

## VISOA Bulletin - MAY 2020

# HOW TO RUN A STRATA CORPORATION IN THE MIDST OF A PANDEMIC

By *Shawn M. Smith*



The way in which strata corporations conduct business has changed dramatically in the last month and a half. No longer are owners able or willing to

gather together to conduct business. Strata councils are equally reluctant to do so. This article will address some of the issues and concerns facing strata corporations as they try to conduct business in these trying times.

### General Meetings

S.49(1) of the *Strata Property Act* (SPA) provides as follows:

(1) A strata corporation may, by bylaw, provide for attendance at an annual or special general

meeting by telephone or any other method, if the method permits all persons participating in the meeting to communicate with each other during the meeting.

Unfortunately, very few strata corporations have such a bylaw. For those that do, this provides an obvious, although perhaps not perfect, solution.

For those that do not, they can rely on the recently enacted Ministerial Order M114 which provides that, during the pandemic “a strata corporation may provide for attendance, or voting in person or by proxy, at a strata property meeting by telephone or any other electronic method, if the method permits all persons participating in the meeting to communicate with each other during the meeting”.

In both cases, a person who attends a meeting is considered to be present in person at the meeting.

Whatever platform is used, it is important make sure the participants can “communicate with each other”. The word “communicate” is defined as: “exchange information; convey feeling or thought; understand one another.” How the platform allows people to express their views will need to be examined. A “chat” function is likely not sufficient on it’s own. The ability to speak orally will be necessary (even if it’s not instantaneous).

Whether relying on an existing bylaw or the Ministerial Order, strata corporations may wish to make further bylaw amendments to address a variety of procedural

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issues that arise with respect to a virtual meeting with full owner participation.

Standard Bylaw 27 (which still applies even if relying on the Ministerial Order) governs how owners vote and includes the following problematic provisions:

“(1)At an annual or special general meeting, voting cards must be issued to eligible voters.

(2)At an annual or special general meeting a vote is decided on a show of voting cards, unless an eligible voter requests a precise count.

(3)If a precise count is requested, the chair must decide whether it will be by show of voting cards or by roll call, secret ballot or some other method.

(7)Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.”

How does one issue voting cards to eligible voters who are not physically present? Voting done on line or over the phone will not even involve the use of voting cards. A secret ballot (or any ballot for that matter) cannot necessarily be done through an electronic or virtual platform. Any bylaw which allows for electronic voting should address these potentially problematic provisions.

Thought must also be given to a wide variety of procedural issues. How best to register voters? How do you know, particularly in a large strata corporation, that the person who signed into the virtual meeting platform is the owner? How do you block an owner who is not eligible to vote, but who signs into the meeting, from voting? How are proxies certified and how do you count multiple votes? The answers to these questions will perhaps be easier in small strata corporations

than in large ones. Further by-law amendments to set out specific procedures may be required.

For strata corporations who do not wish to conduct a meeting through an electronic platform, they can still resort to what has become known a “limited” or “restricted” proxy meeting. This process still involves a physical meeting, but with attendance limited to a small group

(perhaps two or three people) who hold proxies on behalf of the owners. Typically those people are council members, but they need not be. Who they are will need to be determined in advance of the notice of meeting being sent.

As the name suggests, the procedure relies heavily on the proxy provisions of s.56 of the SPA which allow for proxies with specific voting directions to be given; allowing owners a degree of certainty that their vote will be cast in the way they wish (as opposed to simply giving a general proxy and leaving it up to the proxy holder to vote as they wish. A person holding a restricted proxy is obliged to exercise it in accordance with its instructions).

Restricted proxy meetings also rely heavily on the cooperation of owners. There is no means under the SPA to compel an owner to give a proxy or prevent them from attending a meeting in person. As such, a high degree of transparency and trust is necessary to dispel suspicions.

Care must also be taken when completing the proxies. The same rules apply to a restricted proxy meeting as they do to a conventional meeting. In *Macdonald v The Owners, EPS 522, 2019 BCSC 876* the court set out certain requirements with respect to proxies. Those include:

- The appointee’s name must be written on the form before it is signed by the owner. Blank proxies are invalid.
- A proxy form must identify an individual as a proxy holder. A proxy which says “any council member”

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is irregular and should not be certified.

These provisions should be made very clear to owners so that proxies are validly given and can be exercised. Finding out when proxies are being certified that they are not valid will be problematic on many levels.

Thought should be given to whether proxies are retained and for how long. There is no requirement to retain them, although doing so might be preferable in the event of a challenge at a later date. However, absent a bylaw to the contrary, owners do not have a right to see the proxies. S.36 of the SPA permits owners to view certain documents set out in s.35, of which proxies are not one. (It is unclear whether they are considered “correspondence” for the purposes of s.35(2)(k) of the SPA; in which case they would be accessible under s.36. In the writer’s view they are not).

One of the common objections to restricted proxy meetings is that they do not allow for debate and discussion amongst owners; an observation and concern that is quite valid. One way to overcome that concern is to schedule virtual information meetings well in advance of the meeting date such that owners have an opportunity to become informed, ask questions and discuss the proposed resolutions. This may require sending the notice of meeting out more than the required 20 days before the meeting. Where the resolutions involve a matter that is not straightforward, providing more information will likely increase the chances that the resolution passes.

If the meeting is an AGM, a new

council must also be elected pursuant to s.25 of the SPA. There are two preferable means of dealing with that issue:

1. Ask owners to re-elect the current council with a promise to call an SGM at a later date to remove them and elect a new council;

2. Canvass the owners for nominations in advance of sending out the notice. That way the slate of candidates is known and owners can complete the proxy form accordingly;

Small strata corporations should consider using the provisions of ss.41 and 44 of the *Strata Property Act* to waive the holding of meetings and approve resolutions in writing. (However, it requires unanimity as all owners must sign the documents).

Postponing an AGM is a decision that must be carefully made. Pandemic or not, s.40(2) of the SPA still requires it to be held within 2 months of the fiscal year end (although the SPA does not set out the consequences for not doing so). However, s.104(3) maintains the status quo when it comes to the budget. It provides that:

“(3) Until a new budget is approved, the strata corporation may spend money out of the operating fund only in accordance with section 98 or

- (a) on the type of expenses that are set out in the previous budget and that usually occur once a year or more often than once a year, and

- (b) up to the maximum amount set out in the previous budget for each category of expense.”

