



Vancouver Island Strata Owners Association
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VISOA BULLETIN - AUGUST 2006

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PRESIDENT'S REPORT

Harvey Williams

New Board Members. With the appointment of **Cathy Turner, Tony Davis,** and **Sharon Willis** to fill the three vacancies left by resignations in February, the VISOA Board of Directors is now up to it's full strength of nine members.

Cathy Turner, a native Victorian, has an extensive background in community work, serving on boards and committees and holding paid positions in various organizations. Last year, she served as recorder for her strata council and this year is a council member-at-large and parking coordinator. While a member of a housing cooperative, she served as president and member of the Finance Committee.

Tony Davis is president of the council of his self-managed strata corporation a position he has held for the past two years. During his tenure, all sliding glass doors and exterior windows in his building were replaced.

Sharon Willis is a first-time member of the strata council of an older building, where she has assisted in various council tasks over the years. She is a professional editor. One of her services on VISOA's board will be editing the Bulletin for uncrossed t's, double negatives, dangling participles, and working toward a consistent VISOA Bulletin style.

September 10 Seminar. The seminar will be held at the Qualicum Beach Civic Centre (Notice on back cover of this Bulletin). The September 10 seminar will be a repeat of John Grubb's June 11 presentation in Victoria tailored to the needs of up-island strata owners. John proved to be a dynamic speaker with a wealth of information on strata

maintenance. His formal presentation will be followed by a question and answer session.

VISOA Questionnaire. VISOA Members purchase services from VISOA when they pay their dues. The questionnaire attached to this Bulletin is to assist us, your Board of Directors, in offering the services you want to purchase. ***Please help us help you by completing and returning this questionnaire.***

More Issues With Strata Agents

I started out to write about an unlicensed strata manager. Almost immediately, semantics interfered. Should I call them managers or agents? They call themselves agents on their Web site (www.spabc.org) and the name of their organization is ***Strata Property Agents of British Columbia*** (SPABC). Yet most strata property agents refer to themselves as managers, and the companies that employ them are referred to as "management companies." And strata owners generally refer to them as managers.

If they are indeed agents, then who are the managers? The strata councils are the managers, and strata agents act on their behalf.

Unlicensed Strata Agents. We know of at least one person employed by a major property management firm on the Island as a strata agent whose name does not appear in the registry of licensed strata agents. I called the Real Estate Council to inquire about his status and was told that inquiries could only be made by strata councils. One would think that the Real Estate Council would be eager to investigate reports of unlicensed real estate service providers from whom-ever.

Access to Records. Another disturbing report was from a strata owner whose request to examine her strata service contract was rebuffed by her strata's agent. He informed her that the contract was between the company and the strata council and that she had no right to examine it.

Section 36 of the *Strata Property Act* is very clear that owners have the right to examine all of the documents listed under Section 35. Among the items listed in Section 35 is ***all written contracts to which the strata corporation is a party.***

It is understandable that many strata council members may not be well informed on all aspects of the *Strata Property Act*, but there is no excuse for a licensed service provider to be ignorant of basic provisions of the Act.

**ALTERNATIVE DISPUTE
RESOLUTION AND STRATAS (ADR)
*Pat Williams***

ADR is an acronym that is often used and frequently abused. One typically understands ADR to mean "alternative dispute resolution", "alternative" meaning alternative to court. Probably a better description would be "appropriate dispute resolution". As strata corporations continue to be formed as the preferred method of housing, especially as the cost of land increases, the challenges of living in close proximity to others multiply. Often the best dispute resolution mechanism in close community living is communication. When communication breaks down, conflict becomes unhealthy and leads to disputes.

For centuries, the courts have attempted to resolve disputes. A major concern of courts being involved with strata living is

the presence of lawyers (who are trained to take adversarial positions) and the need for a "winner" and a "loser". This atmosphere fosters hostility, hostility that remains long after the court has resolved a particular issue. The result is the Legislature has enacted sections 175 – 189 of the *Strata Property Act*, sections that deal solely with arbitration as a dispute resolution alternative to the courts. Arbitration is not the only alternative.

Section 181 of the Act requires an arbitrator to advise the parties of the possibility of mediation. There are substantial differences between court adjudicated decisions, arbitrator adjudicated awards and mediated settlements. Court is typically the most expensive, and the most restrictive. Mediations are the least restrictive and least expensive. A brief description of the benefits and drawbacks of each would be in helpful.

