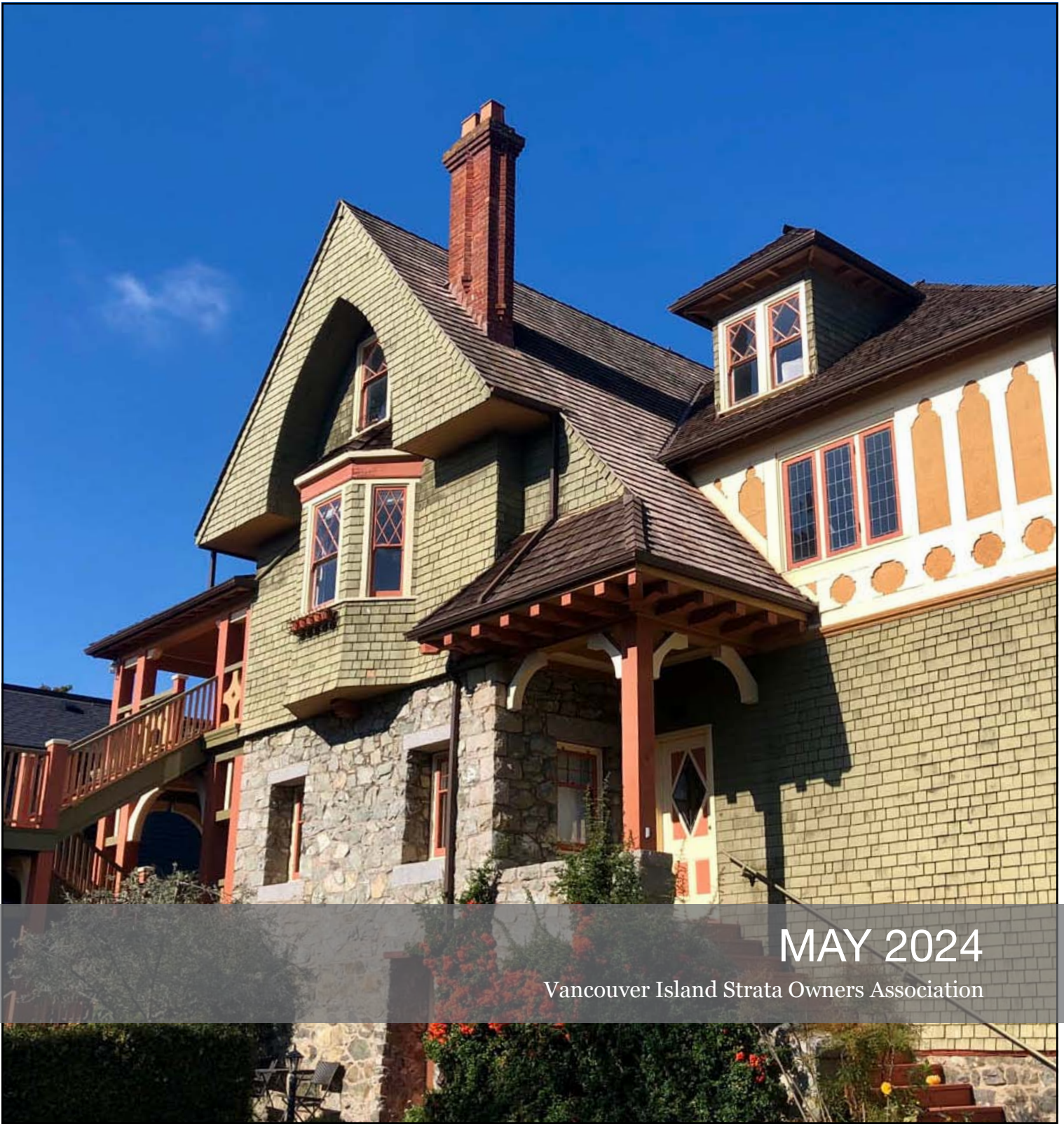




BULLETIN

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



MAY 2024

Vancouver Island Strata Owners Association

VISOA Bulletin

Editor: Bulletin Committee

Graphic Design: Bulletin Committee

Advertising Coordinator: Cindy Young

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

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

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

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On the cover: The Coles House in Esquimalt was built in 1907. Designed by Francis Mawson Rattenbury, it is considered one of his best examples of the English Arts and Crafts style. Additionally, Rattenbury added elements of the Tudor-Revival and the Queen Anne styles which were very popular at the time. Città Group won the Hallmark Heritage Society's President's Award and the Canadian Home Builders' Association Award of Merit for their extensive restoration of the home in 1995. At that time, the house was converted to 7 strata units and received [Heritage Designation](#). And no, it's not haunted! - VIS 3807 Strata Council

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

■ Wave Goodbye to Waiving Depreciation Reports

by Wendy Wall

When depreciation reports first appeared in the *Strata Property Act* (SPA) in 2000, the SPA simply said “The strata corporation may prepare a depreciation report estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items to assist it in determining the appropriate amount for the annual contribution to the contingency reserve fund” (CRF).

On December 14, 2011, “may prepare” became “must obtain”. All strata corporations of 5 or more strata lots, including bare land stratas, were required to obtain their first depreciation report by December 14, 2013 and obtain an updated report every 3 years. However, the SPA allowed stratas to waive the requirement by $\frac{3}{4}$ vote at an annual or special general meeting (AGM or SGM). As a result, some stratas have never obtained a depreciation report. Owners have voted to waive the requirement every year. Other stratas may have obtained one report and waived obtaining a new one after 3 years.

This practice has left many strata corporations ill-prepared for major repair and maintenance projects.