The consequences of maintain-

ing the same budget need to be considered. In an era of rising insurance premiums, this may not be an option.

## **Council Meetings**

Standard Bylaw 17(1) allows for council meetings to be held by electronic means. If a council does so, then it must ensure that provision is made for observers as required by Standard Bylaw 17(3) or amend the bylaws accordingly.

While it may be tempting to use email for decision making at the council level, in *Mueller v. The Owners, Strata Plan LMS2195 2018 BCCRT 773* the CRT reached the conclusion that decisions made by email must be subsequently ratified at properly convened council meeting. If that is to be a common practice then a bylaw dealing with decision making by email should be put in place.

Despite these trying times, it is important that meetings are still conducted in compliance with the SPA. There is no guarantee that owners who do not like a decision will overlook a lack of compliance. They may well take advantage of it. Councils in doubt as to how to proceed should seek legal advice.

*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](mailto:shawn@clevelanddoan.com). He can be followed on Twitter [@stratashawn](https://twitter.com/stratashawn).*



# Editor's Angle



Over the past few months we have witnessed considerable changes! Sandy Wagner has left the Board after over 10 years of leadership and we are going to miss her counsel and knowledge, her extensive participation and development of VISOA, and her substantial involvement throughout the strata world. Even so, despite her “retirement”, she has promised to remain as co-editor of the *Bulletin* as well as give workshops on occasion.

Changes to the Board of Directors also sadly saw the retirement of Paulette Marsollier, but the election of André de Leebeeck, John Grubb and Alicia Holman will undoubtedly supply the Board with new perspectives and new ideas. You can see their

“bios” on the “About Us” page of our website.

At the April Board meeting, the following Officers were elected: President – Wendy Wall, Vice-President – John Grubb, Treasurer – Graeme Campbell and Secretary – David Grubb. All the Directors, as is customary, will be undertaking one or more Chairs of VISOA’s many working groups to help the organization serve the needs and wishes of the members, and participate in the social and political changes which are constantly evolving.

In the past few months, we all have been inundated with the problems created by rapidly rising Insurance premiums and deductibles. We have included articles about this, and it is noticeable from so many such articles that, in addition to the many international problems over which we have little or no control, insurance

very often is tied to how well each strata has been maintaining their property through their depreciation report, their attention to ensuring a master maintenance plan is sustained and revised annually, and an increasing build-up of the CRF to meet those needs.

insurance in the news, the issue is by no means dead. There is a team of lawyers, B.C. Government personnel from the Housing Ministry, Realtors, Strata Managers, VISOA, CHOA, Insurance Brokers and the insurance industry in general, who are all currently working (via telecommunications) to find solutions to a very knotty problem. It is not just the premiums and deductibles: there is very likely going to be an impact on the *Strata Property Act* and probably the *B.C. Insurance Act* as well which have to be considered.

The pandemic created by the Corona Virus has also really impaired not only our personal lives, but many operations of each strata. Most recently, there have been questions about how to hold AGMs and SGMs when we are restricted as to distance between people and the number of people allowed in an assembly. This has led many stratas to look seriously at having the owners assemble by “electronic” means: something that is only vaguely touched on in the Act and in the Standard Bylaws.

“Electronic means” requires that the meeting must be conducted so that *all* participants can communicate *at the same time*. Moreover it would be cumbersome to try to talk to each other that way when a subject requires extensive discussion.

Conference calls are certainly feasible amongst the council because of its small size. But this is predicated on a very accurate set of minutes including the careful

problems of strata



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record of each motion and results of all votes.

However, meetings such as the AGM and SGM – especially those with a larger number of units – pose a considerable problem. The SPA does not anticipate pandemics with all the strictures currently being imposed on society. So holding one in an acceptable manner becomes a problem. To try to sort out this challenge we will have a look at legal ways

of accomplishing such meetings from postponements to “restrict-ed proxy” meetings.

We hope that some of the articles in this edition will allow for thought and give you some ideas about how to keep all your owners informed and the operations of your strata on an even keel so that everyone stays well informed of what is happening to their investment.

Finally, it was been said in the

past, “War brings out the Best and the Worst in people.” So amongst all this “Doom & Gloom”, we love to see and hear those stories about all the “Best’s” in the news. We give thanks to everyone who has “followed the law” and all those who have looked after the neighbours in their strata – and elsewhere – and made our lives and our homes happier and, we hope, healthier.

## Do You Have Any Corona Virus Success Stories?

Please send an email to the [editor@visoa.bc.ca](mailto:editor@visoa.bc.ca) and we will send a compilation in the next Bulletin! Your name or strata number are not required - just your success stories.

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NEWS!”

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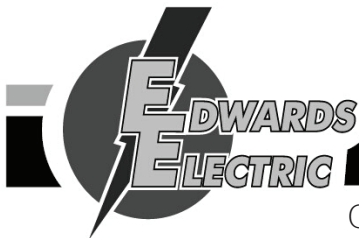
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# Essential Strata Documents Needed for the Sale of a Unit

By Ryan Stenquist, Condo Clear Services Ltd.

At the core of every strata purchase is the information buyers rely on in order to determine the status of the strata and to make a decision.

One of the biggest, unforeseen, issues I have faced is obtaining access to the appropriate documents. Nearly every review we receive (90% plus) is missing important information which begins the often-daunting task of requesting additional documents from the strata and/or their management company.

Many people are aware of the main documents needed such as the Form B: Information Certificate, Depreciation Report, and at least the past two years of council and AGM minutes. However, there are some lesser known, but equally important pieces that we find ourselves requesting on a regular basis:

- **Current Form B** – Many times we receive a Form B: Information Certificate that is months old, and we have even received push-back from people in the industry that believe a Form B is valid for 30, 60, or 90 days. This is not the case. A Form B is merely a snapshot of the strata corporation for the day it was issued and could change the next day. Having an updated Form B may mean that you need to obtain a new one multiple times; but that is the only way to ensure no significant changes have happened. If the Form B is older than 30 days, or approaching that age, I would recommend that a new one be requested as soon as the offer is accepted. The cost is limited to \$35 plus up to 50 cents (if no rush

fees are applied) which, is typically a lot cheaper than paying for a one or two day rush if you find yourself in a tight deadline.

