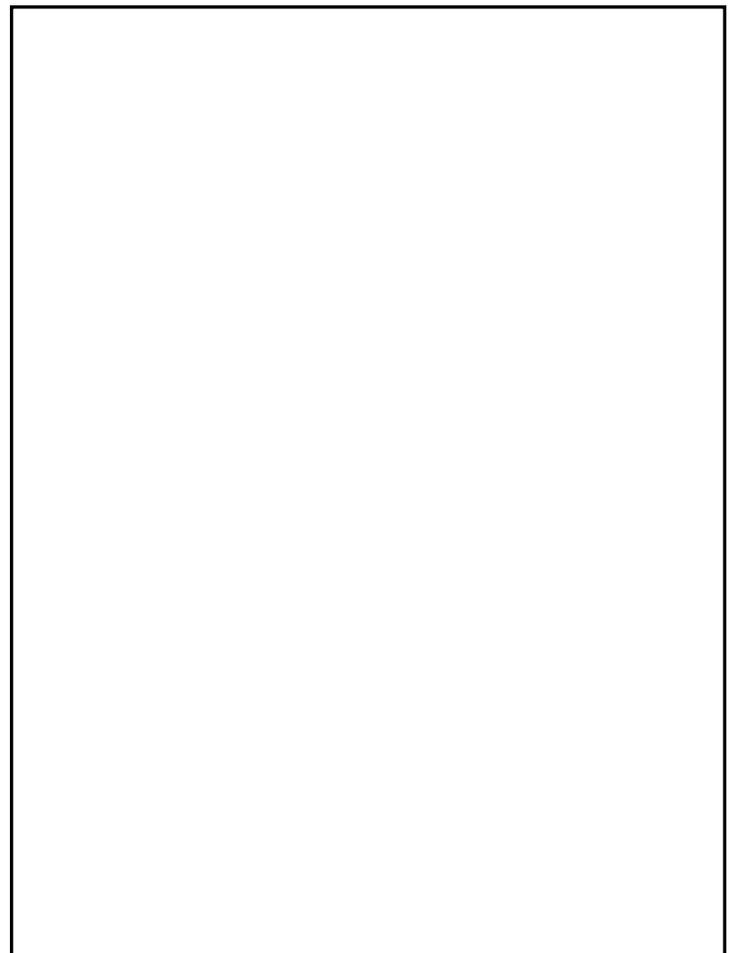
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Electrical Planning Reports for Stratas

The report must also include:

- (c) the current capacity of the strata corporation's electrical system
- (d) a list of existing demands on the electrical system, including, without limitation, demands from
 - (i) EV charging infrastructure, if any, and
 - (ii) heating, cooling, ventilation and lighting systems
- (e) the current peak demand on and spare capacity of the electrical system
- (f) if applicable, an estimate of the electrical capacity that would be needed to power systems, including heating, cooling and ventilation systems, that are currently powered by an energy source other than electricity
- (g) an estimate of the electrical capacity needed for any other anticipated future demands on the electrical system, including electrical capacity needed to power
 - (i) heating, cooling, ventilation and other systems that the strata corporation anticipates may be modified or installed in the future, and
 - (ii) EV charging infrastructure that the strata corporation anticipates may be installed in the future
- (h) steps, if any, that the strata corporation could practicably take to reduce the demands on the capacity of the electrical system
 - (i) upgrades or modifications, if any, to the electrical system that the strata corporation could practicably undertake to increase the capacity of the electrical system
 - (j) an estimate of the electrical capacity that would be made available if the strata corporation were to take steps referred to in paragraph (h) or undertake upgrades or modifications referred to in paragraph (i). 

Watch VISOA's video to learn more.



■ A Four-Step Guide to Strata Evictions

by Oscar Miklos

Can a strata corporation evict a tenant? While the authority to do so has been in [section 138](#) of the *Strata Property Act* (SPA) since its inception, the application of this section has long been mired in legal and practical impediments.

This all changed in November 2022 when the Residential Tenancy Branch (RTB) amended its [Policy Guideline 27](#) to recognize that a strata corporation can be a “landlord” under the [Residential Tenancy Act](#) (RTA) but only for the purposes of issuing a notice to end tenancy under section 47 of the RTA, defending any application disputing that notice, and seeking an order and writ of possession in relation to that notice. In circumstances where a landlord fails to remedy their tenant’s problematic behaviour or where fines are an insufficient deterrent, strata councils must consider whether to ‘step into the shoes’ of the landlord and issue a notice to end tenancy.

The result is that it is now possible to employ section 138 of the SPA which gives strata corporations the authority to issue a one-month notice to end tenancy to a tenant of a residential strata lot for a repeated or continuing

contravention of a reasonable and significant bylaw or rule that seriously interferes with another person’s use and enjoyment of a strata lot or the common property.

To evict a tenant, a strata corporation should follow processes that are set out in the *Strata Property Act* and the *Residential Tenancy Act*.

1. Investigate a Complaint and Gather Evidence

After receiving a complaint about an alleged bylaw or rule infraction, the strata council may investigate the complaint further (if there is insufficient evidence) and should thereafter follow the procedure set out at [section 135](#) of the SPA. This section of the SPA ensures that due process is afforded to the tenant who is alleged to have committed the breach by giving the tenant the details of the complaint in writing and providing them with an opportunity to answer the complaint, including a hearing with the council, if one is requested.

While the procedure set out at section 135 of the Act is not a prerequisite to an eviction, undertaking further investigations and affording the tenant due process can ensure that any eviction proceedings by the strata corporation are well-founded and supported by adequate evidence. It may also serve as a preview of the tenant’s defense if the eviction is contested.

All council decisions must be recorded in council meeting minutes and landlords must also receive copies of all notices and decision letters sent to tenants.

2. Determine whether the Bylaw or Rule is “Reasonable and Significant”

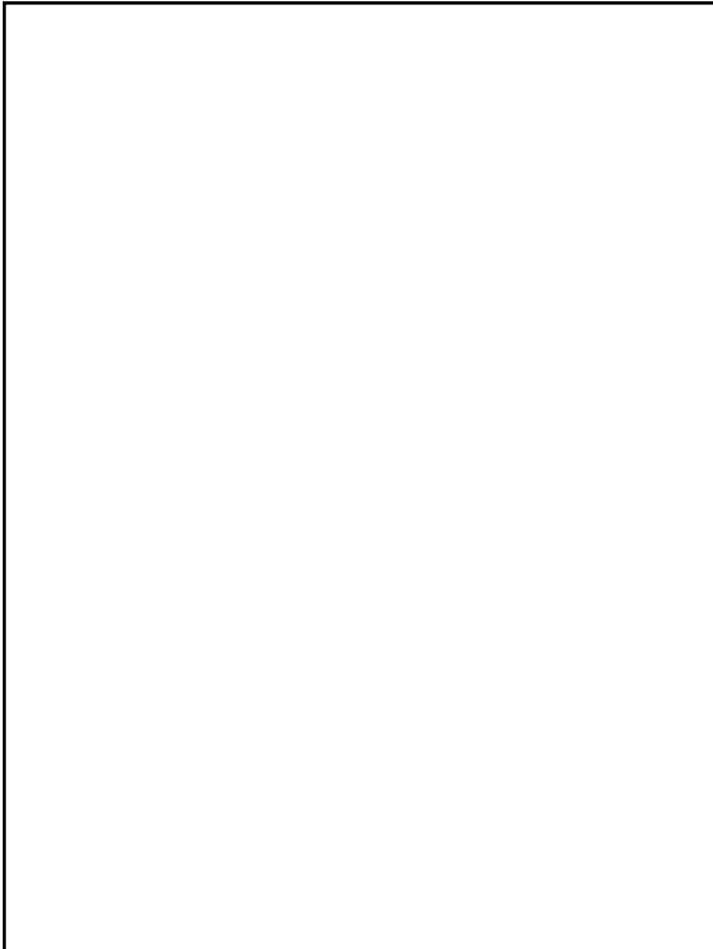
If the problematic behaviour continues, the council must then assess whether the ongoing breach meets the threshold of “a repeated or continuing contravention of a reasonable and significant bylaw or rule that seriously interferes with another person’s use and enjoyment of a strata lot, the common property or the common assets.”