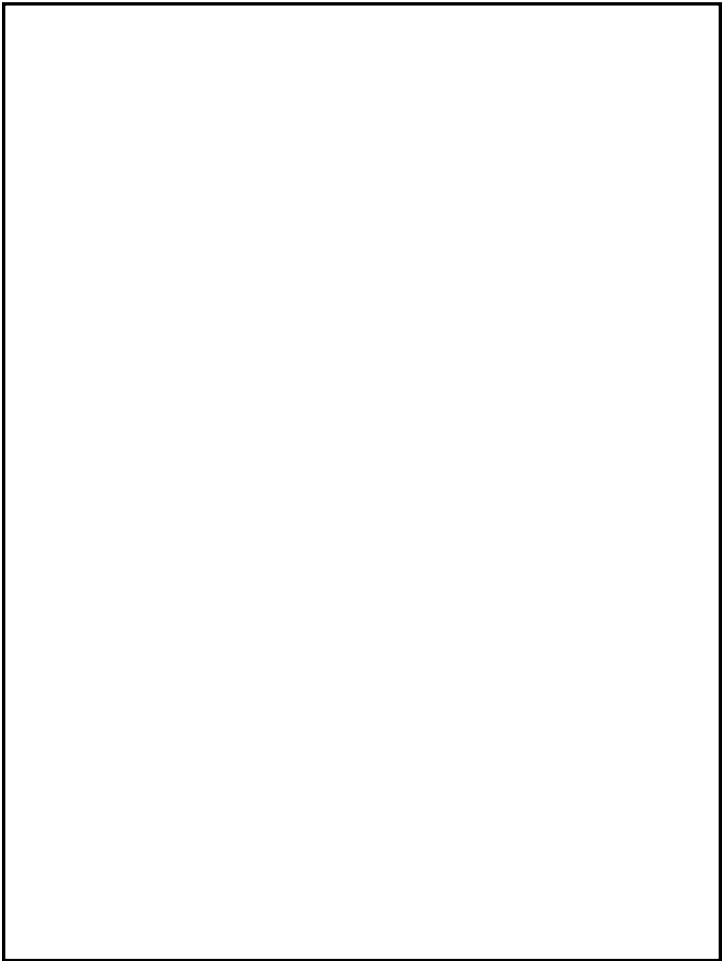
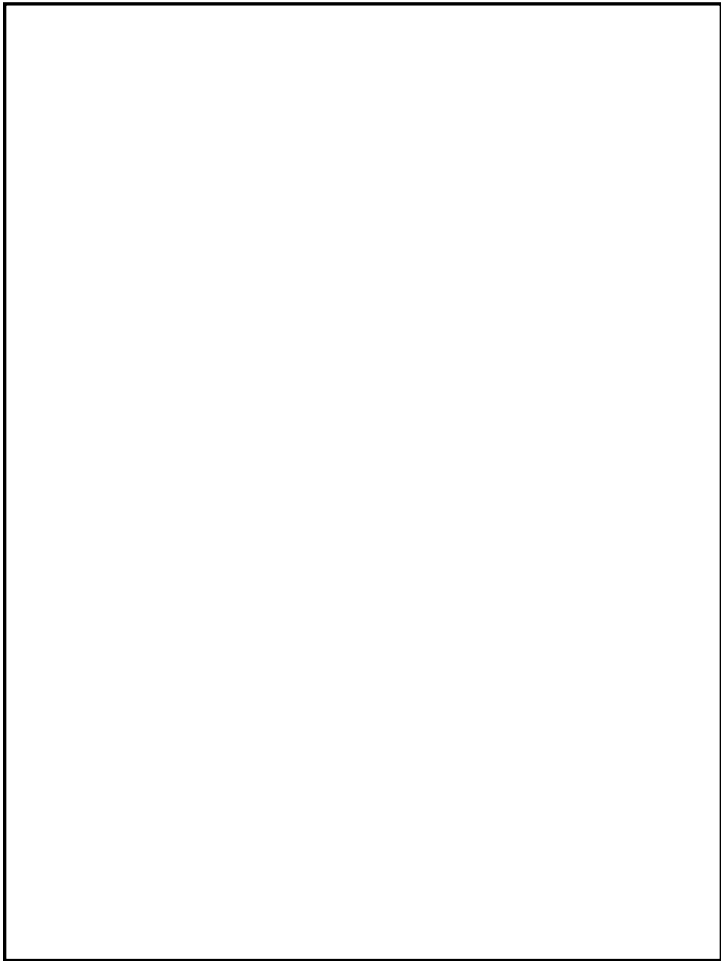
Without awareness and information to help them create a long-term maintenance plan and funding options, it is common for these strata owners to face special levies when repairs are needed.

Wave goodbye to waiving

Stratas can no longer waive or defer obtaining depreciation reports. [Bill 14-2020](#) the *Municipal Affairs and Housing Statutes Amendment Act (No. 2)* passed in the BC legislature and received royal assent on August 14, 2020. Section 4 of that bill repealed most of SPA s. 94 about depreciation reports but it didn’t go into effect right away. Order in Council [OIC 204-2024](#) released on April 22, 2024 brings these changes into force on July 1, 2024. As of that date SPA s. 94 will say:

- (1) In this section, “qualified person” has the meaning set out in the regulations.
- (2) Subject to the regulations, a strata corporation must obtain from a qualified person, on or before the dates determined in accordance with the regulations, depreciation report estimating the repair and

continued on page 4



Wave Goodbye to Waiving Depreciation Reports

replacement cost for major items in the strata corporation and the expected life of those items.

(3) [Repealed]

(4) A depreciation report referred to in subsection (2) must contain the information set out in the regulations.

Are some stratas exempt?

Stratas of less than 5 strata lots are exempt. Regulation 6.22 says the requirement doesn't apply "in relation to a strata corporation if and for so long as there are fewer than 5 strata lots in the strata plan." There are no other exemptions.

New regulations

Bill 14-2020 also amended SPA s. 292 to allow the Lieutenant Governor in Council to make more regulations about depreciation reports. These regulations were also released on April 22, 2024 in [OIC 204-2024](#) and go into effect on July 1, 2024. Regulation 6.2 about depreciation reports has been repealed, reworded, and reorganized. This regulation now has sections 6.2(0.1) and 6.2(1) to (5), and new regulations numbered 6.21, 6.22, and 6.23. Here's a summary of the changes and the dates when

different sections come into effect.

Are stratas required to update the report?

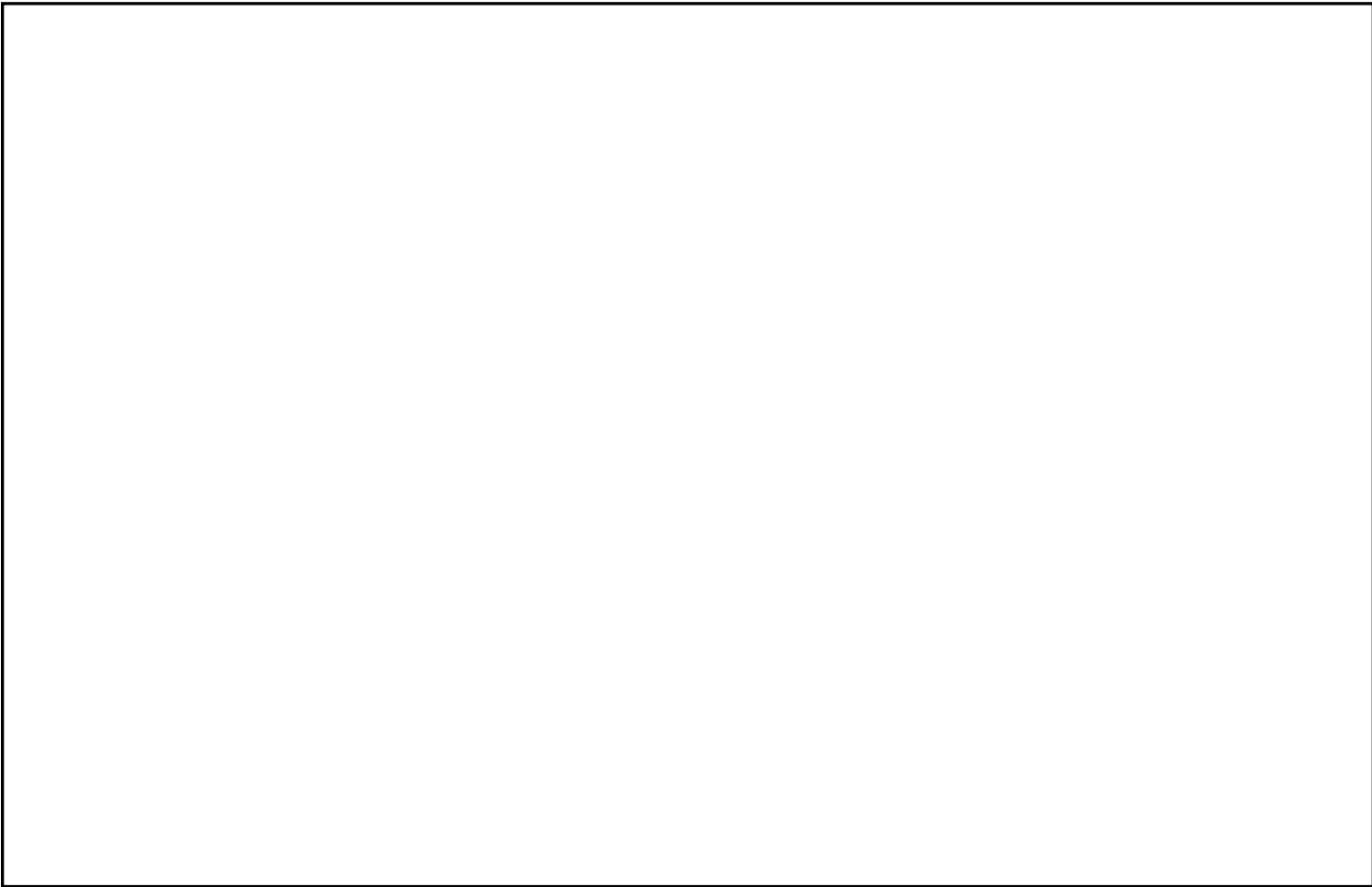
Under the new regulation 6.21(2) "a strata corporation must obtain a new depreciation report at least once every 5 years". This is a requirement. There is no ability to waive or defer it. In comparison, Ontario requires updated reports every 3 years.