- **Insurance Certificate** – Having the appropriate insurance is a requirement for every strata corporation and it is often assumed that is the case; however, we often see policies that are subject to a co-insurance clause, which may mean the strata is under-insured, or have high deductibles which may require additional personal insurance or indicate a high loss history due to water leaks, etc. This is a document that I believe should be mandatory with the Form B yet it is often overlooked and it is more important now more than ever with the current issues surrounding insurance coverage in strata corporations.

- **Current Financial Statements**

– Most management companies do provide a copy of the most recent financial statement and balance sheet (if applicable); however, some do not, and many self-managed strata corporations only provide the year end financials. Having up-to-date financials provides a much better picture of where the strata corporation is fi-

nancially, especially in relation to their depreciation report.

- **AGM/SGM Notices** – Typically we don't have a problem getting the minutes themselves but often we do not receive the notice packages. Under the Act the strata corporation is required to provide notice of the AGM/SGM to the owners and this notice may contain certain pieces of important information that often don't make it into the minutes. This may include:

- A copy of the insurance certificate;
- Proposed budget;
- Year-end financials; and,
- Reports from the council and/or contractors/engineers.

- **Form V: Schedule of Unit Entitlement** – This has become a relatively new practice for us. In most

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document packages we receive a copy of the fee schedule that the strata corporation uses to determine each unit's share of the strata fees; however, in the past year we have come across multiple strata corporations that were not calculating their strata fees properly. In most cases it is a matter of a few dollars difference in their strata fee but over time this can add up to a significant sum of money, especially if any kind of large special levies are expected. We now double check these calculations in order to ensure buyers are paying their appropriate share of the common expenses.

• **Depreciation Reports and Engineers' Reports** – This one can be a little more challenging as we often don't know if they exist until a review of the documents has been done. These can contain material information that often may affect a buyer's decision. The reports could relate to major building repairs or projects that are coming up, or have already been completed but in either case, these are some of the most important documents for a buyer to review.

The best way to avoid a lack of information is to request all the documents right up front. Some management companies may push back and say things like "We never provide these documents." or "We have never had a request for this before." but ultimately, they are required to provide the documents requested.

• **Buyers** – Ensuring that you receive a full document package and reviewing them in detail is

important to making sure you understand your investment and to avoid any major issues that may affect your future in that strata corporation. Realtors may be able to provide some assistance; however, this is a specialized area and is highly contingent on their personal experience. Realtors are not typically licensed as Strata Managers or necessarily equipped to fully understand what the documents mean. Reviewing them yourself or engaging a qualified third party such as a lawyer or licensed document review company is highly recommended.

• **Strata Corporations** – Having all the possible documents ready to go upon request will save yourselves and the buyers/sellers a significant amount of time. This is especially true for self-managed strata corporations; however, if you are managed you may want to double-check which documents your management company is making readily available as they are often lacking in some of the areas mentioned above. If the strata corporation fails to provide any requested documents and they contain material information that could have affected the sale of the property, the strata may incur some liability.

For your reference, the following is a list of documents we recommend requesting with every transaction:

- Current Form B – Within 30 days;
- Current Financial Statement – Within 60 days;
- Latest Depreciation Report

- (Should come with the Form B);
- Insurance Certificate;
- Rental Disclosure Statement (should come with the Form B);
- Registered Bylaws;
- Rules (should come with the Form B);
- Registered Strata Plan;
- Form V: Schedule of Unit Entitlement;
- AGM/SGM Minutes – Two years;
- AGM/SGM Notices – Two years;
- Council Minutes – Two years; and,
- Any Engineers' Reports.

*Condo Clear Services Inc. is a fully licensed brokerage under the RECBC that specializes in supporting strata buyers through reviewing and summarizing strata documents as well as providing consulting services for strata corporations and management companies. Info@condoclear.ca*



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# Disruptive Owners at AGMs - What's a Strata to Do?

By Sandy Wagner



I have the good fortune to live in a strata where nearly everyone gets along – but we know that for many of you, this is not the case.

Have your AGMs been disrupted by loud or angry owners?

A recent CRT decision shows us what not to do – in *Liu v. The Owners, Strata Plan NW 2269, 2020 BCCRT 291* the adjudicator found that the strata was required to remove a bylaw fine of \$200 assessed to the allegedly disruptive owner, and pay her CRT fees.

Ms. Liu was fined under the strata's bylaw equivalent of Standard Bylaw 3, which stated that an owner must not use common property in a way that “unreasonably interferes with the rights of other persons to use and enjoy the common property,

common assets or another strata lot”. The owner was accused of “disruptions and harassing behaviour” at the strata's AGM, held in a common property clubhouse.

As evidence, the owner submitted an audio tape of the strata's AGM, and the Tribunal Member's decision states: “Based on the recording, I do not find any disruptions occurred at the 2018 AGM.”

The Tribunal Member stated further:

“I would describe the verbal exchange as one where both parties were attempting to get their point across, but neither was listening to what the other was saying. There is also an element of misunderstanding based on owner's ability to

clearly understand English as I have mentioned above. The property manager was defending the actions of the strata council and the owner was suggesting more transparency of the strata's common expenses was required. Thus, the conversation b e c a m e indiscernible and resulted in the property manager ruling the owner “out of order”.

Despite the strata's allegations to the contrary, I find the owner did not continue speaking after being told she was out of order.


“Every owner has a democratic right to attend the strata's AGM to exercise their vote. There are no strata bylaws that restricted the owner's right to exercise her vote at the January 2019 AGM. It is to be expected that during discussion at an AGM, owners may have different opinions and voice their concerns in different ways. Owners may repeat their concerns if they believe they have not been heard, or even say things they may regret later. However, I do not find that any of these things, in the circumstances of this dispute, could be considered to unreasonably interfere with the rights of other persons to use and enjoy the common property during the AGM.”

“For all of these reasons, I find the owner did not contravene the strata's bylaw... as alleged by the strata.”