Court

Court is the most structured of the resolutions mechanisms. One usually needs a lawyer, which can prove expensive. Costs awarded to a successful litigant never approach the actual legal costs incurred. The courts only sit from 10:00 a.m. to 4:00 p.m. (with a 90-minute lunch break and a morning and afternoon recess) Monday through Friday. The hearing takes place in the Courtroom – very seldom will a view of the premises be held. The strict rules of evidence apply. The judge was at one point a lawyer. Often the judge has no experience in strata living, although that is rapidly changing.

Arbitration

Arbitration is less structured than Court, more structured than mediation. One may or may not use or need a lawyer.

The arbitrator need not be a lawyer; what is necessary is a professional who has been trained to use arbitration skills and has experience in the subject matter. An arbitration can be held at times and days convenient to the parties. For example, much longer than a 6-hour day, on Saturdays, or whatever. Section 183(3) of the Act states that an arbitrator must hold a hearing as soon as possible at a location near the strata premises. It will not be held in a courtroom, and near or at the strata location allows easy access for the arbitrator to view the premises in dispute (very important for parking disputes). The arbitrator decides what the rules of evidence will be, and is typically more flexible.

Mediation

This form of resolution is the least structured. Its biggest advantage is also its biggest detriment. That is that a mediated resolution is one arrived at by consensus of the parties, not a decision or award invoked on a party. The advantage – the parties have agreed on the result and can move forward, hopefully as neighbours. The detriment – if a resolution cannot be reached, then there is no mechanism for an enforced result, and the parties must resort to arbitration or court. What could have been the least expensive, if not resolved by agreement, becomes the most expensive. A mediator is a facilitator, not an adjudicator. While a mediator does not necessarily need expertise in strata matters, such expertise can be very helpful. Costs of the mediation are shared equally, unless the mediated settlement addresses costs. A mediation will usually continue until a settlement is reached or a determination that a settlement cannot be reached. In other words, there are no recesses or adjournments. A mediator is a trained professional.

Other Alternatives

As discussed earlier, the Act states that an arbitrator must advise of possibility of a mediated settlement. This means that in strata disputes, an arbitrator with training as a mediator as well is a huge asset. This process is often referred to as a “med/arb”. A mediation, followed by an arbitration if the mediation is unsuccessful. As the reader can see, this option means that the mediation detriment of no settlement can be avoided to the extent that there is at least an eventual outcome.

The British Columbia International Commercial Arbitration Centre (BCICAC) and the British Columbia Arbitration and Mediation Institute (BCAMI) comprise professional mediators and arbitrators that can assist stratas. BCICAC and BCAMI operate from the same premises. A phone call to 604-684-2821 (BCICAC) or 604-736-6614 (BCAMI) will result in Rosemary Mohr assisting a strata corporation or an owner arranging for either a mediation, an arbitration, or both.


The Web sites are “www.bcicac.com” or “www.bcami.com”. To estimate a cost of such services would be impossible. The cost will depend upon the complexity of the dispute, the number of parties involved, the experience of the arbitrator or mediator, and so on. One thing is clear. All things being equal, a mediation will cost the least and court the most, assuming that the parties involved respect the process invoked.

An example of the cost difference is reflected in the following example. Assume a bylaw that prohibits parking on a driveway of a townhouse complex. The owner is fined on a regular basis and refuses to pay. A mediation of that issue would likely cost less than \$1,500 and would address questions such as why

does the owner continually violate the bylaw – it could be due to a physical disability, not enough room in carport or garage, etc. An arbitration would result in the Council insisting upon the payment of fines and the owner no longer parking the car on the driveway. A view would assist. The cost would be the cost of the arbitrator (perhaps \$3,000 - \$5,000) without the need for a lawyer. Court would result in an application for an injunction, a petition, affidavits in support, a hearing and an eventual cost of at least \$10,000. The arbitration would be more expensive if the owner then included a human rights issue regarding disability, other owners are allowed to park their cars on their driveways (maybe those driveways have more room), or an R.V. is parked inappropriately, or a wreck of a car is stored without insurance. The arbitration becomes more expensive than the court because in court such an escalation would likely be stopped by the judge – arbitrations, being less formal, have more of a tendency to become rudderless.