Who is qualified to write depreciation reports?

Previously, the regulations were vague. The regulation said "qualified person" means any person "who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation's common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair..."

The new regulation 6.2(0.1) includes similar wording but adds details in part (b). Any depreciation report obtained on or after **July 1, 2025** must be obtained from a qualified person that is one of the following:

continued on page 5



Depreciation Reports

- A registered professional engineer
- A registered architect
- A registered applied science technologist
- An accredited appraiser
- A certified reserve planner, or
- A professional quantity surveyor

There is a transition period for stratas that are working with a person who does not have any of these qualifications. They must obtain the depreciation report before July 1, 2025. After that date, all reports must be obtained from one of the qualified persons listed above.

Are there any changes to the content of the report?

Regulation 6.2(1) sets out what must be included in a depreciation report. For example, it must include an inventory and evaluation of the physical components, a summary of repairs and maintenance for common expenses, and a financial forecasting section.

What's new? While most authors already include an executive summary, it is now a requirement. Ventilation and air conditioning have been added to the list of building systems which included electrical, heating, plumbing, fire protection and security systems. All other requirements remain the same. Read regulation 6.2(1) for complete details.

How does a strata pay for the report?

There have been no changes regarding payment. Under SPA s. 92 and 96, the cost to obtain or update a depreciation report can be paid from either the operating fund or the CRF. These decisions require a majority vote approval of owners at an AGM or SGM.

What's the deadline for existing stratas?

A strata corporation is established on the date the strata plan is filed at the land title office. Stratas established before July 1, 2024 that have never obtained a report or its most recent depreciation report was obtained before December 31, 2020 must obtain their first report or a new report by the dates in regulation 6.21 below. It depends on where the strata is located in BC. The deadline is:

July 1, 2026 for stratas in the Capital Regional District, Fraser Valley Regional District, and Metro Vancouver Regional District (other than islands within these districts that are accessible only by air or boat such as the Gulf Islands)

July 1, 2027 for the above islands and all other areas of BC

If the most recent depreciation report was obtained **after** December 31, 2020, the strata must get a new one within 5 years.

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Depreciation Reports

What's the deadline for new stratas?

Stratas established between July 1, 2024 and June 30, 2027 must get their first depreciation report within 2 years after the date of the first AGM. Stratas established on or after July 1, 2027 must get their first depreciation report within 18 months after the first AGM.

How much must the owner developer contribute?

Under SPA s. 12 an owner developer must establish a CRF. The amount they must pay into the fund is set out in the regulations. This applies to all strata developments with any number of strata lots.

There is now an additional requirement under regulation 6.23 for owner developers to pay money into the CRF to help with the expense of a depreciation report. This is required for strata developments established on or after **July 1, 2027**, with 5 or more strata lots shown on the filed strata plan. The amount the developer must contribute to the CRF is \$5,000 plus an additional \$200 multiplied by the number of strata lots in the strata corporation or \$30,000, whichever is less.

For example, if the filed strata plan shows 10 stratas lots, the developer must contribute \$7,000. If the filed strata plan shows 125 or more strata lots, the developer must pay \$30,000. The amount must be paid no later than the date of the strata's first AGM.

The actual cost of the report might be higher or lower than the contribution from the developer, however it's an important measure to ensure that new strata corporations have money to help pay for their first depreciation report.

It is recommended that the council choose a depreciation report provider that is not associated with the developer so that the report gives an independent assessment of building components and systems.

Plan for the future

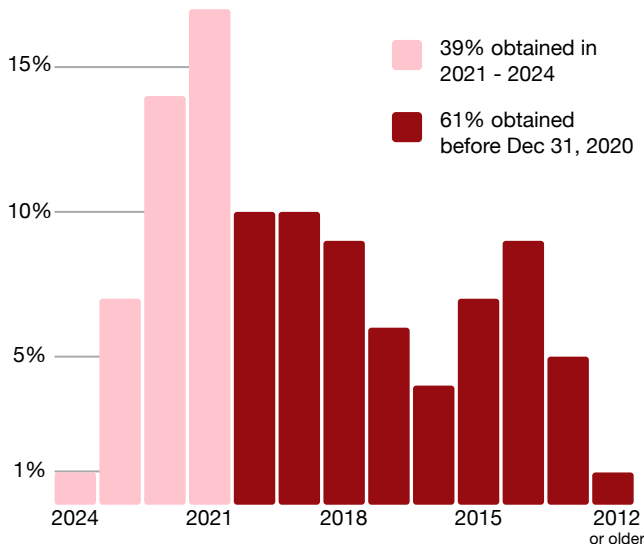
From a practical point of view, after 3-5 years, the information in the report is outdated. It's difficult to manage assets worth millions of dollars without updated information. The condition of the roof, boiler, or parking areas may have fared better or worse than expected over the last few years. The cost of construction materials may have increased more than the inflation rate in the financial models. The current amount in the CRF may be lower than planned due to unexpected repairs or payment of large insurance deductibles.

Obtaining depreciation reports at least once every 5 years and putting that information to good use gives councils and owners their best chance of planning for the future, keeping their properties in good repair, reducing the number of insurance claims, and avoiding special levies. **V**

Depreciation Reports, CRF, and Special Levies

- How many stratas have an up-to-date depreciation report?
- Is the amount in contingency reserve funds (CRF) adequate?
- Are stratas facing special levies or higher strata fees?

Most recent depreciation report by year



Top 5 expenses



#1
Siding & exterior
finishes



#2
Windows &
doors



#3
Roofs

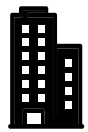


#4
Parking areas & roads



#5
Plumbing

High-rise
4 stories
or higher



Data from ~250 stratas
Average size 153 units

Low-rise
3 stories
or less



Data from ~475 stratas
Average size 62 units

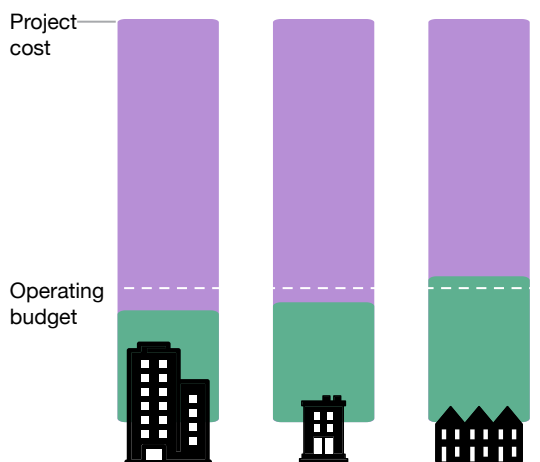
Townhouse



Data from ~300 stratas
Average size 43 units

Is there enough money in the CRF?

On average, the amount in the CRF is too low to cover even one major project.



Amount in CRF compared to operating budget
Example of a repair project valued at 3X amount of operating budget

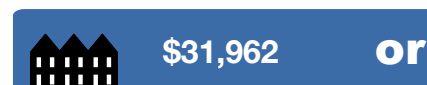
Special levies vs. monthly contribution
projected over 10 years (2024-2033)



or \$203/mo



or \$187/mo



or \$266/mo

Special levies per unit or contributions to the CRF from monthly strata fees.

Note: Figures are expected to be higher as many depreciation reports reviewed have not been updated to reflect inflation.

Source: Eli Report. Based on documents from 1,040 strata corporations reviewed between October 2023 and March 2024. Get a free Eli Report to learn how your strata corporation compares to similar properties: elireport.com.

