VISOA
Vancouver Island Strata Owners Association

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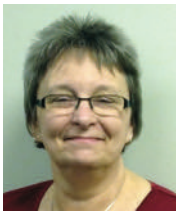
VISOA Bulletin - FEBRUARY 2020

Outgoing President's Report



To cheesily quote Julie Andrews, "So long, farewell, auf wiedersehen, adieu…" This will be my last President's Report for the *Bulletin*.

I've served on your board since 2007, and as President since 2011 and am not seeking re-election at your AGM coming up on February 23, 2020. I know I'm leaving the board in good hands for many years to come.

This past year, after a very unusual financial picture at the end of 2018, the board worked hard to evaluate all expenses and revenue, and I'm pleased to report the final figures for 2019 show a small surplus as we've come to expect. Full details will be in our AGM package, which will be posted on our website by the time you read this message, as well as sent by email to all members (and of course by mail to those few without email).

As a non-profit association, VISOA is not supposed to have profits, but a little savings account is handy for such things as website improvements and replacing office equipment, and of course for emergencies. This past year, our website went down, and just days later our office computer crashed and needed urgent repairs. Thankfully we had the resources to get us back up and running quickly, and you may not have even noticed, but our office administrator and bookkeeper, as well as our webhost contactors sure did!

After payroll, our next largest expense is seminar and workshop expenses, however the "profit" from workshops more or less pays for the seminar expenses – so a bit of a break-even. A more detailed article on our seminars and workshops gives a bit of the history, elsewhere in this bulletin.

As a member-funded association, our main source of income is membership fees, and the board never forgets that we are here for the education and service of all of you. Our Strata Support Team is provided at no cost to all members (and a limited service to non-members) and the team was kept quite busy answering your queries, with the most often-asked questions being about bylaw enforcement, finances, insurance, council responsibilities, as well as "who pays for X". These broad topics inform the seminar and workshop teams about which topics to present.

I've met so many of you over the years, mostly at our seminars and workshops, but I've also attended many of your strata meetings, chaired your AGMs and met informally for your AGM planning. I will miss doing these things.

Now for another cheesy quote, this time from Carol Burnett: "I'm so glad we've had this time together……".

— Sandy Wagner

In this issue...

Editor's Angle

David Grubb, Editor

Sandy's final report as President is yet another example of her dedicated and wide influence on the whole operation of VISOA. She has built our organization when it was just beginning to get back on a solid footing in 2006 – because of stalwarts such as Harvey Williams, Claudio Procopio, Elsie Lockert and the late Felicia Oliver – and developed it into a very viable society which now serves over 8,000 members on Vancouver Island and the Mainland and has a significant influence in government and non-government agencies, and with the public at large.

There seems to be nothing Sandy has not had her hand in: more seminars presented in a professional way both in Victoria and Up-Island, introduction of seminars, finding a range of inspiring presenters, encouraging members to develop practical manuals which VISOA has published, carefully monitoring the budget so that we have a good balance and a little bit in reserve, participating in a number of organizations and groups (government and non-government) to represent VISOA and influence the discussions, ensuring that Board members actually do their jobs (!), and so may other tasks which can often get lost.

Our thanks are hardly enough, Sandy. You will be a hard act to follow. The Board will miss you and your guidance, but we know you are in the wings to assist if it is necessary, and we wish you well.

As to this issue of the *Bulletin*, with so many stratas holding their AGMs around this time, we asked Shawn Smith if we could reprint his article about Meeting Procedures. He deals with the topic in general, but emphasizes items which no strata owners or presidents should ignore. We have added a couple of comments (in brackets) for your consideration.

One of the most significant issues nearly all stratas are going to face this year is the rapid and dramatic increase in insurance premiums and deductibles. This will affect all stratas across Canada, but especially in the major centres such as Greater Vancouver, Greater Victoria, and Toronto. One strata in the Vancouver area had a premium rise from approximately $66,000 in 2019 to approximately $720,000 in 2020! And it was a new strata! To help out the readers, the article from the Insurance Brokers Association of BC is a clear summary of what is going on locally and globally in the industry. You definitely won't like it but you will at least understand Why!

These are all rounded out with articles on bullying as well as the problems that condos (HOAs) in the USA are encountering about e-voting.

If any of our members (or even others) have an interesting article we can include in future editions, please let us know at *editor@visoa.bc.ca*.

BULLETIN SUBSCRIPTIONS

BULLETINS are published quarterly. You may also access over 10 years of past issues on our website. Join the VISOA email list to receive a notification when a new issue is available online. Go to www.visoa.bc.ca and look for the *"Join Our Mailing List"* button.

MEETING PROCEDURE UNDER THE *STRATA PROPERTY ACT*

By Shawn M. Smith, February 2018

From time to time we, as humans, tend toward doing things the way we have always done them; even when we're not certain the way we have done them is entirely correct (and sometimes we continue on, even if we know it's not). We do so because it is expedient. The strata world is no exception to this. For the most part, there are no immediate consequences to such a course of action. It is only when an issue becomes contentious or something goes wrong that suddenly procedure matters. That is because a failure to follow proper procedure can be an easy basis to set aside decisions made at a meeting. Thus it is important, even when it seems like it might not matter, to do things "by the book". The purpose of this article is to review some of the basic issues regarding calling and conducting general meetings.

Notices of Meeting

The requirements for proper notice of an annual or special general meeting are set out in s.45 of the Strata Property Act ("SPA") which provides as follows:

> **"45** (1) The strata corporation must give at least 2 weeks' written notice of an annual or special general meeting to all of the following:
>
> (a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;
>
> (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification under section 60;
>
> (c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.
>
> (2) A person who has a right to be notified under this section may, in writing, waive the right and may, in writing, revoke a waiver.
>
> (3) The notice of the 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 or unanimous vote.
>
> (4) If the meeting is an annual general meeting, the notice must include the budget and financial statement referred to in section 103.
>
> (5) A vote at an annual or special general meeting may proceed despite the lack of notice as required by this section, if all persons entitled to receive notice waive, in writing, their right to notice.
>
> (6) If 2 or more persons share one vote with respect to a strata lot, all of them must consent to the waiver of notice under subsection (5)."

The first thing to note is who is entitled to a notice. Owners always are, but where a tenant has been assigned the rights of the owner (either expressly or by virtue of renting the strata lot to a family member) notice must go to them as well.

Notice must be sent in the manner specified in s.61 of the SPA. For resident owners and non-resident owners who have not given an address other than the strata lot those include:

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- by leaving it with the person,
- by leaving it with an adult occupant of the person's strata lot,
- by putting it under the door of the person's strata lot,
- by mailing it to the person at the address of the strata lot,
- by putting it through a mail slot or in a mail box used by the person for receiving mail,
- by faxing it to a fax number provided by the person, or
- by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.