For instance, installing and keeping orange curtains when the bylaws require them to be white is unlikely to meet this requirement. However, holding loud parties every weekend for numerous weekends in a row is more likely to result in an eviction.

3. Serve a One-Month Notice to End Tenancy for Cause

The following step in the process involves issuing the tenant a One-Month Notice to End Tenancy for Cause. The purpose of this notice is to inform the tenant that the strata corporation intends to end the tenancy.

continued on page 11



A Four-Step Guide to Strata Evictions

The RTB has published a mandatory form for use by strata corporations when evicting a tenant (Form [RTB-33s](#)). This form indicates that the notice is issued by the strata corporation and that the grounds of eviction are based on the wording set out at section 138 of the SPA. The form also includes details of the permitted methods of giving the notice to the tenant.

The tenant has the right to dispute the notice within 10 days of receiving it by filing an “Application for Dispute Resolution” with the RTB. If the tenant is successful with their application, their tenancy will continue. Otherwise, the RTB will issue the strata corporation an “order of possession” which will allow the landlord to take back possession of the rental unit. If the tenant does not contest the notice within 10 days, the tenant is presumed to have accepted the end of the tenancy.

4. Attend the Residential Tenancy Branch Hearing

While many strata councils are familiar with the Civil Resolution Tribunal, it is unlikely they will have knowledge about the RTB and its processes. The RTB has exclusive jurisdiction over residential tenancy matters. The RTB’s dispute resolution application and evidence-submission procedures are done primarily online. The RTB allows for

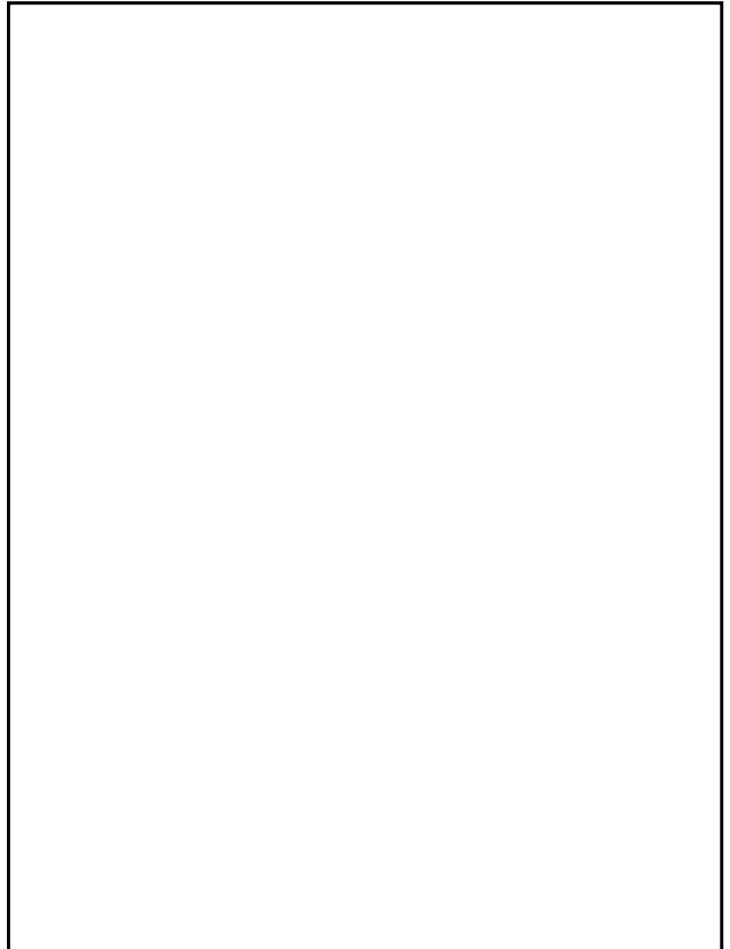
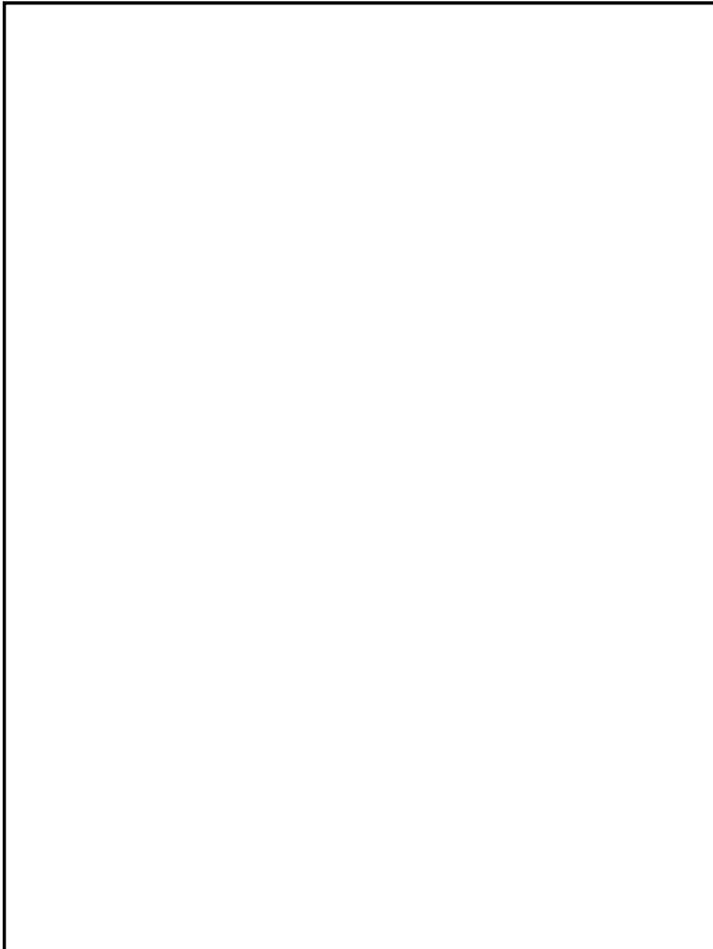
lawyers to represent their clients throughout the dispute resolution process.