“I pause to note that the apparent underlying issue here is the transparency of the strata disclosing its common expenses. The owner's original questions about expenses and perceived inadequate response from the property manager seem to have led to the initial conflict.”


In this dispute, the item to note is that the strata incorrectly decided Ms. Liu's frustration was

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disruptive and harassing. How often have we all seen one owner who just wants their voice to be heard, and when dismissed by the meeting chair only gets louder?

I'm not suggesting that your AGM become a speaking platform for any owner who wants the room's attention – the AGM is not the place to begin to discuss an issue. You need to have a transparent council who encourages owners to ask questions all year. Owners are free to disagree but their opinions should not be disregarded. If Ms. Liu's questions on the strata's accounting were given a courteous reply before the AGM when she first raised them, or even a short reply at the AGM itself, a year of hard feelings could have been prevented.

You will never all have owners agree with every decision made by the strata corporation – but they are owed the courtesy of transparent

replies to questions.

Of course correspondence to council that does not ask a question but is merely a rant by an owner is not “owed” a reply. But what harm could it do to reply, “Thank you for your email. Council has reviewed the matters you write about and we suggest you read the minutes and financial statements, and if you have specific questions please write again.”

If an owner does begin to become argumentative at your AGM, what can you do? A good meeting chair will follow the strata's rules of order. For example, limiting each person's time to, say, two minutes per topic and allowing everyone who wants to speak, their time before allowing anyone to speak a second time. A list of who is waiting their turn to speak is required, perhaps assisted by another council member.

A good chair will also try to

keep order by reminding the attendees that if they have nothing new to add to the discussion but are merely repeating thoughts of others, they might want to give up their time; as well as constraining those who digress from the topic on the floor. Owners with off-topic “beefs” should be encouraged to write to the new council with their questions. Once the owners call for the vote, the time for talking on the matter is done, but even so, if an owner speaking out of turn is not necessarily “disruptive”. A bylaw might be broken if an owner becomes repeatedly aggressive, hostile, or profane to many others – but it is not, if they are simply expressing their frustrations.

One source of conflict, indeed the source in the Liu decision, was a lack of replies to questions about the strata's financial statements. It's hard to imagine a strata corporation

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**'Making Strata Maintenance Manageable'**

– council president or treasurer; or manager – being so unprepared for an AGM as to be unable to answer questions from the floor, but if that is the case in your strata, a simple promise to find the answers and reply after the first council meeting may be all that's needed. That should suffice to move the meeting

along. However, it's possible that owner's question is important to other owners as well. I've seen strata's budgets not approved by owners, because there were just too many unanswered questions at the AGM. Don't be one of those stratas!

*Sandy is a past president of VISOA, and co-editor of this Bulletin. For the full text of the Liu decision, see the CRT website at: <https://decisions.civilresolutionbc.ca/crt/sd/en/item/465579/index.do>*

## Webinars are the New Seminars

By Wendy Wall

For the last few years, VISOA board members have opined that we should learn to do webinars to make our seminar material more accessible to the public, particularly for those who find it difficult to travel to attend them in person. Due to one thing or another, the idea was put on the back burner a few times.

Then came COVID-19 and it seems like the world changed overnight. Many businesses found ways to have employees work from home; restaurants and retail stores began delivering their goods; patients discovered they can have a doctor's appointments online; and people began meeting online to play board games; do yoga and hold birthday parties.

And VISOA did its first online workshop. Necessity is the mother of invention. Just days before the event we had to decide whether to cancel our "Planning EV Charging for Stratas" workshop scheduled for March 21 or learn how to do it online. The attendees were willing to give it a try and the workshop took place using the ZOOM meeting platform.

"I truly believe this crisis is an opportunity in disguise," says Dr. Fang Wan, marketing professor in the Asper School of Business at the University of Manitoba...this is definitely the time when adversity should foster innovation."



So, it took a push, but VISOA is now embracing the technology to present our seminars online. The disappointment of having to cancel venues for our May and June seminars has been replaced with excitement for greater possibilities that have now opened up.

We are no longer limited to holding a few seminars per year due to the high cost of venues. Although we will continue to hold in-person seminars when the restrictions on gatherings lifts, we can now offer as many webinars as we wish online and be more flexible with the scheduling to accommodate the availability of our speakers. If our

speakers consent, we may also be able to post or grant access to recordings of the webinars for viewing at a later time.

*VISOA is currently lining up speakers on various topics. To find out when the webinars will be held, join our email list from our website [www.visoa.bc.ca](http://www.visoa.bc.ca), visit the seminars page on our website, search VISOA on EventBrite.ca or follow us on Facebook and Twitter. Suggestions for seminar topics can be emailed to [seminars@visoa.bc.ca](mailto:seminars@visoa.bc.ca)*

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# Privacy Matters Podcast helps stratas protect personal information and avoid privacy pitfalls

B.C. Office of the Information and Privacy Commissioner

VICTORIA - Strata complexes deal with an enormous amount of people's personal information, often without a clear understanding of applicable laws or the simple steps they can take to comply with them.

A newly released podcast from the Office of the Information and Privacy Commissioner for British Columbia (OIPC) tackles some of the most pressing issues relating to the personal information rights of the more than 1.5 million people who live in strata housing in the province.

Commissioner Michael McEvoy said the podcast, "Strata privacy: rights, cameras and taking action," the third in the OIPC's PrivacyRight educational series, responds to a clear demand from British Columbians.

"Looking at files our office has seen since 2014, we noticed a significant number of calls, complaints, and queries from strata owners, strata council

members and visitors to strata buildings related to privacy and access to information rights and obligations under the Personal Information Protection Act (PIPA)," the Commissioner said.

"Specifically, people were concerned or wanted to know more about the use of video surveillance by stratas; disclosure of personal information; management of requests for information; privacy policies; as well as the appropriateness of collection and use of personal information. We're hoping that this PrivacyRight podcast will answer some of those questions."

The podcast features interviews with Commissioner McEvoy, as well as Tony Gioventu, executive director of the Condominium Homeowners Association and Times Colonist columnist; Sandy Wagner, then President of the Vancouver Island Strata Owners Association, and two representatives of Cornerstone Properties, a Victoria-based property management firm.


for platforms.