■ The BC Strata Tech Conference Returns

The tech industry in BC is stepping up and developing much-needed software and online tools that save time and make it easier for strata council members to manage a wide variety of tasks. This is especially helpful since about 80% of strata corporations in BC don't have professional strata managers.

The [BC Strata Tech Conference](#) is a one-of-a-kind virtual event that brings together industry experts and showcases innovative technology designed to help strata council members, owners, and real estate professionals. This free, online event takes place May 14-15, 2024.


“We were blown away by the positive response to the first conference in 2023” shares Ryan Grant, founder of BC Strata Tech. “It solidified the need for a platform connecting industry leaders and fostering innovation in strata living.”

This year's presentations include how web-based services can build better strata communities by StrataCommons, how electronic voting can improve general meeting procedures by Property Flute, using StrataPress to simplify day-to-day operations and streamline document requests, how to search CRT

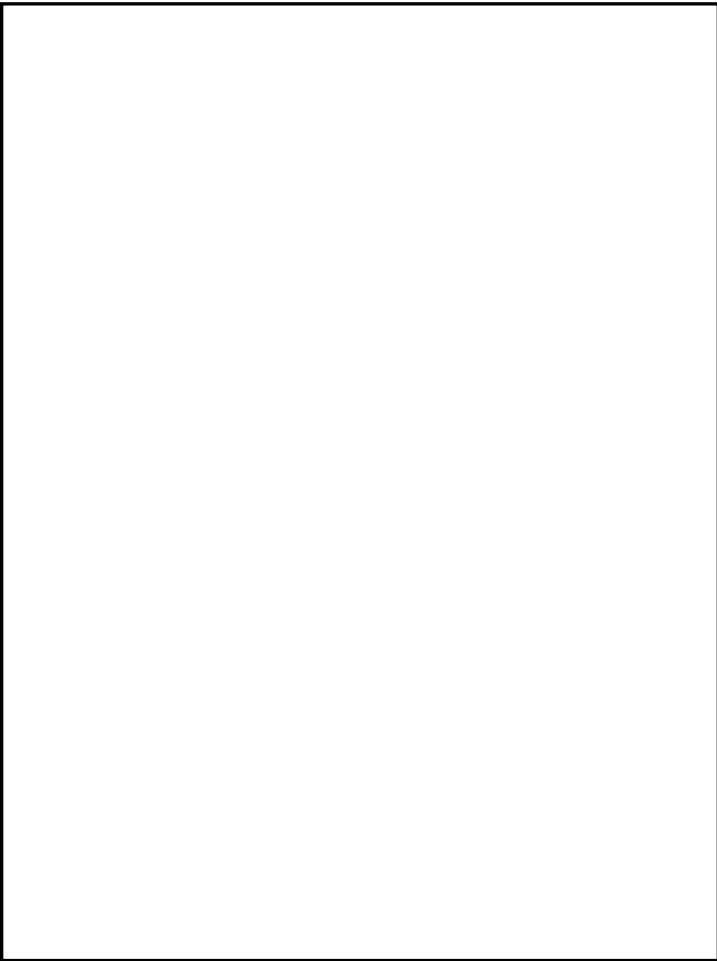
decisions to learn about legal claims and evidence, how PowerStrata can help you manage a strata of any size, getting the best rates for GICs using Yield Exchange, Eli Report's data-driven scorecard for stratas, and more.

Lawyer Matthew Nied will discuss appointing an administrator, the BC Real Estate Association's Chief Economist Brendan Ogmundson will present an outlook on the BC Housing market, and Tony Gioventu will give an overview of CHOA's condo classroom.

VISOA will demonstrate the 2024 version of STRATACCOUNT, a simple Excel accounting package that doesn't require any bookkeeping experience. Preparation of financial statements for strata corporations doesn't need to be complicated! We'll also give conference attendees a tour of VISOA's resource centre which will be available when our new website is launched.

See the conference schedule and register for free at: www.bcstratatech.io 

See the ads on page 9 to learn more about presenters.




■ Editor's Message

It feels like there's no shortage of topics to write about these days. The amount of new and amended legislation affecting strata owners over the last 18 months is roughly the same volume as the previous 7-year period!

We hope that you are finding our Bulletin articles helpful, informative, and timely. It's our goal to keep you up-to-date and give you the information you need to operate your stratas smoothly.

Drop us a line if there's a topic you'd like to see in the August issue. We also welcome submissions from readers and subject matter experts. Contact us by sending an email to editor@visoa.bc.ca.

Please take a moment to check out the business directory and advertisers. They aren't just advertisers, they're members! Give them a call. They are always willing to share their knowledge and expertise! 

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

How To Receive and Sell Low Carbon Fuel Credits

If your strata corporation supplies electricity to electric vehicle (EV) charging stations, it might be eligible to receive BC low carbon fuel credits. The process is now easier due to changes that came into effect on January 1, 2024. These credits are not a rebate from BC Hydro or money paid by the government. To receive money, the strata has to trade (sell) the credits on the credit market. The buyers are usually oil and gas companies.

Is my strata eligible for low carbon fuel credits?

The [Low Carbon Fuels Act](#) and [Regulations](#) (LCFS) set out eligibility and requirements. To be eligible for credits your strata corporation has to pass 3 tests:

- Supply and pay for the electricity to Final Supply Equipment (charging stations)
- Electricity can be measured accurately
- The building has 5 or more dwelling units

Credits are not available for electricity supplied to EV charging that takes place at a building that contains fewer than 5 attached dwelling units.

If electricity is supplied to charging stations at a building

that contains 5 or more attached dwelling units the strata is the “supplier” if it passed all 3 tests.

How to receive credits

Getting the money from low carbon fuel credits has two main steps: submitting a compliance report to get credits and then trading them on the [credit market](#).


If the strata supplies more than 15,000 kWh of electricity to charging stations during a compliance period (January 1 - December 31), it is legally required to ensure that a compliance report is submitted by March 31 of the following year. The strata can do this on its own or work with a third party such as an aggregator.

If less than 15,000 kWh of electricity is supplied to charging stations, the strata needs a third party such as an aggregator to submit the report and get their credits.

What is an allocation agreement?


An allocation agreement is an agreement between the supplier (the strata) and another person or company (aggregator). The agreement must include certain

continued on page 12




STRATAS: Sell your Carbon Credits!


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How to Receive and Sell Low Carbon Fuel Credits

information but can also include other information and terms that are agreed upon such as fees and commission.

The agreement makes the aggregator responsible for the strata corporation's compliance obligations under the law (LCFS). The aggregator that you contract with is taking on all of the legal responsibility and risk of administrative penalties if it's not done right. Whether you want your aggregator to trade 1 credit or thousands of credits, there is a base amount of work it must do.

How do I find an aggregator?

Aggregators that are members of VISOA who provide this service include [Electric Advantage](#), [Foreseeson Technology Inc.](#), and [FuSE Carbon Technologies](#). See VISOA's Business Directory for contact information. The manufacturer or service provider for your EV charging stations might offer an aggregator service.

Questions to ask your aggregator

- Is our strata eligible for low carbon fuel credits?
- What support do you offer to help us through the process?
- What information does the strata have to provide?
- Is there a minimum amount of electricity that the strata has to supply?
- Can you trade small numbers of credits? 2, 10, 20?
- What if we only have one charging station?
- Does your service cover all brands of charging stations?
- Is there a set-up fee?
- What is the sales commission rate for the sale of credits?
- Does the commission rate vary based on volume?
- What is the length of the term of the contract? (It must specify a term that does not exceed 3 years)
- Can we renew at the end of the term?
- How long does it take to trade our credits and get paid? Is payment by cheque?

As with any contract entered into on behalf of the strata corporation, the strata council may wish to have the strata's lawyer review the terms and conditions of the allocation agreement.