The RTB will convene a teleconference [hearing](#) that is typically one-hour in length and that involves the tenant, the representative for the strata corporation, their lawyers (if any), their witnesses (if any) and an RTB arbitrator. Within 30 days of the hearing, the arbitrator will issue a written decision which will either dismiss the notice to end tenancy or that will result in the granting of an “order of possession”.

Navigating the Eviction Process

It is no easy task for strata council members to navigate the eviction process on their own. A strata council who is dealing with a problematic tenant in a residential strata lot would be wise to contact a lawyer who has experience with both strata bylaw enforcement as well as RTB dispute resolution hearings. [V](#)

Oscar Miklos is the founding lawyer of [Refresh Law](#), a law firm advising strata owners, strata council members, property managers and residential and commercial landlords and tenants in all aspects of housing matters.



■ Fire Safety Systems for Townhouses

by Kathleen Nicholas

Townhouse and bare land strata owners are individually responsible for fire safety equipment. Whereas, in condominium buildings, the strata corporation is responsible for fire safety systems and inspections (see [What is an Annual Fire Safety Inspection](#) in VISOA's August 2023 Bulletin).

Smoke alarms are essential safety devices required by building codes to protect occupants from the dangers of smoke and fire. The reality is that you are more likely to die from smoke inhalation before a fire can become large enough to kill you. Smoke alarms, when installed properly, can greatly increase the chances of early detection and increased time for escape in case of a fire emergency.

According to BC's [Office of the Fire Commissioner](#) (OFC), a functioning smoke alarm can reduce the risk of death by up to 50 percent, and significantly reduces the extent to which fires spread beyond the room of origin.

In BC, in 2022, only 45 percent of the structure fires reported to the OFC had a working smoke alarm.

The BC Building Code regulations typically mandate specific types of smoke alarms and their placement to ensure adequate coverage throughout your home.

Common types of smoke alarms

Ionization Smoke Alarms: These alarms detect smaller smoke particles produced by fast, flaming fires – fires that spread rapidly and burn through combustible material. They contain a small amount of radioactive material that ionizes the air, creating an electrical current. When smoke enters the chamber, it disrupts the current, triggering the alarm. The downside of these alarms is that they are prone to false alarms due to their sensitivity to small particles, like cooking smoke and steam from the shower. Homeowners and tenants often disable smoke alarms due to the annoyance of false alarms. These should never be disabled. Remember, a functioning smoke alarm can reduce the risk of death by up to 50 percent. Another thing to consider is that ionization smoke alarms are slower to detect smoke from smouldering fires, increasing the risk of death by smoke inhalation.

Photoelectric Smoke Alarms: These alarms are more responsive to larger smoke particles produced by slow, smouldering fires. They work by using a light beam within the alarm chamber. When smoke enters the chamber, it scatters the light, triggering the alarm. These types of alarms are less likely to cause false alarms from non-smoke related particles, such as cooking fumes and steam from showers. They can, however, be slower to respond to fast, flaming fires.

Combination Smoke and Carbon Monoxide (CO) Alarms: These alarms combine a photoelectric and a carbon monoxide alarm in one, offering broader coverage and increased effectiveness in detecting various types of fires. The CO component of the alarms is integrated with a smoke alarm. They detect the presence of carbon monoxide gas, which is colourless, odourless, and highly toxic. They are particularly useful in homes that have active fireplaces.

Where should smoke alarms be placed?

Smoke alarms are typically required on every level of your home, including the basement, and within each sleeping area. Additionally, they should be installed in areas such as hallways leading to bedrooms.

Smoke alarms are often required to be interconnected so that if one alarm in your home is triggered, all alarms in your home will sound, providing early warning to occupants.

continued on page 13

Fire Safety Systems for Townhouses

Should smoke alarms be hardwired or battery-powered?

Smoke alarms in townhouses are usually independent and not connected to a common property building system. Smoke alarms are usually required to be hardwired into the electrical system of your unit with battery backup in case of power failure. Only qualified electricians should install hardwired smoke alarms.

Battery-operated smoke alarms may also be acceptable in certain situations.

Who is responsible for maintenance and testing?

Unless your bylaws say otherwise, the owner of a townhouse or detached strata lot is responsible to maintain smoke alarms in their home.

The BC Fire Code mandates regular maintenance and testing of smoke alarms to ensure they are functioning correctly. You should test your smoke alarms monthly and replace batteries annually. Some alarms have 10-year lithium-ion batteries that never need to be changed. All smoke alarms must be replaced 10 years from their manufacture date.

Follow the manufacturer's instructions for cleaning.

What happens if I don't comply?

It's crucial for homeowners and strata councils to familiarize themselves with the specific requirements outlined in the BC Building and Fire Codes and any additional regulations enforced by local authorities.

Compliance with these regulations not only ensures the safety of occupants, but also helps avoid potential fines and penalties for non-compliance with local or strata bylaws.

When in doubt, consult with a qualified fire safety professional or your local fire department for information about requirements. 

Kathleen Nicholas is Lead Project Administrator for [Sterling Fire & Associates Inc.](#), which specializes in helping stratas through the fire alarm upgrade process. Contact her at (250) 661-9931 or sterlingfire@ymail.com.

See the [National Fire Protection Association \(NFPA\)](#) educational resources to learn more about smoke alarms.

Watch VISOA videos on YouTube

- ▶ Electrical Planning Reports for Stratas
- ▶ A Strata Council's Guide to Rentals
- ▶ Online Voting Platforms for Stratas
- ▶ Handling Requests for A/C and Heat Pumps
- ▶ Spending Money: CRF, Special Levies, and more
- ▶ Best Practices for Strata Record Keeping
- ▶ How to Enforce Strata Bylaws
- ▶ and more!

New!



■ Introducing New Business Members

JKS Realty & Property Management

JKS Realty & Property Management offers strata management, rental property management, and residential and commercial real estate services throughout southern Vancouver Island. Strata management services include accounting functions, financial statements, arranging for and supervising all services to the property, obtaining competitive proposals for contracted services, attending meetings, preparing for AGMs, and advising council regarding compliance with the *Strata Property Act*.

They are committed to excellent client care and transparent communication. Their knowledgeable, compassionate, and people-centric team is dedicated to ensuring that you feel supported, informed, and cared for every step of the way. They promptly deal with individual unit owners' questions, concerns, and problems regarding the operation of your strata. JKS Realty & Property Management also provides a 24-hour monitored phone line for emergencies.