For non-resident owners who have given an address which is not the strata lot, the options for delivery are limited by s.61(1)(a) of the SPA to personal delivery or mailing to the address provided. Emailing the notice is not permitted in that case.

The contents of the notice of meeting must meet the criteria set out in s.45 in order for notice to have been properly given. One matter which is often overlooked is the very specific requirements for budgets and financial statements. Those requirements are set out in Regulations 6.6 and 6.7 of the SPA (to which s.103 refers). For example, a budget which is missing a schedule of strata fee payments would be a budget for which proper notice has not been given. In *Yang* v. *Re/Max Commercial Realty Associates* 2016 BCSC 2147 the court confirmed that the provision of the information required for financial statements in summary format is acceptable (something contemplated by Regulation 6.7 so long as there is a bylaw allowing for summary statements). However, a standard "balance sheet" may not be sufficient to meet even the summary format requirements.

One common error which self-managed strata corporations make is with the length of notice itself. The "two weeks" referred to in s.45(1) is not 14 days (as one might readily think it is). It transforms into 20 days when the provisions of s. 61(3) of the SPA and s.25 of the Interpretation Act are applied. (S.61 provides that "a notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mail box, faxed or emailed". The *Interpretation Act* requires that where the term "at least" is used, two extra days be added.

(Note: Despite the recent changes to s.25 of the Interpretation Act*, the minimum number of days to be counted is still 20 days. Ed.)*

It is not necessary to prove that each owner (or tenant where the rights of the owner have been assigned to the tenant) actually received their copy of the notice. Just that it was delivered as permitted under s.61 of the SPA.

Lastly, Standard Bylaw 28 sets out the order of business for a meeting. Item (d) is "present proof of notice". There need not be a vote confirming that notice was properly given. All that is required is to confirm to the meeting that the notice was sent at the appropriate time.

Quorum

S.48(1) of the SPA provides that business must

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not be conducted at a general meeting unless a quorum is present. This means two things: One, it is important to establish that a quorum is present at the start of the meeting. Two, it is important to ensure that a quorum is maintained as the meeting progresses.

With respect to the first of these issues, s.48(2) of the SPA provides that a quorum (unless the bylaws provide otherwise) is 1/3 of *eligible* voters holding 1/3 of the strata corporation's vote. This means that quorum is based on the number of strata lots in the strata plan, but only eligible voters count toward determining whether that number has been met. There may be 1/3 of the owners present, but if not all of them are eligible voters, quorum will not be met.

An "eligible voter" is defined as someone entitled to vote under ss. 53 to 58 of the SPA. A person would not be an eligible voter if:

- They owe strata fees and the strata corporation has a bylaw disentitling them to vote if in arrears and the strata corporation is in a position to file a lien (meaning the notice provisions of s.112 have been complied with)
- They have assigned their voting rights to a tenant (either expressly or by operation of s.142(3) or s.148 of the SPA);
- There are two or more owners who dispute who has the right to vote on behalf of a strata lot.
- Two or more proxies are given for the same strata lot;
- A proxy does not comply with s.56 of the SPA.

If a quorum is not present within ½ hour, the meeting is adjourned to the same time the following week unless the bylaws provide otherwise.

Establishing proper quorum is important as it can form a very easy basis for challenging and setting aside decisions at a meeting.

If a meeting proceeds with the bare number of strata lots required for a quorum (whether determined under s.48(2) of the SPA or under the bylaws) it is important to ensure that the chair keeps track of any owners who leave. If a quorum is lost the meeting must stop and business cannot be conducted. Owners wishing to leave should be encouraged to provide a proxy to another owner (even if that proxy is not voted).

(Note: Attention must be paid to s.51 [Reconsideration of a ¾ vote] when there is a quorum, but there are fewer than 50% of the eligible voters present. Ed.)

Proxies

The SPA says very little about proxies. S.56 addressed proxies and provides simply that:

- They must be in writing
- Be signed by an owner of the strata lot

They can be general (ongoing) or for a specific meeting only. There is no limit on the number of proxies that any one owner can hold. Some strata corporations choose to pass bylaws limiting the number of proxies any one person can hold. There are strong arguments both for and against the validity of such a bylaw.

Proxies can be revoked at any time by the proxy giver. The SPA does not say how that is to be done but presumably it is in writing since the granting of the proxy is to be in writing.

Handing off a voting card is not granting a proxy. Where that is done, the vote which was "handed off' must not be counted.

(The same is true of a proxy holder trying to pass the proxy to another person at the meeting. The proxy is strictly between the giver and the receiver, so only the original owner can alter that contract, including who the proxy holder is. Ed.)

The strata corporation need not look behind the granting of the proxy to ensure that the owner properly granted it. In *Strata Plan LMS 3259 v. Sze Hang Holdings Ltd.* 2009 BCSC 473 affirmed 2012 BCCA 196, the court even if an owner sold their proxy to another owner, that would not make the proxy invalid.

It is the chair who is to determine whether a proxy, if challenged, is valid (not the strata manager, a council member or other individual) — *Davis v. Peel Condominium Corp No. 22* 2013 ONSC 33367. Proxies must be challenged at the meeting, not afterward.

The SPA is silent on whether the strata corpo-

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ration should keep the proxies. In the writer's view it should. The proxy is a document authorizing a third party to vote on behalf of an owner. It may be necessary at some later point to prove that the proxy was granted. Some support for this proposition for found in Strata Plan LMS 3259 v. Sze Hang Holdings Inc. 2016 BCSC 32 where the court seemed to disagree with the argument that the strata should not keep proxy forms. (The issue in that case was decided on a different point and thus the decision is not as definitive as it might have been on that point).

(It would be wiser for the proxy holder to make a second copy to give to the council at the AGM. That way, the proxy holder retains evidence of the contract existing between the giver and receiver, but the strata also is assured of the right of the individual named in that proxy to act on behalf of the giver. Ed.)

Chair of the meeting

Under the Standard Bylaws the president is to chair the meeting. If the president cannot or will not, then the vice president fills that role. Only where both have declined or are otherwise unable to chair, can someone else be elected to chair the meeting. Preferably that person should be an eligible voter. However, Standard Bylaw 25(3) says the chair may be elected from "among those persons present at the meeting". That language is broad enough to arguably refer to someone who is not eligible to vote but is otherwise present (i.e. a strata manager).

Only if the chair is the president or vice president can the chair cast a tie breaking vote. Even if the president does not chair the meeting, if they are present they can still cast the tie breaking vote (Standard Bylaw 27(5)).

The chair need not follow *Roberts Rules of Order* (or any other specific Rules of Order) unless the bylaws require it. However, they can be used as a benchmark and for guidance. Whatever procedures are used at a meeting they must be fair — *The Owners, Strata Plan NW971 v. Daniels* 2009 BCSC 1235.