A word of caution. Mediation works best when the “playing field” is relatively level. If one side is a bully, a mediator will attempt to address that. If the bullying does not cease, then ultimately the mediation will fail. For that reason, the author suspects that mediation has not been as common in strata disputes as one would think it should have been over the years. It is for that reason that an experienced mediator is essential to foster the communication necessary to resolve these disputes.

Patrick Williams (no relation to VISOA’s president) is the Governing Trustee of the BC International Commercial Arbitration Centre and a strata property lawyer.



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**YOU ASKED: Who pays for windows?
Harvey Williams**

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.

We get a lot of questions about windows. All kinds of things go wrong with windows. Windows are broken or leak, seals on dual- and triple-pane windows leak, paint on the frames deteriorates, frames rot. The question is

always the same: Who pays, the strata corporation or the unit owners?

Section 8(d) of the Standard Bylaws states that the strata corporation must repair and maintain windows **on the exterior of the building or that front on common property**. Unless that bylaw has been amended, that's pretty clear. But what about collateral damage such as damage to inside window frames or walls due to leaking windows? Common sense dictates that damage caused by a leaky window is the responsibility of the strata corporation. And what if storm windows have been installed by an owner? Or, as in the case of our heritage building, some suites still have the original leaded glass windows that can be expensive to repair. Should the strata corporation be required to repair the damaged leaded glass windows or be allowed to replace them with cheaper faux-leaded glass windows? Such questions are the stuff of court cases.

We have solved that problem by adopting a rule that goes beyond the standard bylaw by specifying responsibility for windows. Our rule could just as well be a bylaw, and in fact, might be better if it were a bylaw, but it works for us. While such a rule does not prevent an owner from taking a case to court - and I would certainly not predict the outcome if one were taken to court - owners accept it because it's there and in writing. For those who are interested, here is our bylaw: ***The strata corporation is responsible for maintenance and repair of windows, window frames and window sills that is necessary to keep them weather-proof and for painting external surfaces of window frames and sills as needed.***

Owners are responsible for the internal surfaces and components of

window frames and sills and for repair of damage resulting from owner modifications to original windows such as storm windows and insect screens, whether inside or outside the original window glass, and for all window breakage resulting from owner activity.

A lawyer might find fault with this rule, but it has completely eliminated dissension over windows by providing consistency and predictability in responsibility for the maintenance of windows.

STRATA NUMBERS

20,000: Number of strata corporations in B.C. at last count.

900,000: Number of individual strata units in B.C. at last count.

\$180 billion: The market valuation of strata property in B.C. at last count.

\$1 billion: Operating funds expended annually by B.C. strata corporations.

\$500 million: Contingency funds held by BC strata corporations.



Strata Council Websites

The Key to Good Communication

Contact Brian Smith (Nanaimo) at
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DO YOU KNOW THAT...

- ☞ **Exclusive use of common property**, e.g., parking spaces, can be granted for only one year at a time? *SPA 76(2)*
- ☞ **A bylaw may be passed** making an owner responsible for repair and maintenance of Limited Common Property? *SPA 72(2)*
- ☞ **Remuneration of a council member** for council duties must be approved in advance of payment by being in the budget, in the bylaws, or by special resolution at a general meeting? *SPA 34.*

WHO SHOULD CHAIR A GENERAL MEETING?

Members report cases of uncertainty as to who should chair general meetings when, for some reason, the council president or vice president do not do so. Section 25(3) of the Standard Bylaws is quite clear as to how a chair should be selected in such cases.

(3) If neither the president nor the vice president of the council chairs

the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.

The chair need not be an owner or even hold a proxy but must be elected by eligible voters present. The Strata Council cannot arrange for a lawyer or call on the strata agent to chair a general meeting, as sometimes occurs, but eligible voters can elect them.

STRATA SERVICE CONTRACTS

No provision in the *Strata Property Act* is as unfair to strata owners as are sections 38 and 39 which deal with strata management contracts. According to these sections, the Strata Council can sign a management contract, but the only way a management contract can be terminated is by a 3/4 vote at a General Meeting unless the contract contains an expiration date. These two sections of the SPA make indeterminate expiration dates the default condition. But subsection 51(4)(d) of the RESA rules reverses this by requiring that all service contracts specify a duration unless the strata corporation agrees not to do so making a duration clause the default condition.