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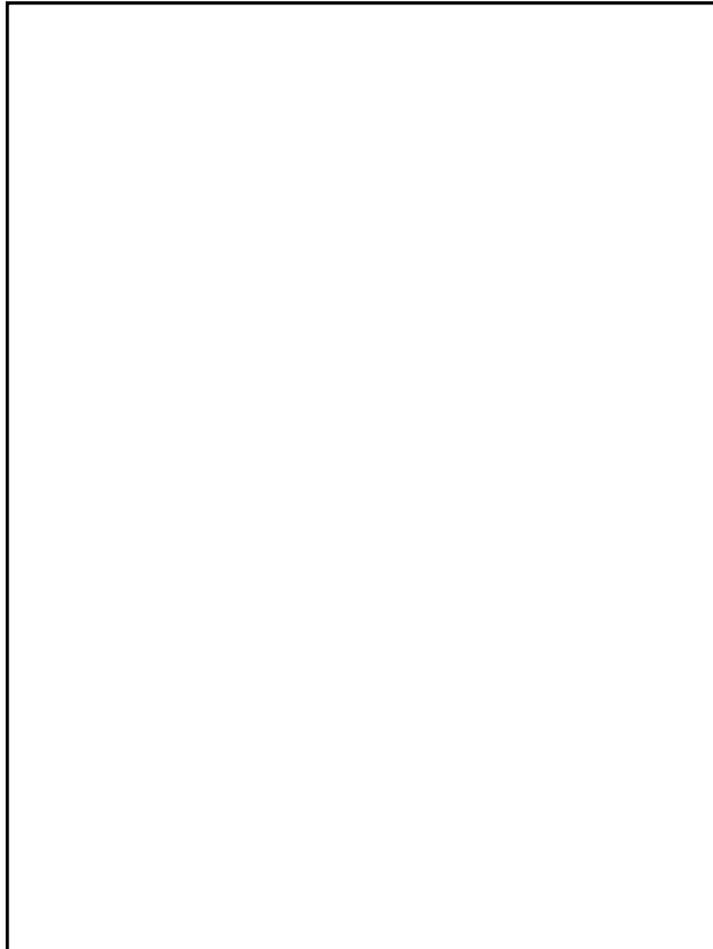
You Asked

Q: Our bylaws list the order of business at an AGM. What is new business?

A: Standard Bylaw 28 lists the order of business for an annual general meeting (AGM). It includes agenda items such as approving the minutes of the last AGM, ratifying new rules, reporting on insurance coverage, approving the budget for the coming year, and electing a council.

All other agenda items are “new business” such as amending a bylaw or voting to approve a project funded by the contingency reserve fund. All matters to be voted on at the meeting must be included in the Notice of the AGM. [Strata Property Act s. 45](#) requires that owners be given at least 2 weeks’ written notice of the meeting, which is actually 20 days to allow for delivery.

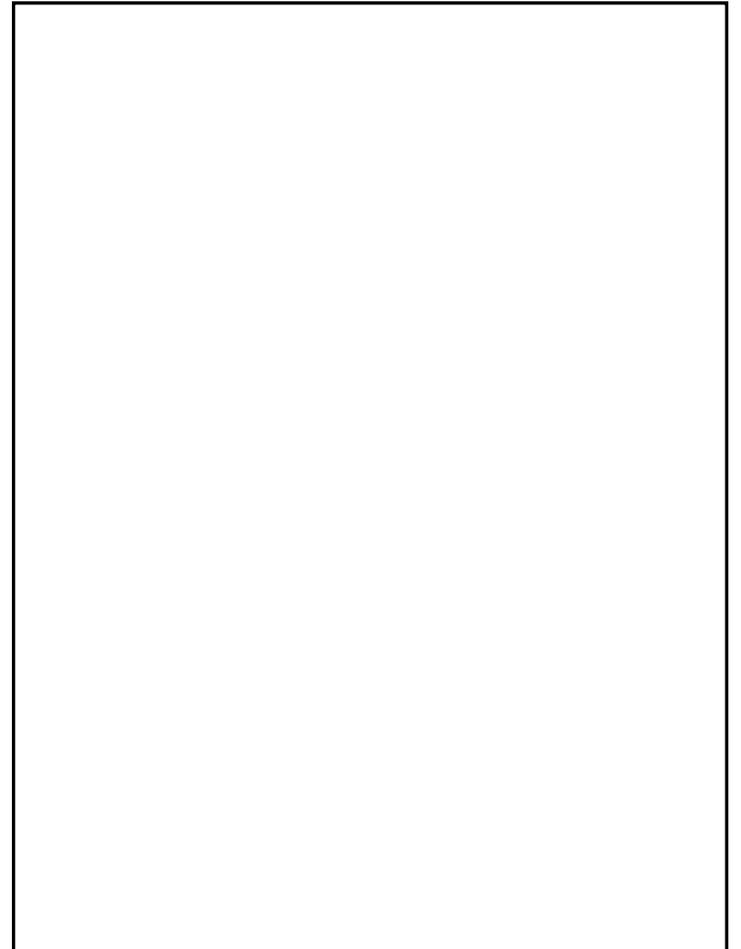
While the order of business includes a vote to approve the agenda, this does not give voters at the meeting the power to introduce any item of business that wasn’t included in the meeting notice. SPA s. 45(3) is clear that the “Notice of an annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote, 80% vote or unanimous vote.”



Frequently owners assume they can raise a new resolution from the floor if it only requires a majority vote. However, the purpose of the Notice is to let all eligible voters know what will be voted on at the meeting. As an owner’s decision whether to attend the meeting will be based on the matters in the Notice, it would be unfair to vote on matters that they had no prior notice of.

According to the *Strata Property Practice Manual*, the BC Supreme Court stated in passing that SPA sections 43 to 46 do not permit resolutions from the floor. However, a majority vote resolution from the floor under [SPA s. 27](#) (directing or restricting the council in its exercise of powers and performance of duties) might be permitted if it properly relates to an item of business included in the meeting notice. For example, during discussion to approve the operating budget, an owner might make a resolution from the floor to increase the budget for insurance and to direct council to purchase earthquake coverage.

As part of the preparation process for an AGM, many councils hold a town hall to discuss projects, concerns, and suggested resolutions. This helps identify new business that could be included in the AGM Notice.



■ You Asked

Q: It's been over a year since we found out that our roof needs to be replaced and council hasn't called an SGM to vote on it yet. Shouldn't this process go faster?

A: How long the planning process takes depends on the circumstances. It isn't unusual for large projects to take a few years to get off the ground, and sometimes longer to reach completion.

The BC Supreme Court considered the slowness of repairs in the Leclerc case in 2012. See [Leclerc v. The Owners, Strata Plan LMS 614, 2012 BCSC 74](#). That case was about water ingress into a strata lot over an extended period of time. The Court said that although the strata corporation could perhaps have hastened its investigations of the problem, there was no evidence of deliberate "foot-dragging", so the court found the strata's actions were reasonable.