## Key takeaways:


- Stratas are private organizations under PIPA and are legally obligated to have a privacy policy. If yours doesn't, the PrivacyRight program offers resources to help you build one.
- Be proactive in protecting privacy: make a privacy policy part of your by-law package. Don't wait until after a breach to take action.
- Surveillance should only be used in cases where options for less invasive solutions have been exhausted. If it is used, the reasons why and how it will comply with PIPA need to be detailed in a privacy policy.
- The *Strata Property Act* allows for much broader access to personal information than would be available under PIPA. Limit the types of personal information you collect in the first place to limit the potential harm of this broad access.
- Exercise caution when contemplating the use of any social media platform for your strata. Uses are often inappropriate and could violate strata residents' privacy rights.
- Complaints related to violations of the Personal Information Protection Act should be directed to the OIPC, while complaints pertaining to the *Strata Property Act* should be addressed to the Civil Resolution Tribunal. If in doubt, call the OIPC and we'll help direct you to the appropriate avenue.

They share their expertise and years of experience dealing with strata privacy concerns, and delve into hot-button topics such as the use (and over-use) of video surveillance; privacy pitfalls at strata council meetings; and caveats for stratas in the social media age. The podcast also looks at what recourse British Columbians have when they feel their privacy rights have been violated.

The podcast is available on all ma-



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## Resources:

- Printable infographic: Strata privacy tips
- OIPC guidelines for strata corporations
- PIPA and strata corporations: frequently asked questions
- PrivacyRight webinars - build a privacy management program from the ground up
- Order P09-02: Shoal Point Strata Council



# The Challenges of Managing a Distressed Property

## Getting back on track

Condo Living Newsletter (24 Feb 2020)

[The following is an article from *The Cooperator*, an American magazine. It was repeated recently by the *Condo Living Newsletter of Toronto*. Written by a property manager in the U.S.A. it demonstrates that proper physical maintenance of a strata, and good communication amongst the owners, are essential to everyone at all times, and especially in this age of rising insurance costs. At the end, I do not know who H. Marshall is, but his thoughts are well worthwhile considering. Ed.]

*The Cooperator*, New York,  
By A.J. Sidransky January 2020  
(abridged)

Condominium properties don't always run like well-tuned machines. Sometimes they hit a bump in the road...and sometimes they break down completely. The reasons behind such a breakdown can come from many directions, including financial missteps, physical plant problems, and interpersonal disputes.

### Money and maintenance

Like just about everything else, physical plants and common elements age—and if proper reserves have not been built up and maintained, buildings may find themselves in the financial weeds if a major physical component suddenly needs repair or replacement, or if a bad winter or other unforeseen event causes extensive damage to the property.

According to Stuart Halper, vice president of Impact Management, a co-op and condo management firm with offices in Manhattan,

Westchester, and Long Island, “A distressed property is generally the result of fiscal mismanagement. For example, boards may choose to undertake the wrong projects at the wrong time. They may decide they prefer to renovate the lobby when in fact they should be upgrading their boiler.”

Nick Ruccolo, a vice president with Crowninshield, a real estate management firm in Massachusetts, also sees financial mismanagement as the underlying cause of distress for condominium communities. “The problem we most typically run across,” he says, “especially with new accounts, is deferred maintenance. Many items that should have been done have been deferred, or passed along. They didn't start as emergency items, but over time they became emergency items. Typically then, a large assessment will have to be put in place to take care of it.”

Buildings age, and mechanical systems and equipment become obsolete. It is the responsibility of a co-op or condo board and its management to properly prepare for the necessary maintenance and ultimate replacement of building systems.

A board that consistently defers regular maintenance or opts for a cheap fix rather than a more long-

term solution will ultimately land the property in distress.

### Interpersonal conflict

While perhaps less obvious at first than financial or physical breakdowns, a breakdown in interpersonal cohesiveness, often characterized by conflict between individuals or groups within the community, can be just as detrimental to the health of a co-op or condo. The inability for a board to make decisions due to conflict or constant infighting among different factions within their community can grind the effective operations and management to a halt. The inability for a board to make decisions due to conflict or constant infighting among different factions within their community can grind the effective operations and man-

*Continued on page 16*



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agement to a halt.

“Interpersonal problems between residents and the board, between board members, and between groups of residents happens all the time,” says Ruccolo. “You have to play the role of conciliator, to get the opposing sides to reach compromise. It’s not unlike the politics of today. You have to find common ground, and that’s really hard to do.”

Halper mentions situations wherein an individual person can get control of the board and will try to run the building or association like their own personal fiefdom. That kind of inappropriate, self-serving control can lead to a complete breakdown in communication, which in turn can make a manager’s job nearly impossible.

### Avoiding trouble—and when to walk away

A financial pitfall can be dodged if caught early enough, before the

dollar amounts involved creep too high for the individual shareholders or owners to handle. “Completing a regularly scheduled reserve study, and maintaining both the reserves required therein and completing the work required as scheduled, will avoid the possibility of the property becoming distressed,” says Ruccolo.

Halper agrees, and adds that “The key is to keep up with both financial and maintenance needs. Raise maintenance annually to keep up with increases in operating expenses and other costs. Cheapness is at the heart of the problem.”

And sometimes, a board’s inability—or unwillingness—to handle its business forces their management company to cut ties and leave the community to its own devices.

While management firms carry errors and omission insurance, there’s still liability, and most firms will part company with a truly dysfunctional board before they become liable for the board’s mismanagement.

Both Ruccolo and Halper also point out that the management business can be stressful enough as it is—managing even one chronically distressed property can add to that stress and can take time away from other properties in one’s portfolio.

“You don’t find firms that only handle distressed properties,” says Ruccolo. Partly for the reasons already

mentioned, but furthermore, Halper continues, it’s a matter of reputation. Nobody wants to be known as the company whose portfolio of properties is riddled with problems, lurching from one crisis to the next. “It’s a small business, and everyone knows each other,” he says. “You have to be careful of your reputation.”

### My Thoughts on This – H. Marshall

Keep in mind that while the managers and the engineers may know that a building is “distressed” many if not most of the owners (and perhaps the Directors) don’t realize it.

There are condos where the municipal fire inspector has issued work orders and the local swimming pool inspector has concerns that need to be addressed, but the owners never hear about these things.