Deference is to be given to decisions made by the chair. Only where they are unreasonable should the court intervene — *Hastman v. St. Elias Moines Ltd.* 2013 BCSC 1069.

Voting

S.50(1) of the SPA provides that all business conducted at a general meeting is to be done by majority vote unless a ¾ vote is required.

Both a majority and a ¾ vote are determined by counting the votes cast for and against. Abstentions (unlike under Roberts Rules) do not count. It is still necessary to count abstentions, however, to ensure a quorum is present.

The prevailing practice is that the "yes" votes must be counted first. Although convenient to count "no's" and assume the rest are a "yes", that cannot be done given that there may be abstentions.

A vote by secret ballot requires the use of voting booths to protect the privacy of owners — *lmbeau v. Owners, Strata Plan NW971* 2011 BCSC 801.

A majority vote resolution (including a budget) can be amended in any manner so long as the amendment is approved by a majority vote (and so long as the amendment doesn't make the nature of the resolution one that would require approval by way of a 3/4 vote). In other words, the owners at the meeting could drastically increase or decrease the budget.

A 3/4 vote resolution can be amended so long as the amendment is not substantial (s.50(2)(a) SPA). What is substantial is determined by the chair. It will differ from case to case but is generally something which would make the resolution very different than presented. (i.e. a bylaw prohibiting all pets being amended to allow for one cat would be substantial).

Resolutions from the floor are <u>not</u> permitted with the exception of:

- Amendments to a resolution
- Procedural resolutions
- A resolution directing council under s.27 of the SPA.

Election of Council

Neither the SPA nor the Standard Bylaws discuss the precise method for electing a stra-

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ta council. All that the SPA requires is that the council be "elected" — s.25 SPA. S.50(1) of the SPA requires that all business, unless a different threshold is established by the SPA, be decided by majority vote. That threshold applies to elections as well. That being the case, the question which arises is whether each council member must be elected by majority vote or whether it can be a single vote for all the candidates (assuming there is less than the maximum number allowed). Ideally the bylaws should provide for the method to be employed. In the absence of such a provision it would be best to have the meeting confirm by a vote, the method of election/confirmation to be used

Where there are more candidates than positions available, the usual method is to have a ballot whereby owners indicate their top 7 (if that is the maximum) candidates. The seven candidates who receive the most votes are then elected. That method is both practical and fair. However, each person must receive at least a majority of the votes cast. In other words, if there are 100 strata lots which cast votes, each successful candidate must receive at least 51 votes. It may be that not all 7 positions actually get filled.

Election by acclamation, although not preferable, was sanctioned by the court in *Yang v. Re/Max Commercial Realty Associates* 2016 BCSC 2147.

Lastly, ensure that all candidates are eligible to be elected to council. Are they in arrears of their strata fees and, by virtue of a bylaw, ineligible for election? Are they actually an owner? Have they assigned their right to sit on council to a tenant or family member, thereby disentitling them from election?

Summary

In the heat of the moment it may be difficult to remember all of these things, but a good chair is required to try. Doing so, even if it seems laborious at the time, can save a lot of grief later on. A resolution improperly passed is a resolution that can easily be attacked and set aside. A chair who follows best practices regarding meeting procedure can rest knowing that they have done their job well.

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.

VISOA SEMINARS AND WORKSHOPS

We're sometimes asked – what is the difference between a seminar and a workshop? Why does VISOA hold both types of events?

Seminars are held 5 or 6 times a year, most often on a Sunday afternoon for three hours. We have one guest speaker who presents a topic of general interest to strata owners, and takes questions at the end. With 60 to 100 attendees or sometimes more, not everyone's very specific questions can be answered but the presenters do their best. The focus is usually on general information that can be applied to most strata owners, on a wide range of topics such as :

- Depreciation Reports;
- Bylaws
- Civil Resolution Tribunal
- Strata Insurance
- Greening Your Strata
- and many more

We began asking participants to register in advance in order to ensure we had enough handout materials and refreshments for all attending. These seminars were presented at no cost to our members until 2019 when we began charging a nominal fee to members, which goes toward the cost of the venue and refreshments. The guest speakers donate their time generously for our seminars, with no speaking fees.

Workshops began in 2012 when the board sought a way to engage and educate members on a deeper level, as well as provide a special benefit for corporate members. The workshops are much smaller groups of 12 to 20 participants, and are more hands-on and interactive, with all attendees having time to share their experiences as well as learn from each other. They are generally held on a Saturday, for 5 to 6 hours, and include lunch as well as a binder and USB stick of reference materials. The facilitators, who are usually VISOA board members, sometimes augmented by VISOA Business members, build in a good amount of question time.

The very first workshop was "Contingency Reserve Fund Management" followed closely by "Best Practices for Strata Secretaries", which is still one of the most popular workshops. Other topics have included:

- Best Practices for Strata Treasurers
- Maintenance Planning
- Working With a Strata Manager
- Preventing and Resolving Strata Disputes
- For New Council Members
- For Small Stratas
- and more!

The workshops began as a benefit for Corporate Members, and so Individual Members could not register – attendees had to be owners from a strata who had taken out a corporate membership. We began to get calls from Individual Members – those who have joined on their own, but the strata itself is not a member – asking: "Why can't I register for the workshops?" And so, after the first few years, we added a higher priced ticket for Individual Members, then later added a third fee for Non-Members – after all, our mandate is education for strata owners, not just members!

We also presented "half day" workshops especially for non members: "Before You Buy a Condo" was a special request of North Island College, and after several successful presentations in Comox and Port Alberni, we began hosting these in Victoria. The goal was to present those interested in buying a strata (although they may not even know it was called a "strata") with a tool kit of questions to ask as well as some information on their rights and responsibilities. We know from post-event surveys that some attendees actually changed their minds about buying a strata unit, after they realized that such things as bylaws and rules applied to them! We also like to think that those who did eventually buy their first home in a strata corporation have become good neighbours and maybe even good council members, as they went in knowing what to expect.

Lately we have also presented more "half day" workshops on two topics that lend themselves to small groups but not necessarily a full day's worth of information. "Planning EV Charging" and "Planning Your Strata AGM" have been presented multiple times this past fall and winter, and will be again based on demand – and of course on the availability of the facilitators.

The post-workshop evaluations give us consistent good marks for the quality of the presentations and the presenters, as well as a delicious lunch and valuable handouts. We plan to continue hosting these workshops for the foreseeable future and if you haven't yet attended one, we encourage you to check one out soon.