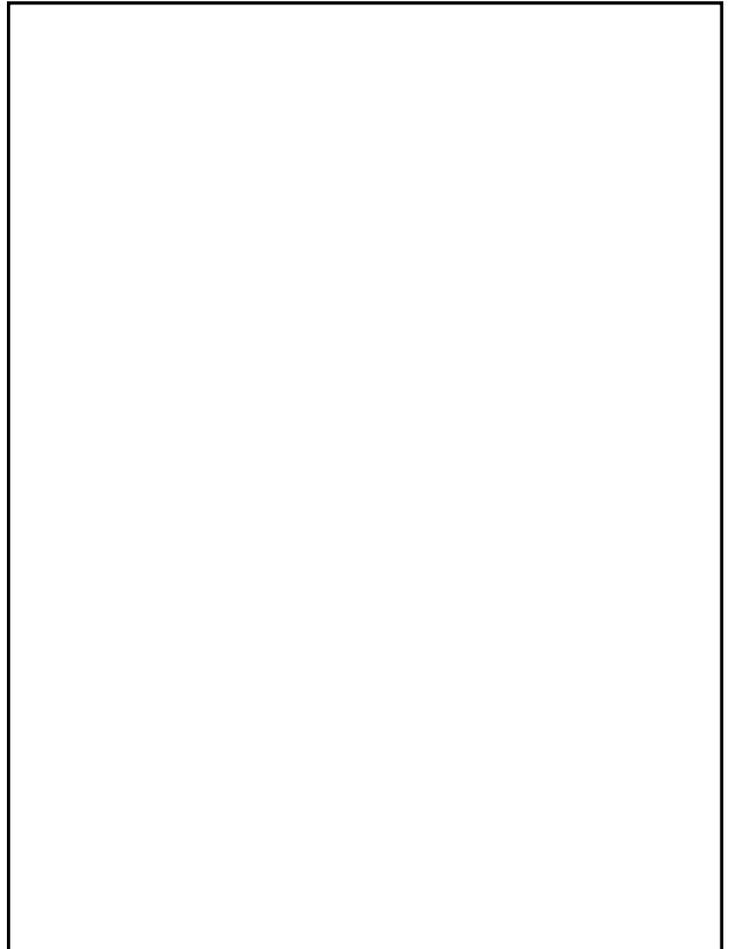
The Leclerc case was mentioned in a CRT decision where the tribunal member found that a siding replacement project was a significant undertaking which required time to develop a solution acceptable to the owners.

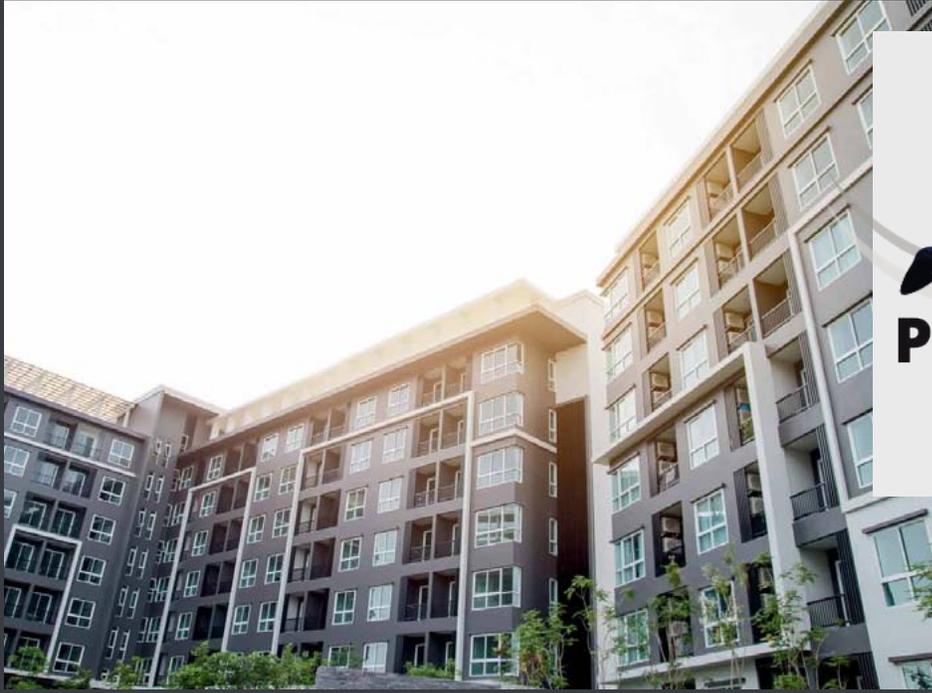
The tribunal member didn't find it was unreasonable for it to take 2.5 years after receiving a depreciation report for the owners to approve a multi-million-dollar siding replacement project. See [Vernon-Jarvis v. The Owners, Strata Plan KAS 1695, 2023 BCCRT 795](#).

While councils shouldn't deliberately delay taking action for necessary repairs, they will need time to go through the planning process. A roof replacement project often involves further assessment by a qualified engineer or independent roofing consultant, potential design changes, developing specifications, drawings, a detailed scope of work, and writing a request for proposals package to be sent out for bids.

To learn more about roof maintenance and replacement see BC Housing's [Maintenance Matters 02 - Maintaining Your Roof](#) and the [Consumer Guide to Roofing](#) by the Roofing Contractors Association of British Columbia (RCABC). [V](#)

VISOA members may submit questions to the [Strata Support Team](#).





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■ Handling Requests for Legal Opinions

by Shawn M. Smith

Section 36 of the *Strata Property Act* (SPA) entitles owners to request and obtain certain documents to be kept by the strata corporation under [s.35 of the SPA](#). The most common request is for “correspondence sent or received by the strata corporation and council” – s.35(2) (k). That can include communications between the strata council and the strata corporation’s lawyers.

S.35(2)(h) specifically refers to “any legal opinions obtained by the strata corporation”. While access to those documents is not an issue if the advice is general in nature, it can be problematic if the correspondence and legal opinions relate to a conflict or litigation with an owner.

Although various Civil Resolution Tribunal decisions and at least one B.C. Supreme Court decision have touched on the issue, it was not until the decision in [The Owners, Strata Plan VR 1120 v. Mitchinson, 2022 BCSC 2054](#) that a comprehensive framework for handling legal communications was decided on.