The newly elected directors don’t know the issues that were raised at the last Board meeting let alone a few years ago.

The owners, and potential buyers, are never told that the underground garage repairs would have cost \$1 million if there were done eight-years ago but since they were not, it will now cost \$9.6 million to fix the defects, that is if the Board ever gets around to repairing the garage.

—H. Marshall

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# The Strata Insurance Crisis

*Fischer & Company, BC Strata and Condominium Law Newsletter  
March, 2020*

For many BC strata residents, the news reports are not exaggerated. A dramatic change has occurred in the strata insurance market:

- Premiums are skyrocketing - 200%, 300% or larger increases are reportedly commonplace for renewals. For some strata corporations the cost of insurance is dramatically increasing strata fee contributions required of owners, making continued ownership less affordable for owners on a fixed income.
- Deductibles were already commonly above \$100,000 for strata corporations with claims history. Now there are more and more strata corporations with deductibles which exceed the amounts of deductible coverage normally available on the marketplace for strata lot owners. Deductibles of \$500,000 or higher have the potential to create unrecoverable losses and potentially cause financial ruin.
- Renewals are more difficult. Some strata corporations have been unable to obtain insurance from conventional sources, and a small number have even ended up without coverage as of their renewal date.
- Coverage in the event of loss is more complicated, and under-insurance is more of an issue when a claim is made.

Those hit hardest are strata corporations with significant claims histories or which are perceived to be high risk due to configuration, known issues or

deferred maintenance. However premiums and deductibles are also sharply increasing for many strata corporations with no loss history at all. Insurance cost increases impact the expenses of a strata corporation and it isn't uncommon for insurance to be the most costly expense line item. Strata fee increases follow. Owners can also be stuck with insurance deductibles for losses which originate within their unit, and that can be devastating if they don't have optional deductible coverage in their personal insurance policy. The impact on strata lot owners is hard: Not only are strata fees going up to cover increased insurance costs, to reduce the chance of further claims, many current owners are also being asked to promptly fund levies to address long-deferred repairs and maintenance arising from years of building neglect. Even worse, some owners may have difficulty renewing or refinancing their mortgage or selling their strata lot if strata insurance isn't obtained.

The causes are varied: volume and value of claims, deferred building care, insurer losses, global factors and market forces. Some insurance underwriters are leaving the market altogether, reducing competition. Those who remain are dramatically increasing premiums and deductibles to maintain profitability and opting out of covering some properties

due to perceived risk.

On a local scale if there is a solution it is for each strata corporation to be much more proactive:

- Adopt bylaws which allow the Strata Corporation to directly inspect and manage or even take responsibility for fixtures, appliances and connections like dishwasher hoses which can leak water. Ensure that any other potential vectors of loss are being inspected, maintained, remediated, replaced or otherwise addressed as needed to minimize the chances of loss or damage.
- Ensure that the bylaws do not allow unqualified owners or contractors to conduct alterations or repairs which should require specific qualifications and insurance.
- Be sure to obtain a reliable appraisal every year to ensure that your strata is obtaining the mandatory full replacement insurance and isn't breaching section 149 of the Act or risking denied or partial coverage by under-insuring.
- Do not defer obtaining or updating and renewing the strata corporation's depreciation report. Be sure that the author of the depreciation report is informed of all reports, inspections and repair and maintenance concerns.
- Do not defer repair or maintenance, particularly with respect to roofs, plumbing and

*Continued on page 18*



sprinkler systems, building envelope, gas and electrical systems, or other building features which have the potential to cause loss or damage when they fail. Periodic professional inspections should be conducted for roofs, plumbing and other such features.

- Get advice on building and unit improvements which could help avoid or mitigate losses, such as water drain pans, individual unit water shut-offs and automatic leak detection shut-off controls.
- Get moving early on insurance renewal and ensure that you communicate any resolved issues to your broker along with pending plans to resolve known issues.


cost. Mr. Fischer often attends meetings to help explain difficult funding decisions to owners having experienced all manner of objections while also being sympathetic to owner concerns.

On a broader scale - the right legislative changes are necessary. I would be very surprised if there wasn't a legislative change to address this issue soon - but they need to address causes rather than symptoms. Some are proposing fixes which will only reallocate risk exposure or allow strata corporations some measure of self-insurance if they do anything at all.

are those which will reduce claims and those which mandate responsible repair and maintenance programs. Principal among those is a change to the building code for new construction and requiring retrofits for some buildings. For example, many water escapes could be prevented or contained by automatically shutting off water to a strata lot when a leak is detected, and ensuring that each unit can safely contain and drain the amount of water likely to be released before the shut-off is engaged.

The most difficult part of this transition is persuading owners to pay for the necessary proactive measures as well as paying for increased insurance

In my opinion, the only really effective corrections



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# The Payment of Expenses for the Civil Resolution Tribunal

By Trevor Morley, TWM Law

Unfortunately, it appears that the resolution of many disputes between owners and strata corporations requires a decision from the Civil Resolution Tribunal (“CRT”). According to the CRT’s statistics, as of March 2020 there were 2,474 strata property disputes commenced with the CRT and 830 disputes had been resolved by adjudication.

A common question asked by strata corporations is how to properly account for and pay dispute-related expenses. The obligations regarding the payment of dispute-related expenses is dictated in Division 5 of the *Strata Property Act* (“SPA”) which addresses the Civil Resolution Tribunal. Specifically, Section 189.4(c) states that sections 167, 169 and 171(5) and 171(6) of the SPA applies to a dispute that is resolved by the CRT.

Section 167 states that an owner

who commences a suit against the strata corporation does not need to contribute to the expense of defending the suit or a judgment made against the strata corporation.

Section 169 states that, if a strata corporation has to pay legal costs or other costs to an owner to resolve the dispute, the owner receiving those costs or payments does not have to contribute to an amount the strata corporation has to pay.

Section 171(5) and 171(6) state that an owner being sued by a strata corporation must not contribute to the expenses of suing.


The result of these provisions is that, on a plain reading, a strata corporation cannot pay expenses related to a CRT dispute from the operating fund or contingency fund because the money in those funds was raised through strata fees that presumably include strata fees paid

by the owner in the dispute.