UPCOMING VISOA EVENTS

Save the Dates:

Sunday, February 23: Victoria AGM
Comfort Inn: Speaker Alex Chang
(lawyer from Lesperance Mendes Law)

Saturday, April 19: Victoria Trade Show:
Meet our Business Members and see what they can do to help! Comfort Inn

Sunday, May 24: Nanaimo
No venue yet. TBA

Sunday June 14: Victoria
Comfort Inn. TBA

September 20: Nanaimo. TBA

November 15: Victoria
Comfort Inn. TBA

Dealing with Bullies – Some Lifelong Lessons

Ted Leonhardt

Although this deals with one person's experiences and observations in the work world, our readers will recognize many of the problems and some solutions when dealing with bullies in a strata setting. So often, unfortuately, bullies don't even recognize their behaviour. Keep in mind: No one can bully you if you choose not to be bullied. Ed.

"Teddy, what's three times five?" It's asked in a voice I can't ignore.

"Fifteen."

"And what's four times five?" More demanding now.

"Twenty," I say, dreading the next question, knowing exactly where he's going with this. Knowing, too, that tears are about to spill.

They do.

"Okay crybaby, what's four times six?"

I think the right answer is just four higher than the last one–or is it six higher?–but I can't think, and instead I feel a yawn coming. The body's same self-sabotaging illogic that's got me crying as the worst imaginable moment. Yawning will really send him ballistic!

I lose out to the yawn.

"Bored stupid, are you? Or just plain dumb? You'll never get through the fourth grade!" Dad's voice is rising now. And here it is: "You stupid little dirtbag."

Bullying is a form of violence. It's intended to dominate a victim into submission. When we're under attack, our rational minds shut down, moving into their self-protective "fight-or-flight" modes. (We typically learn about this process in high school biology class, as I'd wind up discovering five years after passing the fourth grade, no thanks to my father.) When we can't fight or run away, we freeze or surrender. These are normal human responses to being in danger.

My dad was a bully. And experiences like learning my multiplication tables taught me a lot about bullying. His attacks drove away any possibility of remembering what four times anything was. It gave him absolute power over me. It still pains me to write this, to recall the deep well of absolute despair into which he'd plunge me. The whole exercise wasn't about learning; it was about him being "smarter" than I was, and proving it by emotional blunt force, shattering any hope of returning back into the world as a normal kid.

Bullies bully to be in control because they feel powerless themselves. They bully not to inform, not to help. Theirs is never constructive criticism; it's

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destructive criticism. (Even so, I never missed my father's point: I needed to learn my multiplication tables and hadn't put the time in.) I came to realize, as well, that bullying is situational; bullies usually only bully under certain circumstances. Somewhere deep down (and among other motivations having nothing to do with me), my father was afraid I wouldn't be successful. Unfortunately, he didn't know how to help without demeaning and shaming me. If I resisted or didn't respond, he could only escalate; for him, there was no gentler approach.

I wasn't stupid, and I knew it even as he berated me. I was pretty sure I was smarter than most kids in my class. I also knew I was smarter than he was.

I wasn't a crybaby, either. I knew I was just overwhelmed by my father's ruthlessness. I'd seen my mother in tears from his cruelty, too.

Bullies follow patterns of their own design, inevitably turning their victims into skilled observers of human behavior. I compiled a mental encyclopedia of all the situations that might trigger my dad and did everything I could to avoid them. Looking back, it's easy to see that I developed anti-bullying techniques unconsciously, purely out of survival. I couldn't change my father and I couldn't leave him. But I learned through trial and error how to reduce my vulnerability. These are a few of the rules I'd cobbled together by age 11 or 12:

1. **Keep your distance.** I stayed away from my dad as much as possible, and I made plans to leave home as soon as possible.
2. **Flatter.** When I had to spend time with my father, I praised his strengths to keep him from finding fault with me. The flattery, combined with sidestepping sensitive subjects, actually created a workable dynamic between us much of the time.
3. **Tell someone when you can.** Once after getting caught running away from home, I asked the priest of our church for help. I knew that using an authority my father would respect could help keep him in check for a while.

My father's bullying was out in the open, overt and aggressive. There was nothing subtle about it, and my resistance strategies were just as makeshift as you'd expect from a kid weathering that type of crossfire. But they kept me going. In the business world, I later found, bullying is usually (but not

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always) more masked, and more sophisticated.

Bullying to Curry Favor

At first I think it's my fault, but after six months in my first professional position, I realize my new boss is sneaky, deceptive, and mean. He takes credit for others' work and demeans his staff in public. He invents infractions to accuse his team members of when his superiors are around. He seems motivated to build his reputation as a hard-driving manager focused intently on continuous improvement–the favored leadership style of the moment. Any attempt to protest earns swift humiliation and blame. We staffers resort to total passivity to survive.

"People leave bosses, not jobs," they say, and it's true. I quit after nine months.

Bullying to Seem Smart

It's years later. I'm running a design firm. No one on my staff is as poised or confident as Gretchen when interacting with clients. But her coworkers are starting to resist joining her on projects. I suspect something is wrong, but Gretchen is responsible for substantial billings. People who can manage clients are hard to find and harder to replace. So I bury my concerns.

Then two designers approach me to speak about her confidentially. "Ted, she gets us to contribute designs on her projects," Terry starts. "She adds our best ideas to her solutions. Then she presents using our work to get the client to see the benefits of hers."

Sally agrees. "She has an imperialistic style with us. She's superior and disdainful, and she ignores our comments. She even rolls her eyes when we try to speak up. Once she made me work all night after I'd critiqued her solution."

I realize that I've avoided giving my star player the corrective feedback she needs. I've been too afraid of losing her. I make an appointment to speak with Gretchen the next day. When I offer some gentle pointers about working more collaboratively, she seems receptive, and I feel relieved. Duty done.

Months pass, and I turn my attention elsewhere. Then Kay, one of my creative directors, appears at my door.

"Ted, Gretchen has to go, or I'm out of here."

"What happened?" I ask, fully anticipating the answer.

"I know you spent a bunch of time with Gretchen last fall, but nothing actually changed. She just got sneakier. She'll never change."

Gretchen doesn't use profanity, name call, or raise her voice like my father did. But she uses her position of authority to demean, dismiss, and dominate exactly like he did. Sadly, she's equally incapable of seeing that she could get better results by working with her team than by bullying them.

I let Gretchen go the next day.

Bullying to Hide Insecurity

Paul is an account director with a bad habit: He makes creative commitments to clients without consulting his team, earning him the nickname "PowerPoint Paul," because he once went into a slide deck overnight to change a design to something he thought the client would like better.

I call him on it. He launches into a series of justifications that in his mind made it okay to circumvent his team. Is he bullying them? Not exactly, but Paul's knack for deceitfully taking control and undermining his colleagues isn't far off the mark–and I suspect that his own lack of confidence is the culprit. Meanwhile, his coworkers feel powerless, forced to submit to his way of doing things.

When I describe to him a series

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of similar incidents I'd been made aware of, Paul starts crying. Once he recovers we map out a better way for him to approach the creative team with client concerns. With a bit of coaching and help from his colleagues, he's eventually able to change tack and gradually rebuilds trust with his team. And I'm able to retain a talented account manager.