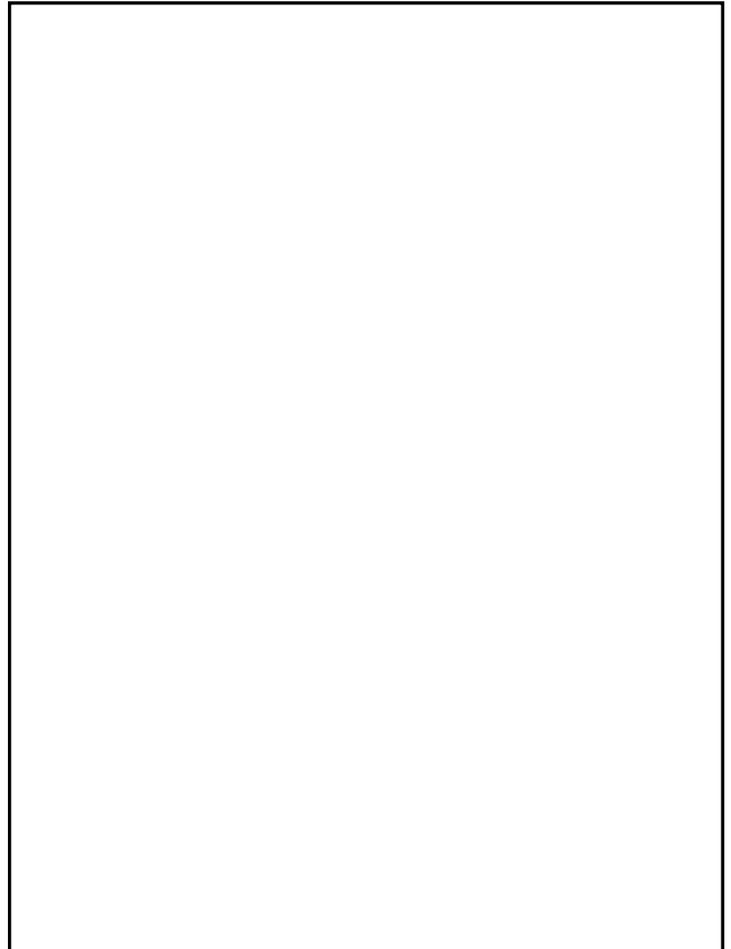
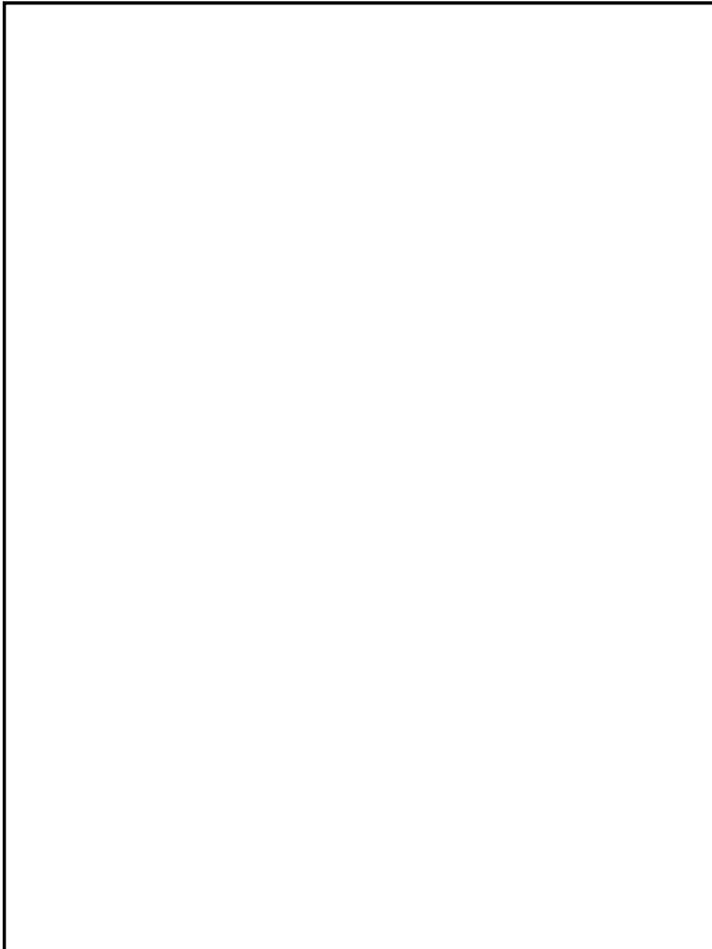
The court in *Mitchinson* had to deal with how the concepts of solicitor-client privilege and litigation privilege applied to requests under s.36 of the SPA; specifically in the context of legal opinions under s.35(2) (h). Both concepts protect communications between a lawyer and their client from disclosure to third parties.

Who is the lawyer’s client?

The first thing the court dealt with is whether the individual owners, since they are part of the strata corporation, are clients of the lawyer giving the advice. It held that they were not stating:

“[70]... I am satisfied that a strata corporation is a separate legal entity from its owners, and that when the Strata council retains legal counsel, it does so on behalf of the legal entity that is a strata corporation. Simply put, the individual owners are not each clients of the legal counsel retained to represent council, for the following reasons.”

continued on page 23



Handling Requests for Legal Opinions

Solicitor-client privilege

The court then went on to consider to what extent the concept of privilege overrides s.36 of the SPA. It rejected the traditional approach from *Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428, 2009 BCSC 506* that legal opinions could be provided to a non-party owner with the proviso that it not be shared with anyone. Given the importance of solicitor-client privilege that approach was not viewed as “sufficient protection of that privilege”.

In grappling with how to apply privilege to the rights clearly granted under s.36 of the SPA, the court said the following:

[115] Sections 35(2)(h) and 36 of the SPA are clearly intended to abrogate solicitor-client privilege to some extent. However, when read in their entire context, including s. 169(1)(b), it becomes apparent that the language used by the Legislature is insufficient to abrogate solicitor-client privilege for all purposes. Instead, those sections must be interpreted so as to abrogate the strata corporation’s solicitor-client privilege only to the extent that doing so does not compromise the strata corporation’s position in litigation against an owner or owners.

Dealing with disclosure of legal opinions

Based on that determination the court established a framework for dealing with disclosure of legal opinions which applies to requests from any owner, even those not involved in the dispute. That framework is as follows:

- a) opinions relating to litigation between the strata corporation and the requesting owner are not disclosable, as specifically provided by s. 169(1)(b) of the SPA;
- b) opinions relating to disputes between the strata corporation and the requesting owner that had not resulted in litigation are not disclosable, as protected by solicitor-client privilege; and
- c) opinions relating to contemplated or ongoing disputes between the strata corporation and other owners are not to be provided to the requesting owner until such time as the litigation is fully resolved, and all avenues of appeal fully exhausted, at which time they may be provided to a requesting owner. Upon disclosure, the requesting owner is not to share the legal opinions received with any other person or organization.

Correspondence with strata’s lawyer

While the decision in Mitchinson focused on opinions under s.35(2)(h),

continued on page 24

Handling Requests for Legal Opinions

it clearly extends to correspondence under s.35(2)(k) as legal opinions are often given by email.

In *Curtin v. The Owners, Strata Plan VIS 4673, 2023 BCCRT 541* the CRT held that the dispute only needs to be contemplated for the principles in *Mitchinson* to apply. In other words, there need only be the prospect that the parties might end up in the CRT in order to invoke those principles.

Strata corporations dealing with requests for communications between the strata corporation and its lawyers will need to carefully review those communications and determine if they fall within the scope of the principles set out in *Mitchinson*. If they do, the strata corporation does not need to provide them to any owner, even an owner who is not involved in the dispute.

Owners seeking correspondence regarding a legal issue may find that they will not be privy to as much information as they would like. While potentially frustrating their ability to access that information will be limited (at least until the matter is concluded). **V**

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a 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](https://twitter.com/stratashawn).

Asbestos Abatement Licences Now Required

When hiring tradespersons or contractors, councils and managers often check references, online reviews, and request proof of liability insurance. Strata owners and councils also have to consider regulations if asbestos containing materials (ACMs) are present.

To help keep workers safe from the dangers of asbestos, new regulations require owners (such as strata corporations and individual strata owners) and prime contractors to ensure that their asbestos abatement contractor holds a valid Asbestos Abatement Licence (AAL) before permitting them to carry out asbestos abatement work. To be valid, a licence must be issued by WorkSafeBC and must not be expired, cancelled, suspended, or refused.

What licences and certification are required?

As of January 1, 2024, asbestos abatement contractors (employers) must have an AAL to operate in BC. Licences are valid for one year and must be renewed annually. Those doing the asbestos abatement work need a certificate.

“Asbestos abatement work” means any of the following

activities carried out for the purpose of the abatement of asbestos in relation to a building:

- Identifying material that is or may be ACM
- Collecting samples of material that is or may be ACM
- Assessing the risk posed by working with or near material that is or may be ACM
- Removing, repairing, transporting, or disposing of, material that is or may be ACM
- Planning or supervising any of the above activities

Who needs a licence?