VISOA continues to receive complaints about management companies insisting that service contracts do not need expiration dates. **But the management companies are wrong.** Strata councils should insist that all management contracts be for a specified duration as required by the RESA rules.

Division 1 of the RESA sets forth the rules for service contracts. The entire text of Division 1 is printed on page 7.

RESA RULES: PART 5 - RELATIONSHIPS WITH PRINCIPALS AND PARTIES

Division 1 - Contractual Matters

5-1 Written service agreements required in some cases

- (1) *Requirement for service agreement* - **Unless waived by the prospective client, a brokerage must have a written service agreement in accordance with this section if**
 - (a) the brokerage is to provide trading services to an owner of real estate in relation to the offering of that real estate for sale or other disposition
 - (b) the brokerage is to provide rental property management services to an owner of rental real estate , or
 - (c) **the brokerage is to provide strata management services to a strata corporation.**
- (2) *When agreement must be entered into* - **A service agreement required under subsection (1) must be entered into as follows:**
 - (a) in relation to trading services referred to in subsection (1) (a) before the brokerage represents the client in offering the real estate for sale or other disposition;
 - (b) in relation to rental property management services referred to in subsection (1)(b), before providing any of those services;
 - (c) in relation to strata management services referred to in subsection (1) (c) , before providing those services.
- (3) *Completion and content requirements* - A service agreement required under subsection (1) must
 - (a) be signed by the client and an authorized signatory of the brokerage,, and
 - (b) clearly state all terms and conditions of the agreement, including the matters required by this section.
- (4) *Specific content requirements* - **In all cases, a service agreement required under subsection (1) must include the following:**
 - (a) the name of the client and the licensee name of the brokerage;
 - (b) the address of the real estate in relation to which services are provided under the agreement;
 - (c) **the date on which the agreement is effective;**
 - (d) **the duration of the agreement;**
 - (e) a general description of services to be provided by the brokerage;
 - (f) the remuneration to be paid under the agreement and the circumstances in which it will be payable;
 - (g) provision respecting the use and disclosure of personal information.

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Rates

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Ads must be paid for in advance, and are subject to VISQA Board approval. Ads must also be "camera ready", in BMP or other format - additional fees for scanning or layout may otherwise apply.

MEMBER'S LETTER

In 1998/1999 this complex discovered they had a leaky condo, and at that time they decided just to repair the affected weather walls and reinspect the balance of the unrepaired walls in five years. Well, as you can imagine, the rest of the walls are now requiring repair, and we are undergoing it now at twice the cost of the repair six years ago. Our first comment to anyone with a leaky condo is do it all at the same time - patching is not the answer. We will also be doing our roofs too as they are in poor condition and no sense doubling up on flashing, etc.

We feel that this leaky condo situation is a major crisis and warranted more government support right from the start. One comment is that all owners should be eligible for the interest-free loans from HPO - not just owners over 60. Also, the GST should be waived, not just the PST. No one should be allowed to profit from the misery of others, especially the government.

My husband and I would be interested in anything we could do to bring this building problem back out of the closet

and find some way to get some compensation for any owner. We are one of the lucky ones that could afford to pay, but it still came at some hardship, as my husband will now not be able to retire as scheduled, and I have gone back to work. If you chose to live on a flood plain or on the side of a hill, the government helps when you have a flood or landslide - where is the help for the tragedy of unsuspecting home buyers who think they are not buying in areas with such obvious problems?

Bruce and Christine Tonkin, Nanaimo.

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LOOKING OUT FOR NEIGHBOURS

Elaine McAndrew

One of my contractor friends was called in to find and repair a water leak in a four-storey apartment-style condo. He obtained entry to the suite because

water was entering the ceilings of the units below. He found a dead body in the bath tub, and the water was still running. Not one of my buildings, fortunately, but a shocking experience. We have to be on the alert for our neighbours who have health problems. In rental apartments there are requirements for the manager to check on tenants. In self-owned condominiums, a person could be needing help, and the other residents would not be aware of any problem.

In another case, a reclusive aged owner passed away in her suite. The suite was a very large one, and odour did not alert anyone to the fact that something was very wrong or make enquiries. Odour often alerts persons in the hallway. They described the condition of the body for me, and no one wants to encounter that situation. It is believed she was there for three months after dying.