In the years since learning my multiplication tables and moving on to tackle Gretchen- and Paul-size problems, I've revised my playbook for handling bullies:

1. **Remember it's not about you.** Bullies aren't bullies out of nowhere. My dad was a war vet. We never talked about it, but he could very well have been suffering from post-traumatic stress. I later came to realize that his bullying, while painful for me, was really far more about *him*.
2. **Observe, and plan an escape.** Whenever my father was bullying me, I was unable to do anything but shut down and take it. But I always knew what was going on. Recognize the behavior you're experiencing for what it is–and know that the trauma will pass. Then strategically plan your escape from the tyranny, like Kay managed to do. Commit to not weathering abuse indefinitely.
3. **Find support.** Bullies can leave you feeling ashamed or unworthy of others' respect, and the tendency is to isolate yourself so others don't see that. But seeking help and advice from trusted friends, peers, or a professional can help you find a path forward. Isolation will only drive you deeper into submission. If you decide to report the bully, choose an authority carefully–one who has the resources to assist you, confidentially if need be, and won't make the situation worse (even unintentionally).

Unfortunately, I'm not optimistic that we'll ever live in a bully-free world. But understanding bullies' motivations, tactics, and patterns can help you contain and escape them.

For me, total escape from dad's bullying didn't come until I took my first professional position. I'd been slowly distancing myself from home, and him, for years–first with part-time jobs that paid for clothes and cars, and later with full-time summer employment that included room and board. But it was my first job as a design illustrator that allowed me to step away from him completely. Best of all, my starting salary was more than he'd ever made. I calculated that one in my head without even trying.

Ted Leonhardt is a designer and illustrator, and former global creative director of FITCH Worldwide. He is the publisher of NAIL, a magazine for creative professionals.

This article was originally published on June 17, 2018, by Fast Company, and is republished here with permission.

• Stop apologizing and say these things instead

• These Emotionally Intelligent Habits Can Make You A Better Listener

• Why progressive discipline doesn't work (and what to do instead)

Strata Insurance Rates Are Rising

Here's why and what strata councils and unit owners can do.

Insurance Brokers Association of B.C.

Our thanks to IBABC for allowing us to reprint this article. It is perhaps the most succinct description of what is currently happening across the country. If the information is correct, at least one new strata on the Mainland reported a 780% increase from about $66,000 in 2019 to about an unbelievable $560,000 in 2020. Ed.

What has changed?

Over the course of 2019, strata corporations across Canada either received notice of a premium and/or deductible increase on renewal of their building insurance policies, or were advised that they should budget for increases on their next renewal.

In B.C.'s Lower Mainland region, where an estimated half of its total 2.7 million residents live in strata-titled property, these increases are having a widespread impact. One real estate insurance brokerage advised its Vancouver strata corporation clients that they should budget for a 25%+ increase in insurance costs for 2019, possibly higher if the property had suffered losses. Some renewals have reportedly increased anywhere from 50% to 300% and the deductibles to cover claims have also increased substantially, from $25,000 per claim to as high as $250,000 and $500,000; at least one building has had its deductible increased to $750,000.

What do strata insurance policies typically cover?

The owners of individual units in the strata building all own a proportionate share of the common property. To help ensure that all owners' equity is protected, the *Strata Property Act* requires strata buildings to be insured for full replacement value of all common property, common assets, and fixtures. This

includes the original construction, including finishing attached to the building. The insurance valuations must be based on recent appraisals.

Because of the ownership structure of stratas and their commercial-grade systems (plumbing, boilers, electrical, heating and ventilation), strata buildings are insured with a commercial property insurance policy, which is typically used for businesses but modified for strata property.

Strata unit owners insure their contents, plus upgrades made to the unit, under a "condo" homeowners' policy. These policies include two crucial coverages:

1) liability insurance to cover damages from losses that originate in the unit and extend to the common area or other units, and

2) coverage for a portion of the strata building's deductible in the event of a major claim.

Why are strata building insurance premiums increasing, and why is the increase so high?

For any business, when cost increases threaten to cause deficits, remedial action is needed. That is especially true for insurance: insurance companies must maintain reserves to meet the demands of future claims, and they must disclose financial information to the federal regulator, the Office of the Superintendent of Financial Institutions, to demonstrate that they are meeting its requirements.

Like other financial instruments - interest rates, for example - insurance rates are constantly being revised in reaction to market forces

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and emerging trends. Such is the case now with commercial insurance in general and strata building insurance in particular. The past years of growth in B.C.'s strata-housing market created a protracted and highly competitive market where normal-level premiums were unduly suppressed. Along with housing prices and financial products, insurance rates tend to follow market cycles.

Other factors leading to strata insurance premium increases include:

The number of claims has increased. When a water failure or fire occurs in multi-unit buildings, multiple units are often affected. The result is a higher likelihood that the cost of repair will be substantial. The increasing growth in the number of strata developments, the aging of strata buildings (many date back to the 1970s and '80s) and the natural reluctance of strata owners to undertake major system upgrades until problems occur with more frequency all add up to increased insurance claims and repair costs.

If your building has a history of claims relating to water escape from system failures and/or resident activities, or it has an aging building system with a poor record of maintenance, its increased risk profile will also add pressure to the costs and levels of deductibles.

The cost of rebuilding has increased. B.C. saw real estate property values increase a few years ago. Even though government has imposed measures to cool the market down, property values remain high and construction costs in the Metro Vancouver region have risen between 7 and 15% in the past year.

The local market is affected by global losses, which are increasing. The increase in frequency and severity of fires, floods, severe storms, and earthquakes elsewhere in the world reminds us that we face a similar escalation of risks here at home.

Recent advances in technology and computer modelling are making more information available about areas that may be at higher risk of fire, flood and earthquake. This modelling technology, plus the actual insured costs of recent major Canadian losses, has allowed insurance companies (also referred to as insurers) to make more accurate evaluations of how much insurance should cost in a given area.

To keep the cost of insurance as low as possible, insurers are allowed to transfer the need to maintain reserves for catastrophic losses (those over $25 million) to other insurance companies known as reinsurance companies. While this has the benefit of keeping premiums lower, it also makes local insurance rates vulnerable to losses that occur elsewhere in the world.

Catastrophic losses from weather-related incidents are a leading reason for current premium increases. As reported by the world's largest reinsurance company, Munich Re, 2018 was the fourth-costliest year since 1980 for insured losses. And 2017, with hurricanes Harvey, Irma and Maria, was the costliest. With major weather-related payouts occurring annually, companies are incorporating that risk into pricing because it's now the new norm.

Increasingly, smaller, regional insurers are leaving the strata-building market to the larger, national insurers, which is reducing the competitive options for strata corporations.