For more information visit the BC Government website [Renewable and Low Carbon Fuels - Electricity](#). 

Thank you to Dennis Rogoza of Consulting Group Inc. for his expertise in developing this article and VISOA's webinar. Contact Dennis at drogoza@rogoza.com.

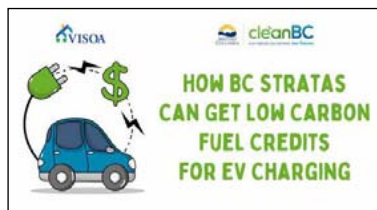
Watch the webinar on YouTube: [How BC Stratas Can Get Low Carbon Fuel Credits for EV Charging](#).

Watch VISOA videos on



- ▶ Electrical Planning Reports for Stratas
- ▶ How to Purchase Strata Insurance in BC
- ▶ Handling Requests for A/C and Heat Pumps
- ▶ Top 10 Tips for Heat Pump Bylaws for Stratas
- ▶ Spending Money: CRF, Special Levies, and More
- ▶ How to Enforce Strata Bylaws
- ▶ Best Practices for Strata Record Keeping
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■ Update: Handling Requests for Legal Opinions

by Shawn M. Smith

In a previous article in [VISOA' February 2024 Bulletin](#), I discussed the B.C. Supreme's Court's decision in [The Owners, Strata Plan VR 1120 v. Mitchinson, 2022 BCSC 2054](#). It established a comprehensive framework for handling requests from owners for copies of legal opinions, legal communications, and managing solicitor-client privilege.

The owner sought leave to appeal that decision. In March 2024, the B.C. Court of Appeal released its decision in relation to the appeal of the lower court's ruling – see [Mitchinson v. The Owners, Strata Plan VR 1120, 2024 BCCA 89](#).

The B.C. Court of Appeal upheld the decision that solicitor-client privilege applies to documents falling under [Strata Property Act \(SPA\) s.35\(2\)](#):

- (k) correspondence sent or received by the strata corporation and council, and
- (h) legal opinions obtained by the strata corporation.

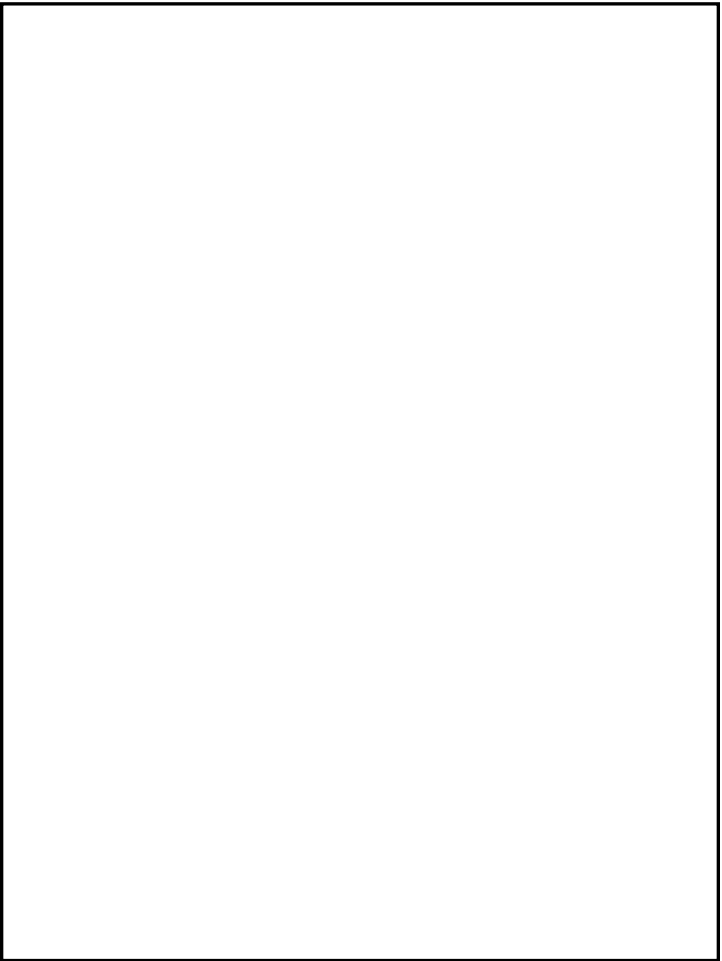
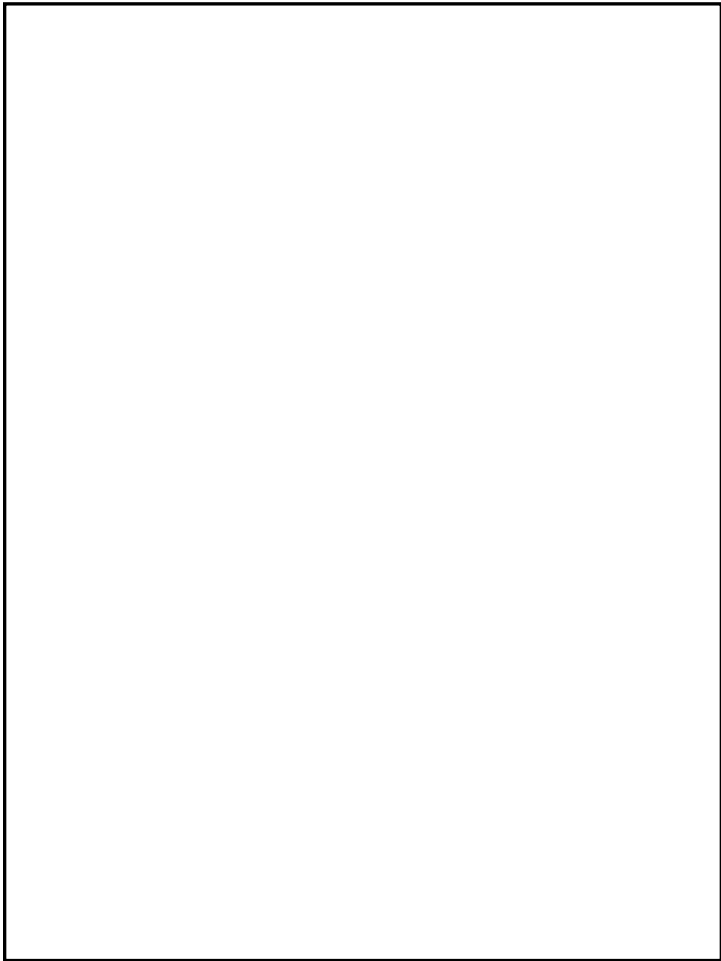
However, the Court went farther than the lower court did

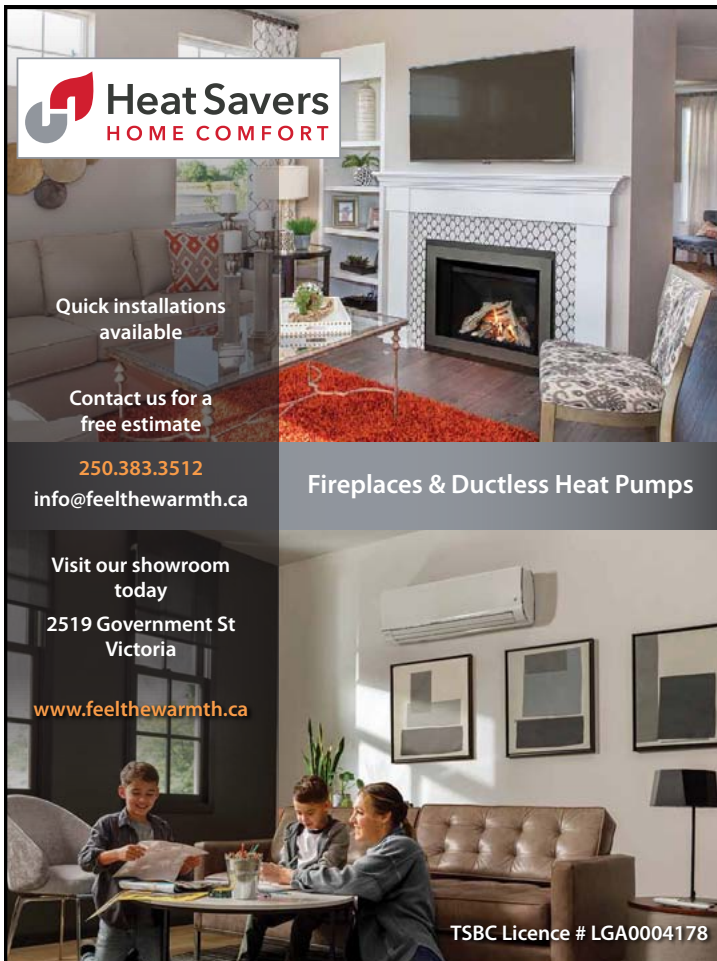
and prohibited access to legal documents altogether, saying:

[45] For all of the above reasons, I find that ss. 35(2)(h) and 36(1)(a), when read individually or together, are not sufficiently clear, explicit and unequivocal to evince an intention to abrogate solicitor-client privilege by requiring the Strata to produce records over which such privilege is claimed.

[46] In my view, this interpretation does not unduly impair the SPA's objective of greater transparency for strata lot owners given the breadth of other records set out in s. 35(2) that are producible under s. 36(1). Nor does this interpretation render meaningless the reference to "legal opinions" in s. 35(2)(h). It is open to the Strata, in response to a request from an owner, to voluntarily waive privilege over, and produce, legal opinions relating to matters that do not concern litigation or matters that are not contentious. It is also open to the Strata to waive privilege at the completion of a legal proceeding, as contemplated by the [B.C. Supreme Court] judge...

continued on page 15





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Update: Handling Requests for Legal Opinions

Denying a request

The decision of the Court of Appeal means that legal opinions and communications with the strata corporation's lawyers do not need to be provided to an owner.

A strata corporation facing a demand for legal opinions and communications from an owner can rely on the Court of Appeal's decision to resist that demand. The Civil Resolution Tribunal (CRT) has already applied the court's decision in *Latuszek v. The Owners, Strata Plan VR1428*, 2024 BCCRT 381 to dismiss an owner's request for those types of documents.

Voluntarily waiving privilege

Strata councils can share some legal opinions and communications with owners. That is fine as solicitor-client privilege can voluntarily be waived. However, that must be done carefully, giving consideration to whether there is anything in the opinion or communication that might be damaging to the strata corporation.

Care must also be taken to not inadvertently waive that privilege. This is most likely to occur as part of a document request (i.e. as part of an email between council and a manager discussing the advice). That burden will fall heaviest on strata managers as they usually handle requests for documents. Self managed strata corporations will face a similar challenge to identify communications that should not be shared.

Future considerations

While the Court of Appeal's decision makes it easier for strata councils to manage requests for copies of legal communications, it will undoubtedly frustrate those owners who want greater insight into legal disputes. Change (as noted by the court) lies in the hands of the Legislature through an amendment of the SPA. [V](#)

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

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■ Introducing New Business Members

FuSE Carbon Technologies

Does your strata supply electricity to EV charging stations? Energy consumption = credits! Credits have value!

Contact a FuSE strata specialist to determine if your strata is eligible for BC Low Carbon Fuel Standard (LCFS) credits and Canadian Clean Fuel Regulation (CFR) credits. FuSE is a full service carbon credit aggregator. They will meet all legal reporting requirements and sell your credits for the best price.

The FuSE software platform offers a robust suite of tools and reports. Clients can log into their FuSE account to see how many credits have been generated and traded, and download financial reports. It's efficient, transparent, accurate, and easy to use.

The FuSE team in BC offers customer support to get your strata started and facilitate every step along the way.

Contact Matthew Riyanto, General Manager at 778-228-6511 or matthew@usefuse.com.

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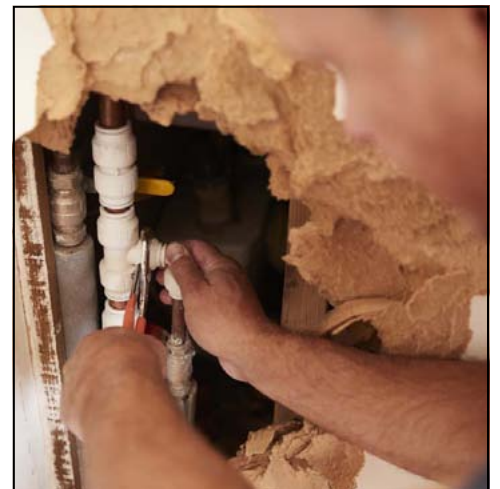
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■ You Asked

Q: Our strata has 22 units. Is there a minimum number of people who have to show up to start our AGM?

A: Under *Strata Property Act* (SPA) s. 48, quorum for an annual or special general meeting is 1/3 of the strata corporation's votes unless the bylaws say otherwise. Quorum is 2/3 if there are fewer than 4 strata lots or fewer than 4 owners.

Your strata has 22 strata lots, each with one vote. Since there is no bylaw that says otherwise, to meet quorum you need 8 eligible voters present in person or by proxy. If there are fewer than 8, business cannot be conducted right away. What happens next depends on your bylaws.

In your case, and by default, [SPA s. 48\(3\)](#) applies. The chair has to wait 1/2 an hour and if there still aren't 8 voters present in person or by proxy, the meeting is adjourned to the same day, time, and place next week. On that day, if there are still fewer than 8, after waiting 1/2 an hour, the eligible voters present in person or by proxy constitute a quorum and the meeting can proceed.

For many stratas and strata owners adjourning for a week is inconvenient. It can also be problematic if the

strata manager or a rented hall is not available next week. So, it's common for a strata to pass a bylaw with slightly different wording so the meeting can proceed on the first night after waiting a certain length of time. For example:

"If within 1/2 hour from the time appointed for an annual or special general meeting, a quorum is not present, the meeting stands adjourned for a further 15 minutes on the same day and at the same place. If within a further 15 minutes from the time of the adjournment, a quorum is not present, the eligible voters, present in person or by proxy, constitute a quorum."

There is an exception if it's a SGM called under [SPA s. 51](#) to reconsider a $\frac{3}{4}$ vote resolution that was passed by fewer than 50% of the strata's votes. If a quorum is not present within 1/2 hour of the start of the special general meeting, the meeting is terminated and must not proceed. A bylaw cannot supersede s. 51.

Hopefully your owners understand how important it is to vote at general meetings in person or by proxy. Most would not be happy if decisions are made by a small group of voters.



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You Asked

Q: How do we calculate the percentage of the special levy for each owner? Is rounding permitted?

A: The *Strata Property Act* (SPA) sets out a formula to calculate a special levy. Surprise! It's a formula not a percentage.

Based on the schedule of unit entitlement filed at the land title office for your strata, the special levy for lot 1 is:

$118 \text{ (unit entitlement of strata lot 1)} / 600 \text{ (total unit entitlement)} \times \$300,000 \text{ (amount of the total levy)}$
= \$59,000

Table 1: Calculated by Unit Entitlement (U.E.)


Lot #	U.E.	Levy
1	118	\$59,000
2	112	\$56,000
3	112	\$56,000
4	129	\$64,500
5	129	\$64,500
	600	\$300,000

Table 2: Calculated using percentages

Lot #	%	Levy
1	20	\$60,000
2	19	\$57,000
3	19	\$57,000
4	21	\$63,000
5	21	\$63,000
	100%	\$300,000

If owners paid the amounts in table 2, lots 1 to 3 would each be paying \$1,000 too much and lots 4 and 5 would be paying \$1,500 less than they should under the SPA.