However, the CRT in its decision 2019 BCCRT 1262, endorsed a process whereby the strata corporation paid the CRT related expenses from the operating fund and then paid to the owner an amount equal to their “proportionate share of legal fees” that were paid from the fund.


However, we have concerns with a strata corporation employing this method outside of an order from the CRT, and we recommend that strata corporations seek legal advice if the CRT-related expenses, including the amount of a judgment, are significant.

*Trevor Morley is associate counsel at Reed Pope in Victoria. He provides a full range of support to strata corporations and owners and is particularly passionate about community building and governance. He can be reached at [tmorley@reedpop.ca](mailto:tmorley@reedpop.ca).*



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# Who Pays for Water Damage in a Strata Lot?

By Chris Stepchuk

Water damage inside strata lots is all too common these days.

## What causes water damage in strata lots?

Some common causes are leaking pipes or dishwashers, or an overflowing toilet or tub. Whatever the cause may be, these situations generally can turn into a mess of fingerpointing and hurt feelings between strata owners. The problems are generally amplified in homes with hardwood or laminate flooring, which can be easily damaged by water.

## Who is responsible for water damage in a strata?

Typically, unless your bylaws state otherwise, strata corporations are responsible for common areas, and strata lot

owners are responsible for their own individual strata lots.

Where things can get sticky, is when the cause occurs in one strata lot, and then consequently affects another strata lot. A common example of this would be when an upper floor toilet overflows and leaks down into multiple strata lots below.

In this case, the owner is a named insured under the *Strata Property Act*, and the Strata Corporation will typically pick up the bill if the damage is greater than the Strata Corporation's insurance deductible (can be \$5,000 or \$10,000). The Strata Corporation will generally then turn around and come after the Strata Lot owner for the deductible, who would hopefully have insurance to cover this amount.

in \$5000 in this case), the Strata Corporation would only be responsible for repairs to common property (common walls and ceilings), and not to either of the Strata lots. The affected strata lot (the one who got flooded out due to the upper strata lot's toilet overflow), would then have to sue the upper strata lot. This would generally be done through their insurance company.

## How strata corporations can mitigate water damage issues

A good way to avoid some of this complicated mess is to create a strata bylaw that indicates an owner who is responsible for the damage to pay for the damage or loss.

Another good piece of advice is to ensure that all strata owners have proper insurance to cover the deductibles, as well as personal property.

If the damage to the strata lot is less than the deductible (Say that the damage is only \$2000 and the deductible



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# YOU ASKED By VISOA Strata Support Team

Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. Questions may be rephrased to conceal the identity of the questioner and to improve clarity when necessary. We do not provide legal advice, and our answers should not be construed as such. However, we may, and often will, advise you to seek legal advice.

## Why Can't We Make Exceptions to the Act or Bylaws When One Owner Needs a Break?

**Q.** When we create a bylaw to exclude smoking in the strata, why can't we make an exception until the one smoker, who has been here a long time and has always smoked, leaves the condo?

**A.** First, owners need to recognize that in becoming owners (or tenants) they must give up certain rights and privileges they may have had in a free-standing dwelling. As one judge put it, "We're all in this together."

The *Strata Property Act* (SPA) is the means by which all the residents must agree to certain standards in many areas of living in the community.

The Schedule of Standard Bylaws is put into place as a general basis, but, unlike the SPA itself, the bylaws, as long as they do not violate the Act, can be amended if the owners have good reason to do so to meet some specific conditions in that strata. This is practical as the times change and the various courts' decisions affect how we conduct ourselves.

You are right that there are many things still that require alteration or introduction to tighten up the SPA. And indeed, between 2012 and 2019, a subcommittee of the BC Law Institute has made a complete study of the SPA (6 Reports). That committee consisted of not just lawyers but experts

from across the strata industry, including realtors, VISOA, CHOA, government representatives, etc. They have presented their findings and recommendations to the government. (<https://www.bcli.org/law-reform-resources/bcli-publications/reports>). In time, we expect to see many of their recommendations incorporated into the Act.

It may be difficult for a layperson to understand, but each strata lot owner is part of an organization called "The Owners, Strata Plan XXXX". However, that organization is independent in law and under SPA s. 2(2) is a *person* in its own right, independent of any single owner:

*2(2) Subject to any limitation under this Act, a strata corporation has the power and capacity of a natural person of full capacity.*

So, while the owners at a General Meeting can tell "The Owners, Strata Plan XXXX" as a "person to do something or not do something, they cannot tell "The Owners, Strata Plan XXXX" as a person to violate the SPA or the bylaws which the owners subscribe to at that time. The law is applicable to anyone living in the strata and the council is obliged, especially by SPA s.26, to enforce the law on behalf of "The Owners, Strata Plan XXXX": the corporation who is a natural person of full capacity.

Council exercises powers and performs duties of strata corporation

*26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.*

You will notice that the Act is for the benefit of the majority of the residents: just as you imply. But for that reason, acquiescing to the wishes of one or two (named) people (or an identified unit) infringes on the rights of the other units in your strata who do not want any smoking in the complex.

The only time that residents can be exempted from something is if an SPA clause states that the owners may, by bylaw or other enactment, do (or not do) something. SPA s.123 (pets and age limits) and SPA s.141(2) (Rentals) are two such clauses in the Act, where owners are guaranteed that they can make some limitations, regardless of any other rights granted under such laws as the Human Rights Code, etc.

However, you will note that neither a strata lot nor a person is specified in any of these clauses. Such permission (including exceptions) must be applied to all residents and strata lots.

For this reason, you cannot create a bylaw for one person who smokes, or specify a particular strata lot, regardless of how long the smoker has been in residence.

You will have to create a bylaw which permits anyone (including visitors) to smoke in some speci-

*Continued on page 23*

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE MINISTER OF PUBLIC SAFETY AND  
SOLICITOR GENERAL

*Emergency Program Act*

Ministerial Order No. M114

WHEREAS a declaration of a state of emergency throughout the whole of the Province of British Columbia was declared on March 18, 2020 because of the COVID-19 pandemic;

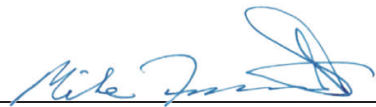
AND WHEREAS strata corporations must be able to conduct their business in accordance with public health advisories to reduce the threat of COVID-19 to the health and safety of persons;

AND WHEREAS section 10 (1) of the *Emergency Program Act* provides that I may do all acts and implement all procedures that I consider necessary to prevent, respond to or alleviate the effects of any emergency or disaster;

I, Mike Farnworth, Minister of Public Safety and Solicitor General, order that the attached Electronic Attendance at Strata Property Meetings (COVID-19) Order is made.