How does this impact owners of strata units in B.C?

Strata unit owners should be aware of impact on the building policy and their unit policy:

If your strata corporation is faced with a substantial increase in insurance rates, the cost will be reflected in your annual budget that determines your annual strata fees. If the deductible is dramatically increased to $100,000, for example, it means any claims under $100,000 are not covered by insurance and, subject to your bylaws, each owner

Continued on page 17

is likely responsible for damages to their strata lot with the strata corporation responsible for the cost to repair common property.

The result is many of the repair and replacement costs that have been covered by the policy of insurance taken out by the strata corporation will now be downloaded onto the affected owners in the event of a claim.

Coverage for owner liability is more important than ever. The *Strata Property Act* establishes building insurance deductibles as a common expense, but also allows the strata to sue an owner to recover the cost of repair or the deductible portion of a claim if the owner was responsible for the loss.

To save the potential legal costs of suing an owner to prove their negligence caused the loss, many stratas have passed bylaws making owners "strictly liable" for any losses that originated from their units.

Review your strata bylaws: How does your strata approach this issue?

Condo policies can include coverage for this transfer of the deductible costs to owners. If an owner is responsible for a claim (for example, their washing machine hose fails, and escaping water causes damage to other units and common areas), the owner could be responsible for the $100,000 deductible or the full cost of repair if it is less than the deductible. Now, more than ever, unit owners will want condo homeowner insurance that covers their liability in the event of a claim for damages to their unit, as well as the cost of a deductible or the risk of being sued by other owners if they cause a claim.

What can your strata do to limit the risk?

Strata councils:

1. Be aware that being able to demonstrate long-term stability and a proactive approach to building maintenance will put your building in the best light and the best position for risk assessment. In these current market conditions, switching insurance brokerages or insurers may not be in your strata's long-term best interests.

2. Review your strata's depreciation report to ensure your strata is meeting regulatory requirements, and that the report's recommendations are reflected in the building's maintenance and repair plan for items that pose a risk such as roofing, water lines, and drainage systems.

3. If the strata corporation is faced with a change in insurance, dramatic increases in cost and deductibles, or the possibility of no coverage, immediately give notice to all owners regarding the changes. Early disclosure will help owners understand the situation, work together toward a solution. Provide the new summary of insurance as soon as it has been renewed so that owners can amend their unit coverage accordingly in a timely manner.

4. If your building fails to obtain insurance, contact a lawyer to determine the potential liabilities and risks for owners and council members and what next steps you should consider.

5. Repair access or building issues that may risk an injury. Address broken sidewalks, or security issues.

6. Work with owners to manage risks:

a) Ensure that all owners have access to the water shut-off to their units so they can quickly shut the water off themselves in the event of a leak.

b) Verify that all units with washing machines have upgraded their hoses to braided steel. Failed rubber hoses in cramped closets and spaces are a chronic cause of water damages.

c) Remind owners that thanks to the soft water in the Lower Mainland they can reduce the amount of soap they use in dishwashers or washers. For later model appliances, use the high-efficiency soap that is recommended. Excess soap suds can build up and temporarily block pipes.

d) Owner activities, such as smoking, barbeques on balco-

Continued on page 18

nies, balcony gas heaters, in-suite hot water tanks, and storage of flammable materials increase the risk of a fire or flood.

7. Update your bylaws: Bylaws that present a risk of human rights complaints also increase your risk. Comply with the *Strata Property Act* and enforce your bylaws. Failure to properly enforce bylaws or comply with any enactments of law can result in claims with the Civil Resolution Tribunal, the B.C. Supreme Court, or the B.C. Human Rights Tribunal. All of these increase your risk and ultimately the cost. Past decisions relating to stratas are available online.

All owners:

1. The strata council and all owners should work closely with your insurance broker.

Brokers are working tirelessly to place coverage for all strata corporations, but in some circumstances because of values and claims history, there may also be a limit to coverage. Invite your insurance broker to attend your annual general meeting to explain the changes to the building's insurance.

2. It is imperative that you as a unit owner have proper con-

do insurance for your unit. Your strata corporation is required to provide all owners with details of all building insurance policies and warranties in effect. Be sure you understand your strata building's coverage, limits, and deductibles, and how the strata council and/or your strata bylaws may apportion or assign responsibility for deductible or under-the-deductible losses. Relay those conditions to your insurance broker, who will explain your coverages and options.

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Alberta Court Rules Against Emotional Support Dog

Airdrie Today.com (abridged)
By: Ben Sherick 10 January 2020

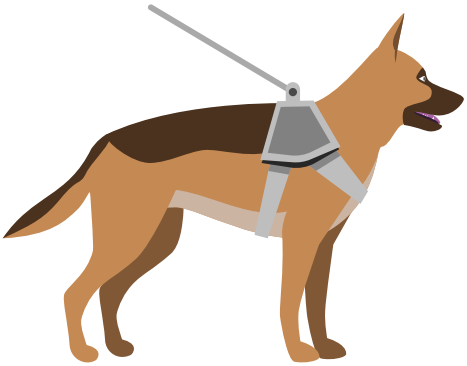
An Airdrie family is bewildered that a beloved emotional support pet will be evicted from their condominium.

Following a recent decision by the Court of Queen's Bench of Alberta in Calgary, siding with the board of Iron Horse Condominiums that directed her dog Charlie must be removed, Brenda Clayton said she felt the system was stacked against her.

"I'm still really in shock over it," she said. "I don't understand how there could not have been just even a slight bit of compassion there somewhere."

According to the decision by Master in Chambers J.L Mason, the issue was "a case of a couple who misunderstood the rules and, in the throes of personal tragedy, purchased a new dog without getting the requisite approval of the board, or registering the dog."

Clayton said she and her husband purchased the condo in 2000 and moved in, along with a dog, in 2002. At the time, the complex allowed approved dogs. When their first dog passed away in 2008, the Claytons replaced it with another.



According to the court decision, in the summer of 2015, the Iron Horse Condominium Corporation began a transition to becoming a "no dog" complex, adopting a pet policy that no longer permitted dogs in any of the Iron Horse Condominium buildings, with any previously-existing dogs grandfathered in. Additionally, all pets were required to be registered with Astoria Asset Management.

Written notice of the new policy was supplied to residents of the complex. Under the new rule, the Claytons' dog was grandfathered in, but the family was under the impression that they, as dog-owners, were grandfathered in.

According to Kassandra Kitz, press secretary with Alberta's Ministry of Community and Social Services, qualified service dogs that have been trained to support those diagnosed with a disability are the only dogs with guaranteed public-access rights. Further, she said, individual businesses and organizations in the province can establish their own policies on whether to allow dogs at their facilities.

"While all dogs can provide emotional support, this alone is not sufficient to obtain public-access rights," she said, confirming as well that emotional support animals are not accredited in Alberta.