The strata corporation may consider another way that establishes a fair division of expenses for that particular levy. In that case, the levy must be approved by a resolution passed by a unanimous vote (all 5 strata lots must vote in favour, no abstentions).

When preparing for an annual or special general meeting that has a resolution to approve a special levy, the Notice must include the amount of each levy and explain how it was calculated. Always double-check the calculations to make sure they are correct. See [SPA s. 108](#) for details. 

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



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■ Strata Pre-Sale Risks and Buyer Rights

by Elaine Brown

Buying strata condos or townhouses before they are constructed (presale) means putting down a deposit and signing a contract that you will pay the balance on a closing date after the development is built. It sounds simple but there are risks with [Pre-Sale Purchases](#).

What is a disclosure statement?

Under the [Real Estate Development Marketing Act](#) (REDMA) a developer has to file a [disclosure statement](#) (DS) and any amendments with the Superintendent of Real Estate for all [developments](#) of 5 or more strata lots. A basic premise is that buyers are entitled to know what they are buying. REDMA s. 15 requires the developer to give the buyer a copy of the DS describing all material facts, an opportunity to read it, and receive written acknowledgment from the buyer that they had an opportunity to read it.

If a developer doesn't comply with REDMA, the buyer may be able to rescind the contract, and obtain a refund of the deposit." In *Dwane v. Bastion Coast Homes Ltd.*, 2009 BCSC 726, the BC Supreme Court judge said that

REDMA "is a piece of consumer protection legislation and that one of its central objectives is to ensure that material facts are provided to purchasers when developments are being marketed to them."

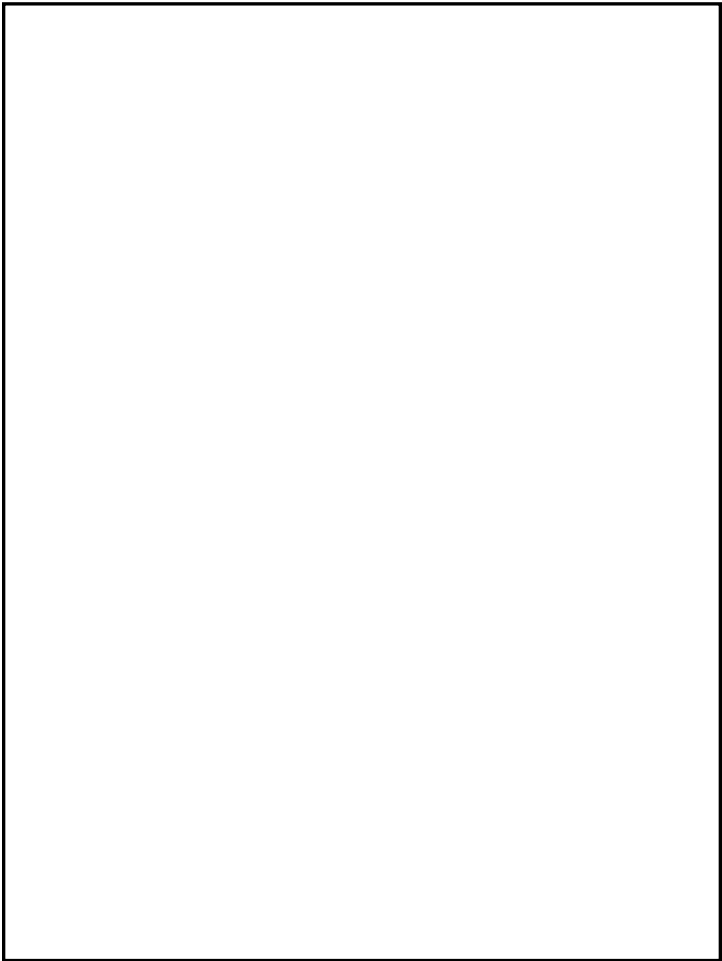
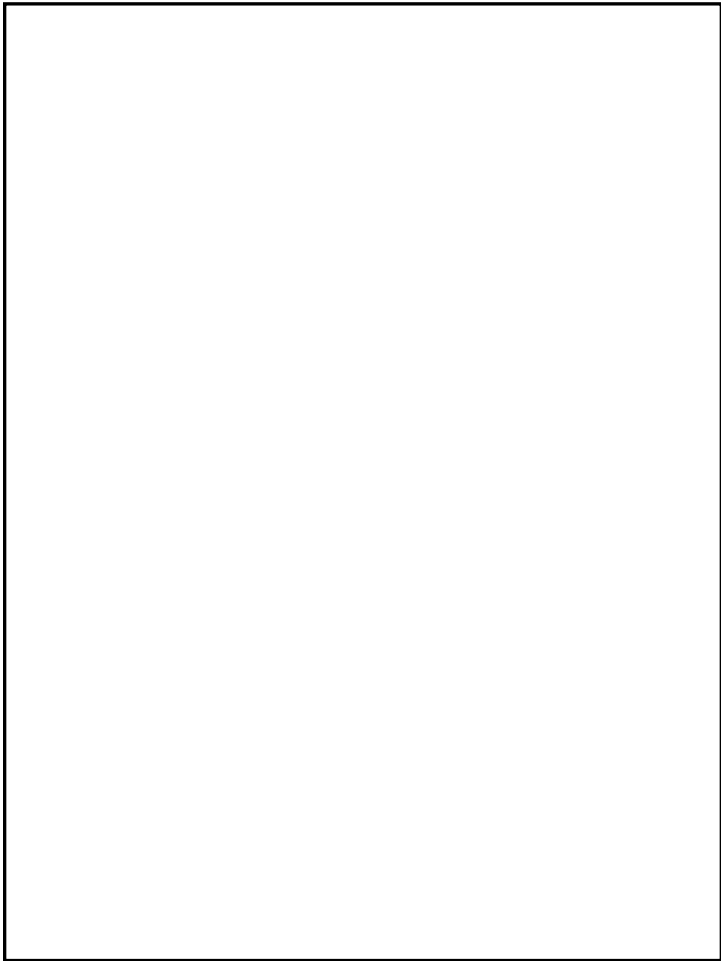
Under the legislation, a material fact is something that "could reasonably be expected to affect the value, price, or use of the unit or development property, the identity of the developer" and bankruptcy of the developer.

When a developer files a new DS or an amendment, REDMA s. 16 requires the developer to give a copy to new purchasers and each purchaser who already has a contract but hasn't received title yet.

Right to cancel within 7 days

Condo lawyer Gerry Miller describes presale contracts as "incredibly complex and one-sided to the point of it being almost unfair." Read the DS carefully and have your lawyer review it. REDMA s. 21 gives purchasers the right to cancel (rescind) the pre-sale contract within 7 days of signing it and have their deposit returned.

continued on page 25



Strata Pre-Sale Risks and Buyer Rights

Ask your lawyer to explain the details of the contract:

- What happens if the development is cancelled?
- Will you get your deposit back with interest?
- What if the unit isn't finished on time?
- Will you have to pay more if construction costs are higher than expected?
- Will you get what you saw in the display suite or on the floorplan?
- Can the developer substitute materials during construction?
- Can they change the features, size, and layout of the unit?
- Can they change the features and layout of the development?

In the May 2019 issue of the VISOA Bulletin, lawyer Michael D. Carter of Cleveland Doan LLP said, "If specific features of the new home are important to you, then you should ensure the contract does not allow the developer to change those features without your consent. A developer who makes unreasonable changes to your home may have breached the purchase agreement,

so you should seek legal advice if you find yourself in that situation." In *Mitchell v. Zenterra Developments Ltd.*, 2019 BCPC 14, the court said that the developer breached their obligations under the contract. While they had the right to make changes, the changes needed to be reasonable.

Qualifying for a mortgage

It can take years for projects to be built and in that time, well, life happens. You might get married or divorced, have a child, change jobs, or suffer an illness. Presale buyers who paid a deposit in 2020/21 probably expected mortgage rates to remain at 2-3%. What happens a few years later when the closing date arrives and you don't qualify for a mortgage at a 6-7% interest rate?