April 15, 2020

Date



Minister of Public Safety and Solicitor General

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*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: Emergency Program Act, R.S.B.C. 1996, c. 111, s. 10

Other: MO 73/2020; OIC 173/2020

# ELECTRONIC ATTENDANCE AT STRATA PROPERTY MEETINGS (COVID-19) ORDER

## Application

- 1 This order applies during the period that starts on the date this order is made and ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9 (1) of the *Emergency Program Act* expires or is cancelled.

## Electronic attendance at strata property meetings

- 2 (1) In this section,
  - “strata property enactment” means
    - (a) the *Strata Property Act*, or
    - (b) any regulation made under the *Strata Property Act*, including, without limitation, a bylaw of a strata corporation;
  - “strata property meeting” means a meeting authorized or otherwise provided for under a strata property enactment, including, without limitation, an annual or special general meeting.
- (2) Despite anything in a strata property enactment, a strata corporation may provide for attendance, or voting in person or by proxy, at a strata property meeting by telephone or any other electronic method, if the method permits all persons participating in the meeting to communicate with each other during the meeting.
- (3) A person who participates in, or attends or votes at, a strata property meeting in a manner contemplated by subsection (2) is deemed, for the purposes of the strata property enactment referred to in the definition of “strata property meeting”, to be present in person at the meeting.

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*You Asked*

*Continued from page 21*

fied area. For instance, some stratas delineate a smoking area only in a common property area well away from the residences, or they will ban smoking anywhere on the property.

Some stratas do have a bylaw which “grandfathers” current owners who are smokers until they are no longer resident, but denies that right to any other owners, tenants, occupants and visitors, and any prospective owners have to be warned before they buy. This type of bylaw has not, apparently, been challenged in court, so one has to presume there have not been serious concerns about its enforceability.

Moreover, stratas are now wrestling with the smoking of

marijuana, where, in some cases, some people may require the substance for medical reasons.

The only variation on this, so far as individuals are concerned, is in the case of a Human Rights Tribunal (HRT) order as far as I am aware. If the person has *bona fides* medical evidence that requires that they be allowed to smoke tobacco (or marijuana and maybe even vaping products), then, depending on that evidence, the strata may feel it necessary to accommodate the person in the manner prescribed by the HRT. The same could also be applicable to people who are legally entitled to use tobacco for religious purposes. But again, once the person is no longer resident,

the HRT condition ceases.

However, a serious conflict could occur as well if a resident has serious allergies to smoke (e.g. emphysema) and which the strata council is told by the HRT or CRT to make provision for. This could be a “Catch-22”: the strata couldn’t do anything about the smoker, but might have difficulty accommodating the person with medical problems at the same time.

As always, it is better to consult a lawyer who specializes in strata law to ensure that any bylaw amendment is accurate and enforceable.



# President's Report

## Crisis, Community and Tolerance



With the retirement of long-time president, Sandy Wagner, at VISOA's AGM at the end of February, the new board was prepared for a challenging year; as the new president I knew it would not be easy to fill her shoes. Then, just after our first board meeting, came the announcement declaring COVID-19 a pandemic in British Columbia.

We may now be experiencing the most challenging period in the history of stratas in our province. Some are calling it the perfect storm. Between the increasing difficulty getting insurance for strata corporations, the skyrocketing premiums, and the strain that COVID-19 is placing on strata owners, councils and managers, it may be more apt to label it the perfect nightmare.

So many lives have been put on pause that it has forced us as a society to take a deep breath and ask ourselves: "What is really important?"

The immediate response we have seen in our communities and stratas is that health and safety have become the number one priority. I am hearing stories of strata volunteers working together to disinfect common areas several times per day, residents connecting with seniors frequently by telephone, and picking up groceries for neighbours who are self-isolating. There is a strong sense of community in many stratas to help each other through a truly devastating period in our lifetime.

There is another side to this coin. Strata councils are seeing an increase in bylaw complaints, not necessarily because more infractions are occurring, but because some owners have suddenly found themselves with time on their hands to write letters. Could we not channel our boredom in a way that builds community? Our neighbours may be out of work, worried about finances and loved ones and already stressed to the max. Is this not the time to practice tolerance?

That said, I encourage all residents

to take a moment to read your bylaws, adjust behaviours if necessary and be considerate of your neighbours. Stress caused by noise, smoking and the like, is not conducive to good health. Both you, and your neighbours, deserve to feel comfortable and safe in their homes. Being respectful of one another can contribute to the overall health of your strata community.

Additionally, councils and manag-

ers are already undergoing an unprecedented amount of stress dealing with insurance issues and keeping buildings operational when many trades and services are short-staffed or closed due to COVID-19. Your volunteer council members, who just like everyone else, are undoubtedly experiencing stress in their personal lives, need to be able to focus their energy on the strata's critical issues, not bylaw complaints.

This is truly the time to focus on the priorities, be tolerant and find ways to bring our stratas together as a community.

The news and social media are teeming with examples of acts of kindness and support: in Nanaimo, a chamber orchestra director and his family performing a recital from their back yard; residents of a Kitsilano independent living building taking part in an exercise dance class from their balconies; walking paths in Victoria and around the world sporting positive messages and drawings in chalk; exercise instructors of every sort offering free online workout classes; people preparing meals for health-care workers and the homeless; pen pal programs to connect youth with isolated seniors; neighbours taking babies and pets to spread joy through window visits; distilleries switching over their production lines to make hand sanitizer; donations of medical supplies to organizations; and hearts in windows everywhere.

If you have an inspiring anecdote of efforts in your strata or community, please share it on our Facebook page or send an email to [president@visoa.bc.ca](mailto:president@visoa.bc.ca). *We are all in this together.*

— Wendy Wall

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