This couple went to court hoping that emotions and human pity would triumph over the facts and Alberta's laws. Unfortunately, that makes it a very uneven fight.

—H. Marshall

(The issue of registered seeing-eye and helping dogs is the same in BC. Other dogs or animals are not legally recognized as any sort of "support" animals. Ed.)

The Law vs. Compassion – Should the SPA Allow for Medical Difficulties?

We are grateful to Sarah Picciotto and OnPoint Legal Research Law Corporation in allowing us to reproduce this article from their newsletter Take Five *(November, 2019). Even though both the Strata's point of view, and that of the B.C. Court of Appeal, have some validity, Mr. Dougan's three paragraphs at the end of the article are the nub of the matter faced by our governments and us as citizens. Ed.*

The Case - *The Owners, Strata Plan NW 307 v. Desaulniers,* 2019 BCCA 343

~The notice requirements set out in s. 135 of the Strata Property Act are clear and unambiguous, and must be met before a strata corporation may seek reimbursement under s. 133 of that Act~

On November 1, 2015, a flood occurred in a strata building. It appeared that the flood originated in the appellant's unit but she refused to grant access to representatives of the strata corporation. On November 9, 2015, the strata obtained an order granting it access. The order also provided that the appellant was required to reimburse the strata for costs of the flood remediation work that was not covered by insurance.

When representatives entered the unit, however, they didn't find any flood damage. Instead, they discovered that the appellant had done major modifications to her unit - including dismantling electrical outlets and tampering with the dryer's electrical plug. The appellant was detained by police and taken into psychiatric care.

The municipality prohibited occupancy of the unit until certain repairs were completed. After the repairs were done, the strata sought an order requiring the appellant to reimburse it for the repair expenses. At the hearing of that application it became clear that the strata could not rely on the 2015 order, since that order only contemplated reimbursement for flood damage, and not the extensive electrical and other work that was actually done. The strata therefore relied on s. 133 of the *Strata Property Act*, SBC 1998, c43, which provides that a strata corporation may seek the reasonable costs of remedying contraventions of its bylaws or rules. Section 133, however, is subject to s. 135, which imposes a notice requirement before reimbursement may be sought under s. 133. The chambers judge found the repairs had been urgent and so granted the strata's application and ordered reimbursement, despite the failure to give notice under s.135.

APPELLATE DECISION

The appeal was allowed. The strata corporation argued that, in the circumstances, it did what was necessary to protect the interests of both the appellant and the other owners; it would be unjust to require strict compliance with the notice requirements when effective notice would not have served any purpose. Given the unique and unfortunate circumstances, the technical breach of failing to give notice could be set aside in light of the legislative objective of preventing the unfairness of making innocent owners pay for the breaches of another owner.

The Court rejected this argument. There was no ambiguity in the Act regarding the need to give notice, and so the general principles of statutory interpretation urged by the strata corporation did not apply. There was simply "no leeway" to permit the strata to recover repair costs without having first provided notice, and so the appeal was allowed and the order for reimbursement was set aside.

The Defense - *Comments by Matthew Nied and Rebecca Sim, Counsel for the Appellant*


Matthew Nied


Rebecca Sim

In this case, in which we acted on a *pro bono* basis, the fact that there is no evidence that the strata complied with the notice requirements outlined in s.135 of the *SPA* provides helpful guidance for British Columbia strata corporations in respect of the requirements of procedural fairness and the validity of chargebacks under s.133 before making those repairs. In fact, the transcript of the proceeding in the court demonstrated the procedural fairness requirements of s. 135 of the *SPA* the *Strata Property Act* (the "*SPA*").

This case involved challenging facts and, as noted by the Court of Appeal, the order under appeal was made in "unusual circumstances". In particular, the order required the appellant to pay amounts to the strata for certain repairs made to her unit by the strata while she was involuntarily detained in a psychiatric facility. While the *SPA* provided authority for the strata to make the repairs, these were not even considered.

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Part 7 of the *SPA*, to which ss. 133 and 135 apply, balances the collective rights of owners, who govern permitted uses of strata property, with the individual rights of owners to deal freely with their strata lots. As queried by Mr. Justice Willcock at the hearing of the appeal, s. 135 may also provide a process where an owner can determine whether they, or their insurer, can make the necessary repairs to their unit before a strata makes the repairs itself.

In response to the appeal, the strata relied on a scholarly article written by Professor Doug Harris, a professor at the Peter A. Allard School of Law, for the proposition that the frequency with which the courts are having to deal with adversarial situations between residents with mental health concerns and strata corporations may point to a need to rely less heavily on the black letter law of the *SPA*. In that regard, the strata argued that the appellant's detainment in a psychiatric facility during the time of the repairs rendered the lack of notice under s. 135 of the *SPA* of no practical consequence. The Court of Appeal's decision is a reminder that the procedural fairness requirements outlined in the *SPA* are "unambiguous" and must be satisfied if a strata wishes to chargeback repair costs, irrespective of any unique circumstances.

The Prosecution - *Comments by Phil Dougan, Counsel for the Respondent*


Phil Dougan

This case turns on a strict reading of s. 135 of the *Strata* Property that requires a strata corporation to give notice to an owner before taking action that may variously impose costs upon the owner. As lawyers, we often crave 'bright-line' tests so that there will be less ambiguity and misunderstanding in any given area of law.

In this case the line is very bright, so we trust there will be no other cases like this one. However, my concern is not so much for the law, the decision of which I can completely appreciate; it is the effect of the rule in this circumstance that fear loses sight of the intention of the *Strata Property Act,* and the impact on ordinary owners.

The *Strata Property Act* is consumer protection legislation instituted to protect the investment of individual owners while they join forces with their neighbours in a legally binding social contract, that we shall call a strata corporation.

Other than buying into the same building, these people are complete strangers to one another, and have no interest or desire to become social workers for the other people in the strata complex.

With senior levels of government apparently abdicating any responsibility for mental health in our society, we are seeing it repeatedly now, that strata councils, and strata owners, are having to shoulder the social and financial burdens of the mentally ill.

In our practise, we see *inter alia*, hoarders, drug addicts, narcissists, psychopaths, and in this case, apparently, a paranoid schizophrenic left to their own devices in a strata building. We have had cases where family members knew very well the struggles of their kin, but set them up in a condo somewhere, so that the family did not have to deal with the eccentricities of the ill person.

In this case, in the background of the straight-forward ruling is a very complex and exhausting circumstance for the near neighbours and the strata council. The strata did, in my opinion, far more than it should have done, or was required to do legally, to try and assist a severely mentally ill resident; and has been penalized for it.

The other owners, whose only mistake was to live in this building have now been forced to pay tens of thousands of dollars in repairs and legal fees, because someone who cannot live by themselves is deemed to be 'fine' and need not be in care. To me, the effect of the ruling utterly undermines the financial well-being of strata owners, and provides yet another extremely good reason to not live in a strata!