Employers that offer asbestos abatement services in relation to a building require a valid licence, such as:

- Asbestos abatement contractors
- Fire and flood restoration contractors
- Renovation contractors
- Asbestos surveyors
- Trades offering asbestos abatement services in addition to their primary service (e.g., plumbers removing asbestos-containing materials)

continued on page 26

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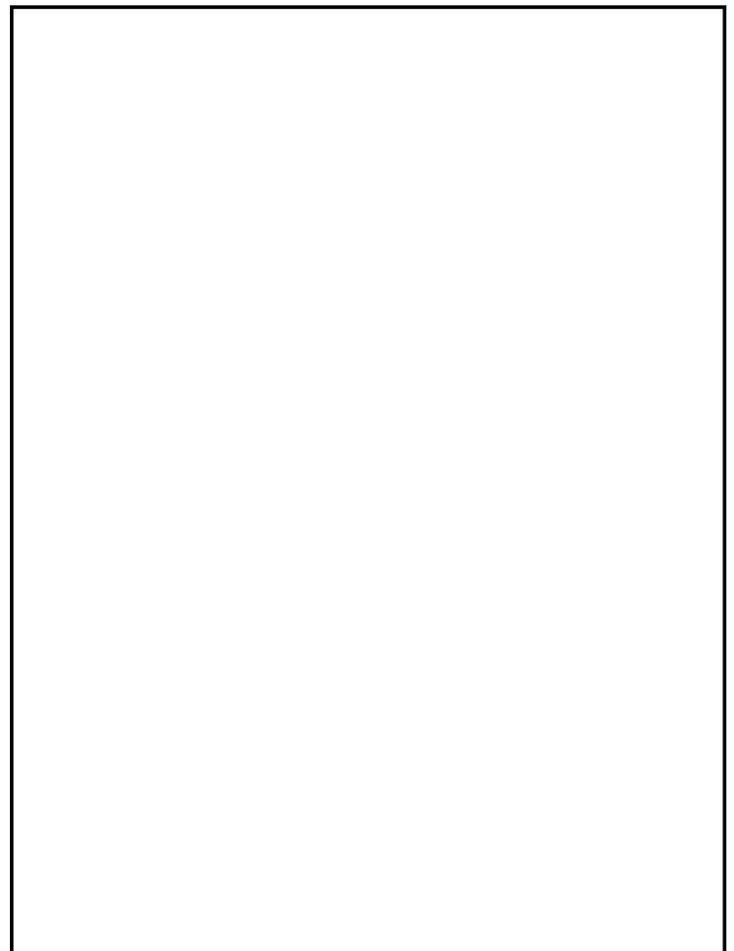
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Asbestos Abatement Licences Now Required

When is an AAL licence not required?

A licence isn't required for employers whose workers may disturb or handle asbestos but who are not performing asbestos abatement work, such as:

- Electricians and plumbers
- Flooring contractors and painters
- HVAC contractors and elevator technicians

Certification

Anyone doing asbestos abatement work in relation to a building needs to be certified. The level of certification a worker needs depends on the type of asbestos work they will be doing. To be certified, a person must complete a training program from a provider approved by WorkSafeBC and pass a written exam.

How to find licenced contractors

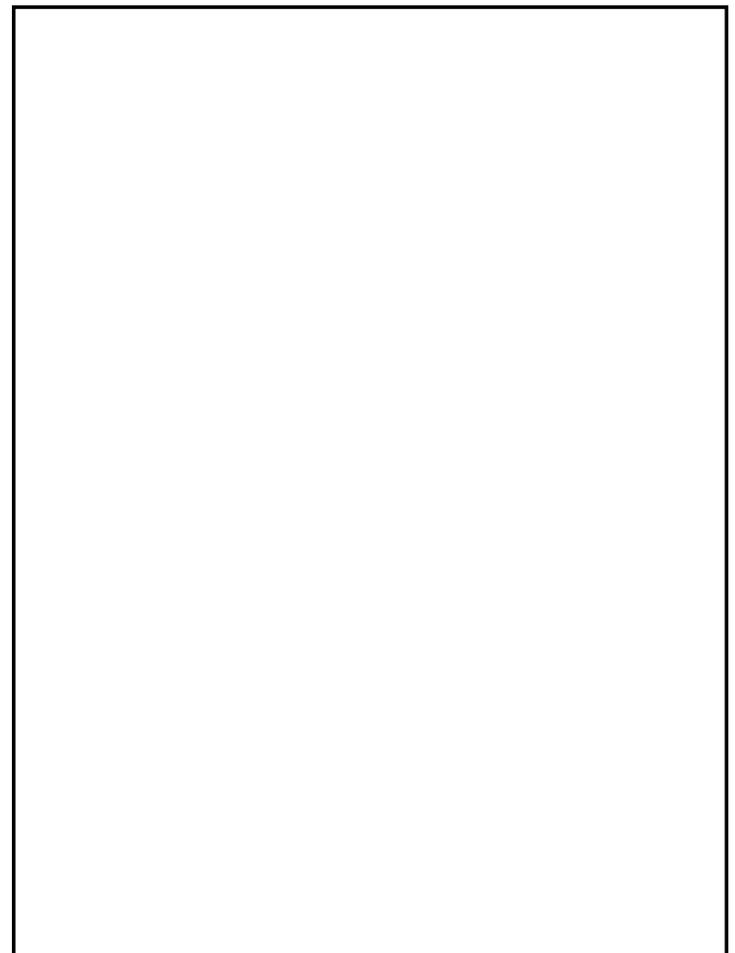
Search WorkSafeBC's [Asbestos Abatement Licence \(AAL\) Registry](#) to identify who is, or was, licensed to perform asbestos abatement work in BC. A valid AAL indicates that the licensee meets the statutory definition of asbestos abatement contractor or independent operator and has agreed to the terms and conditions of

a licence, which includes compliance with health and safety requirements under the *Workers Compensation Act* and the Occupational Health and Safety Regulation.

Invalid licences will be listed with one of the following statuses: expired, cancelled, suspended or refused. [V](#)

This article is a summary of information published on the WorkSafeBC website in January 2024. Please visit www.worksafebc.com for complete details.

Watch VISOA's video to learn more.



■ President's Message

As requested by readers, here's a recap of 2023.

Form B:

The [Form B Information certificate](#) was changed twice in 2023: on April 1 to include a summary of the strata corporation's insurance coverage, and again on December 6 to include a copy of any electrical planning reports. Get a copy of the new Form B on pages 29-32.

Age restriction bylaws

In April, *Strata Property Act* (SPA) [s. 123.1](#) was clarified and on May 1, [Regulation 7.01](#) brought into effect exemptions for spouses and children.

Minimum contribution to the CRF

As of November 1, all strata corporations and sections must contribute a minimum amount to their contingency reserve fund (CRF) annually. The amount of the annual contribution must be at least 10% of the total amount budgeted for operating expenses ([Regulation 6.1](#)).

Electric vehicle charging

On May 11, amendments to the Act lowered voting thresholds from $\frac{3}{4}$ to majority vote for certain decisions

related to the installation of EV charging infrastructure or the management of electricity used by EV charging infrastructure including:

- a significant change in use or appearance ([SPA s. 71](#))
- acquiring/disposing of personal property ([SPA s. 82](#))
- expenditures from the CRF for installations or necessary to obtain a report ([SPA s. 96](#))

Other amendments on May 11 were brought into force on December 6 by regulations [5.101](#) and [5.3 to 5.6](#):

- a new section called Alterations to Common Property to Install EV Charging Infrastructure for Owner ([SPA s. 90.1 to 90.3](#))
- an amendment to [SPA s. 76](#) regarding assignment of common property parking stalls following requests by owners under s. 90.1 to install EV charging infrastructure.