Banks will only loan money on the current value of a property. If you agreed in the presale contract to pay \$750,000 for a condo and it's now worth \$600,000, you would have to come up with \$150,000 on your own. If family members can't help, you might find that your only option is a private lender with even higher rates. If you can't find the money to complete the sale, you could lose your deposit.

Assignment of a pre-sale contract

A contract assignment occurs when a buyer transfers the contract to buy a strata lot to someone else before the completion date, often at a higher price. Some contracts don't permit assignments. In others you have to get the developer's consent and pay them a substantial fee.

The developer must collect and report information about all assignments in the [Condo and Strata Assignment Integrity Register](#) (CSAIR). See an example of the information reported in an [assignment scenerio](#).

Property Transfer Tax

If you transfer the right to purchase the property to someone who isn't a related individual, the final purchaser pays [property transfer tax](#) on the total amount paid which includes all assignment amounts and any upgrades at the time of registration at the land title office. See current [property transfer tax rates](#).

You may transfer the right to purchase the property to a [related individual](#) such as a spouse, child, or parent before the property is registered at the land title office without affecting the taxable amount.

Income Tax

Some purchasers assign or "flip" the units to other buyers at a higher price before construction has finished or even before construction starts.

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Strata Pre-Sale Risks and Buyer Rights

Any profits made from an assignment of a pre-sale strata unit must be reported on your income tax return. Contact a tax professional or the Canada Revenue Agency's website to learn about [property flipping](#) and [capital gains](#). Profits will be checked against information in the CSAIR.

The BC Flipping Tax

The new BC Home Flipping Tax applies to income from the sale of a property, including presale contracts, if the property was owned for less than 730 days (2 years).

The tax is imposed under the *Residential Property (Short-Term Holding) Profit Tax Act (Bill 15-2024)* which was passed on April 24, 2024 and takes effect on January 1, 2025. It aims to reduce speculation and minimize contract assignments. When you assign the presale contract to another person before the 2-year mark, the tax would apply on any profit and the tax rate will be based on the time between when you entered into the contract and when you assigned it to someone else.

A cautionary tale

A recent story illustrates the risks of entering into a pre-sale contract. Sudip Sehgal immigrated to Canada in 2016 as a skilled worker. Recognizing the high cost and insecurity of being a tenant, he scraped together some money with the help of family members in 2021 and put a deposit of \$81,990 on a townhouse in Surrey.

When personal circumstances changed in 2023, he asked the developer for permission to assign the deal to a buyer he found. The developer refused to give consent. Mr. Sehgal wasn't able to come up with the money by the closing date and lost his deposit.

CBC News reported that Mr. Sehgal "says he is now broke and back to renting... [and] wishes he'd gotten better advice. The \$81,990 deposit was money his family helped save and its loss was devastating, especially to his parents, who are both in their 80s."

Public consultation

BC Financial Services Authority (BCFSA) has drafted a consumer disclosure form called [Summary of Pre-Sale Risks and Buyer Rights](#) (see page 27). The proposed form aims to make buyers aware of the key risks of pre-sale purchases and encourage them to seek professional advice. It also lists the circumstances when a buyer can cancel a purchase agreement.

Review the form and complete a short [survey](#) by May 16, 2024 to send your feedback to BCFSA. [V](#)

Thank you Elaine for contributing this article. If you would like to submit a story idea or article, please send it to editor@visoa.bc.ca

Summary of Pre-sale Risks and Buyer Rights

This document highlights important information for you as a purchaser of a pre-sale development unit. This is not a complete summary of your rights and obligations under your purchase agreement.

You are strongly advised to seek independent professional advice and review the **entire** disclosure statement and the purchase agreement with your professional advisor prior to signing your purchase agreement.

Name of Development _____

Name of Development

KEY RISKS OF PURCHASING PRE-SALE DEVELOPMENT UNITS

Review section _____ of the disclosure statement for information regarding the estimated date range for completion of construction. This date range is subject to change. You should review **all** disclosure statement amendments to verify if the developer has changed this date.

There is a risk with all pre-sales that construction may be delayed or **may never** be completed.

Your purchase agreement may include terms allowing the developer to:

- Change the closing date of your purchase;
- Cancel your purchase agreement if certain minimum pre-sale targets are not met, your unit is not ready to be occupied by a certain date, or you fail to pay an amount when required;
- Return your deposit without interest if the developer cancels your purchase agreement; or
- Refuse to allow an assignment of your purchase agreement.

Review BCFS's [Understanding Pre-Sale Purchases](#) brochure to learn about additional pre-sale risks.

CONTRACTUAL RIGHTS

Section _____ of the disclosure statement describes important information about your purchase agreement. You should review this section as it summarizes your and the developer's rights and obligations. Confirm that the developer or its representative has brought this to your attention: Purchaser's Initials _____.

You always have the right to cancel your purchase agreement within seven days of signing the purchase agreement by giving written notice to the developer (see Section 21 of the [Real Estate Development Marketing Act](#)).

You have the right to cancel your purchase agreement if:

- The developer does not obtain and disclose to you that it has received a building permit by _____;
or
within seven days of the developer disclosing to you that it has received a building permit and the building permit shows a material change in the layout or size of your unit, the development, or a major common facility; or
- The developer does not obtain and disclose to you that it has received a satisfactory financing commitment by _____.

These rights **do not** apply if the developer has already disclosed that it has obtained a building permit and a satisfactory financing commitment.

Confirm that the developer or its representative has explained to you whether these rights to cancel your purchase agreement are applicable: Purchaser's Initials _____.

■ President's Message

I think it's fair to say that 2024 is already shaping up to be another busy year for strata owners. We started the year with education about electrical planning reports, held our annual general meeting in February, the principal residency requirement for short-term rental accommodations goes into force on May 1, and new regulations about depreciation reports go into effect on July 1 (see page 3).

VISOA's board of directors and Strata Support Team are up for the challenge and ready to serve our members. Membership has grown 28% over the last two years, likely due to so many questions about changes to legislation during that time.


Our volunteers are dedicated. Led by Lachlan and Joanne, our Strata Support Team is managing the increased volume of questions and requests for support. Board members are continuously impressed with the quality of their responses and recognize that these volunteers are the heart and soul of our society. The upcoming launch of our new website and membership management tools will help VISOA manage continued growth by introducing operational efficiencies.

In January, more than 20 people expressed interest in serving on VISOA's board of directors and our

nominations committee had the difficult task of selecting candidates. The election took place at our annual general meeting on February 25. Please join me in welcoming Lesley Brown, Susan Ferster, Calvin Gray, and Jamie Stevens to VISOA's board of directors. They bring a wealth of knowledge and experience to the table. Together with directors Andre De Leebeeck, George Fisk, Jim Griffith, John Grubb, David Stinson, and myself, the board has members with a diverse set of skills and experience.

We are also lucky to have Cindy Young, now in her 6th year as VISOA's office administrator, who keeps the front-end operations running smoothly and is often the first point of contact for our members.

Directors and staff will be working with a facilitator this month to help the entire team regroup and focus on the year ahead.

Thank you to our members for your continued support. It's my pleasure to serve as president again this year and I look forward to hearing from you. Please contact us if you have suggestions for educational webinars, Bulletin articles, or initiatives for board consideration. 

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

VISOA

Board of Directors 2024-2025

Executive:

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

Members at large:

- Lesley Brown
- Susan Ferster
- George Fisk
- Calvin Gray
- Jim Griffith
- Jamie Stevens
- David Stinson

VISOA board members are volunteers. We are strata owners just like you and we are dedicated to helping the strata community.

Learn more about each [board member](#).



2024 Cover Photo Contest

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

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

Second prize: \$50 to the submitter.