If our intention in strata legislation is to protect consumers and to make strata living attractive, cost-effective and an 'easier' way of life than single family home living, then we need to legislate around mental health issues in strata corporations.

Professor Harris, at UBC Law School, has already set out the strong correlation between mental health and cases in which those who are unwell are 'evicted' from condominiums for their bad behaviour. This is hardly ideal either. [Harris, D.C.; *Anti-Social Behaviour, Expulsion from Condominium, and the Reconstruction of Ownership*, Osgoode Hall Law Journal, Vol. 54 Issue 1 (Fall 2016)]

As our population ages, as mental illness rates climb because of social, medical and environmental issues, if we do not wrestle to the ground how we equitably care for the mentally ill and protect the investment of ordinary strata owners, there are going to be a lot more angry, and financially challenged, condo owners, than we already have!

THEY SAID IN 1955

"When I first started driving, who would have thought gas would someday cost 25 cents a gallon. Guess we'd be better off leaving the car in the garage."

Here's Why Homeowners Shouldn't Rely on E-Voting for HOA Elections

The Strata Property Act does not allow for e-balloting. Section 49 allows owners to participate "if the method permits all persons participating in the meeting to communicate with each other during the meeting." This can still pose problems for people present by the phone or programs like Skype especially where there is a requirement for a secret ballot. Nevertheless, it does prevent some of the problems shown in this article where some U.S.A. states permit e-voting.

Substitute "strata" for "HOA" for convenience in understanding. Ed.

December 17, 2019

By Deborah Goonan, Independent American Communities
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A reader with expertise in cybersecurity recently wrote to me about his disturbing HOA experience with e-voting.

Anthony M. Rutkowski, Executive Vice President for Yaana Technologies, has extensive professional experience as a lawyer and information technology engineer. He is principal owner of Netmagic, LLC, and a Distinguished Senior Research Fellow at the Georgia Institute of Technology's Center for International Strategy, Technology, and Policy (CISTP) at the Sam Nunn School of International Affairs.

Suffice it to say, Rutkowski knows a little something about cybersecurity as it relates to electronic voting systems used by governments in the U.S. and around the world.

In his recent blog post, Rutkowski shares what he learned about his e-voting contractor hired by his Virginia homeowners association.

Is e-voting a magic bullet?

HOA-industry trade groups, and several prominent law firms have been promoting e-voting as a sort of magic bullet for apathy in HOA-governed communities.

On the plus side, according to HOA attorneys, e-voting eliminates the need to print and mail paper ballots, and it encourages greater voter participation by out-of-town HOA members and others who do not attend the annual meeting.

But Rutkowski cautions, there are several serious security issues with e-voting.

For one thing, state and federal laws do not set security standards for voting electronically. Just about anyone can set up an e-voting business, virtually anywhere in the country, without any professional or technical certifications.

Obviously, that leaves cyber HOA elections vulnerable to hacking, vote rigging, and other mischief. And, with no paper ballot trail to verify the outcome of any corporate or nonprofit election or amendment process, how can unit owners rely on the integrity of the vote?

The simple answer: they cannot.

Who collects those e-votes anyway?

When Rutkowski tracked down the destination of his own e-vote, here's what he discovered:

It turned out the e-voting provider was actually a one-person Oregon company that had been administratively dissolved for several months; that its headquarters was a small local law office, and the mailing address was a strip mall UPS mailbox. Technically, the service was being run on a server in a small Salt Lake City office, and the purported online security was a free 3-month quickie digital certificate that involved no identity checking. The balloting process also involved a "registration" screen to capture

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homeowner information with a link to a Florida LLC also run out of a UPS mailbox on a local server. Although the Oregon provider's online brochure suggested it had many satisfied customers, the server in Utah revealed only one other HOA customer in Texas.

Not too surprisingly, when Rutkowski checked the official meeting minutes of his HOA, he learned that the board approved its e-voting contractor without any background check or competitive bidding process.

HOA leaders apparently accepted, without question, the recommendation of their esteemed HOA manager. Just like that, the contractor was hired to handle the HOA's annual election as well as a special vote to amend its Covenants, Conditions, and Restrictions (CC&Rs).

The amendment e-vote was conducted prior to the annual HOA election. Needless to say, the results of that vote remain controversial.

On the bright side, after the HOA was made aware of the questionable status of its contractor, the board changed its tune. The HOA reverted back to the paper ballot system for their annual election.

The uncertain future of e-voting in HOAville

Rutkowski advises governing bodies at all levels, especially hyper-local HOAs, to proceed down the e-voting path with extreme caution.

He points out that even seasoned experts have not completely figured out how to prevent fraud and cyber hacking of electronic votes.

Until the technical wizards figure out how to prevent election rigging in cyberspace, it's best for HOAs to stick with the tried and true paper ballot systems.

About a decade ago a kind of e-Voting technology euphoria emerged in many State legislatures that resulted in statutory amendments enabling the use by Homeowner Associations of essentially any kind of electronic voting scheme they wanted to employ. Typical was Virginia's 2010 amendment to its Property Owners' Association and Condominium Acts that enabled "Voting, consent to and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means…."

The problem, however, is that there are no standards, certification mechanisms, or regulations of any kind that apply to providers or such e-Voting services. Anyone, anywhere in the world can set themselves up as an e-Voting provider. Worse yet, in the past several years, it has become quite apparent that e-Voting systems are highly susceptible to innumerable cybersecurity and fraud vulnerabilities that are almost impossible to remedy even with significant resources at Federal and State levels.

Those at the bottom of the government food chain – State chartered Homeowner and Condo Associations – are at the greatest risk. They typically have the least resources to maintain essential integrity of their e-Voting systems. They have also tended to be the victim of unscrupulous management contractors who encourage these Associations to switch from paper to e-Voting systems so they can earn extra income and promote e-Voting contractors with whom they have business relationships. The results are e-Voting debacles that place election and declaration amendments results at risk. When even large cities and States have fallen back to the trustworthiness of paper-based systems, there is no rational basis for HOA/COAs not doing the same. Furthermore, paper-based systems automatically provide a trusted audit trail, require no special legal or technical skills, auto-determine voting rights for each property, meet disability act requirements, and highly cost-effective.

With new legislative sessions now getting underway in many States, it seems appropriate to now recognize the extreme e-Voting vulnerabilities inadvertently created which have placed HOAs and COAs at risk and rescind the State statutory provisions adopted. While such systems with regulation and certification may be acceptable for informal polls, they are wholly unsuitable for fundamental governance requirements. Additionally, at the Federal level, Congress needs to bring the lowest level local governmental entities like community associations under the protective umbrella of elections cybersecurity protection.

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