Electrical planning reports

As of December 6, strata corporations of 5 or more strata lots are required to obtain electrical planning reports ([SPA s. 94.1](#)). Regulations [5.7 to 5.12](#) provide the details.

Make sure to subscribe to VISOA's e-newsletter to stay informed of news, webinars, and more.

I look forward to seeing VISOA members at our annual general meeting on Sunday, February 25. Make sure to [register](#) by February 23. See you there!

Wendy Wall, VISOA President, president@visoa.bc.ca

VISOA Board of Directors 2023-2024

Executive:

- Wendy Wall, President
- John Grubb, Vice President
- André De Leebeeck, Treasurer

Members at large:

- George Fisk
- Jim Griffith
- David Stinson

Thank you to our board members for your dedication to helping the strata community in 2023-2024.

See the 2024 AGM Notice for information about board election.



2024 Cover Photo Contest

Submit your photo of a BC strata to editor@visoa.bc.ca. Photos selected for the cover of Bulletin issues in 2024 will be entered into a draw on December 1, 2024.

First prize: a one-year VISOA corporate membership for all owners in your strata.

Second prize: \$50 to the submitter.



Strata Property Act

FORM B

[am. B.C. Regs. 238/2011, Schs. 2 and 3; 172/2016, s. (b); 206/2016, Sch. 1, s. 1; 6/2023, s. 6; 7/2023, Sch. 1; 261/2023, App., s. 3.]

INFORMATION CERTIFICATE

(Section 59)

The Owners, Strata Plan[*the registration number of the strata plan*] certify that the information contained in this certificate with respect to Strata Lot[*strata lot number as shown on strata plan*] is correct as of the date of this certificate.

[*Attach a separate sheet if the space on this form is insufficient.*]

- (a) Monthly strata fees payable by the owner of the strata lot described above \$.....
- (b) Any amount owing to the strata corporation by the owner of the strata lot described above (other than an amount paid into court, or to the strata corporation in trust under section 114 of the *Strata Property Act*) \$.....
- (c) Are there any agreements under which the owner of the strata lot described above takes responsibility for expenses relating to alterations to the strata lot, the common property or the common assets?
 no yes [*attach copy of all agreements*]
- (d) Any amount that the owner of the strata lot described above is obligated to pay in the future for a special levy that has already been approved \$.....
The payment is to be made by[*month day, year*].
- (e) Any amount by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year \$.....
- (f) Amount in the contingency reserve fund minus any expenditures which have already been approved but not yet taken from the fund..... \$.....
- (g) Are there any amendments to the bylaws that are not yet filed in the land title office?
 no yes [*attach copy of all amendments*]
- (h) Are there any resolutions passed by a 3/4 vote or unanimous vote that are required to be filed in the land title office but that have not yet been filed in the land title office?
 no yes [*attach copy of all resolutions*]
- (h.1) Are there any winding-up resolutions that have been passed?
 no yes [*attach copy of all resolutions*]
- (i) Has notice been given for any resolutions, requiring a 3/4 vote, 80% vote or unanimous vote or dealing with an amendment to the bylaws, that have not yet been voted on?
 no yes [*attach copy of all notices*]

- (j) Is the strata corporation party to any court proceeding, arbitration or tribunal proceeding, and/or are there any judgments or orders against the strata corporation?
 no yes *[attach details]*
- (k) Have any notices or work orders been received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets?
 no yes *[attach copies of all notices or work orders]*
- (l) Repealed. [B.C. Reg. 6/2023, s. 6 (a).]
- (m) Are there any parking stall(s) allocated to the strata lot?
 no yes

(i) *If no, complete the following by checking the correct box.*

- No parking stall is available
- No parking stall is allocated to the strata lot but parking stall(s) within common property might be available

(ii) *If yes, complete the following by checking the correct box(es) and indicating the parking stall(s) to which the checked box(es) apply.*

- Parking stall(s) number(s) is/are part of the strata lot
- Parking stall(s) number(s) is/are separate strata lot(s) or part(s) of a strata lot *[strata lot number(s), if known, for each parking stall that is a separate strata lot or part of a separate strata lot]*
- Parking stall(s) number(s) is/are limited common property
- Parking stall(s) number(s) is/are common property

(iii) *For each parking stall allocated to the strata lot that is common property, check the correct box and complete the required information.*

- Parking stall(s) number(s) is/are allocated with strata council approval*
- Parking stall(s) number(s) is/are allocated with strata council approval and rented at \$ per month*
- Parking stall(s) number(s) may have been allocated by owner developer assignment

Details:

[Provide background on the allocation of parking stalls referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

***Note: The allocation of a parking stall that is common property may be limited as short term exclusive use subject to section 76 of the *Strata Property Act*, or otherwise, and may therefore be subject to change in the future.**

(n) Are there any storage locker(s) allocated to the strata lot?

no yes

(i) *If no, complete the following by checking the correct box.*

- No storage locker is available
- No storage locker is allocated to the strata lot but storage locker(s) within common property might be available

(ii) *If yes, complete the following by checking the correct box(es) and indicating the storage locker(s) to which the checked box(es) apply.*

- Storage locker(s) number(s) is/are part of the strata lot
- Storage locker(s) number(s) is/are separate strata lot(s) or part(s) of a separate strata lot [*strata lot number(s), if known, for each locker that is a separate strata lot or part of a separate strata lot*]
- Storage locker(s) number(s) is/are limited common property
- Storage locker(s) number(s) is/are common property

(iii) *For each storage locker allocated to the strata lot that is common property, check the correct box and complete the required information.*

- Storage locker(s) number(s) is/are allocated with strata council approval*
- Storage locker(s) number(s) is/are allocated with strata council approval and rented at \$ per month*
- Storage locker(s) number(s) may have been allocated by owner developer assignment

Details:

.....
.....

[Provide background on the allocation of storage lockers referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

***Note: The allocation of a storage locker that is common property may be limited as short term exclusive use subject to section 76 of the *Strata Property Act*, or otherwise, and may therefore be subject to change in the future.**

- (o) a summary of the strata corporation's insurance coverage

[Provide a summary of the insurance coverage on a separate sheet or sheets.]

- (p) For the purposes of section 59 (3) (m) of the *Strata Property Act*, the following information is required:

Has the strata corporation obtained any electrical planning reports under section 94.1 of the *Strata Property Act*?

- no yes *[attach copy of all electrical planning reports]*

Required Attachments

In addition to attachments mentioned above, section 59 (4) of the *Strata Property Act* requires that copies of the following must be attached to this Information Certificate:

- The rules of the strata corporation;
- The current budget of the strata corporation;
- The most recent depreciation report, if any, obtained by the strata corporation under section 94.

Date: *[month day, year]*.

.....
Signature of Council Member

.....
Signature of Second Council Member (not required if council consists of only one member)

OR

.....
Signature of Strata Manager, if authorized by strata corporation