BARE LAND STRATA PLANS

Elaine McAndrew

Strata plans take many forms, and it is the method of ownership and a strata plan number that makes them condominiums/stratas. There are many buildings that look like they might be condos, such as high-rise/low-rise apartment-style suites, town houses, commercial units and mixed-use stratas. It is the strata plan number that proves a project is registered under the old *Condominium Act* or the *Strata Property Act*.

There are some very creative registrations involving special circumstances, like a church with senior's

residences on top, a cruise ship and time shares. There is a project with 20 horse stalls. An owner buys a stall, and can arrange for board and care for a horse. In all cases, the owners own their lots and a specified share of the common property, and this is registered on the unit entitlement schedule.

Bare land stratas have the same form of ownership, but instead of having the lot defined by walls, ceilings and floors, the lot is defined by survey pegs. The owner is responsible for his/her roof, exterior surfaces, plumbing, landscaping, etc., everything within the pegs marked on the strata lot.

The developer of a bare land strata is responsible for providing access roadways, water supply/ distribution, sewage collection/treatment systems, landscaping and anything else the approving authorities deem to be pertinent. The project is self-sustaining, and Municipal or City services come just to the strata boundary line. Local services are provided by the strata. A large strata plan is very much like a small town with facilities to manage and a Council to ensure that the repair/maintenance/ replacements are done. The strata may provide or arrange for garbage collection, snow removal, fire protection, and other services.

Amenities such as a swimming pool, cable TV, meeting rooms, tennis courts, etc., may also be provided. One strata has a convenience store/deli on a commercial lot within the bare land strata. The common property in a bare land strata may be extensive, including landscaped green areas, lake access and trails.

The unit entitlement for lots in bare land stratas is 1, no matter how the lots differ

in size. Owners pay for their share of the common property, i.e., if the strata plan has 80 lots, each owner pays 1/80th of the common expenses. Bare land strata plans show no buildings, only lot boundaries and common property.

Bare land stratas are popular for a number of reasons, and the main one is that developers have a little more flexibility. The Approving Officer (in cities) or the Approving Officer in the Ministry of Highways (in unorganized territory) may approve a plan that fits the zoning and special conditions of the site, such as one on rocky, hilly land, and perhaps allow narrower roadways.

For purchasers, house design and finishing of surfaces may be regulated. Some bare land strata plans have specified minimum and maximum sizes of homes that can be built. Bylaws may also control exterior finishes and roofing material, and there may be a design committee to approve the plan and the landscaping.

Councils may go on to regulate flag poles and the size of the flag. As in other stratas, aggressive enforcement of bylaws or bylaws that are too stringent may affect the strata's reputation and marketability of lots.

Owners of bare land lots may have single-family homes and a little more space between houses, but many of the same problem areas exist as with other types of stratas: people, personalities, pets, parking and noise.

Pets are often regulated as to number and types, usually small dogs and cats. Owners must clean up after pets, although some have avoided this duty by walking their dogs after dark.

A bare land strata is ideal for a

manufactured/mobile home park. In some areas of the Province, mobile home parks were built on leased land. When the time came for the landowner to retire, sell his/her holdings or do something else, the mobile home owners were in a tight spot. Mobile homes are not all that mobile.

Budgets differ a little. Road maintenance, snow removal, security, water and sewers, plus lighting of common property, may be on the budget. Usually there are no elevators, underground parking or boilers to maintain.

There are very real advantages in owning a single-family home on a strata plan rather than a subdivision or single lot. The consistency of appearance protects property values. We've all seen derelict vehicles, garbage, overgrown yards, etc., on non-strata lots. The over-all appearance of homes and yards can be regulated through bylaws. Neighbours are nearby, and lots are smaller and more manageable than regular subdivision lots. A sense of community exists. The lot owners have control of utility usage, unlike some stratas where water, heat, etc., are paid according to unit entitlement.

It seems to me that town house owners also behave more like single-family home owners do (maybe it's that private entrance) than those in apartment style units. Each owner/family has equal access to the facilities and amenities. In some townhouse projects there are expenditures that are more one-per-house than by unit entitlement. For example: chimney cleaning, maintenance of exterior doors, and lock changes.

In a bare land strata, some forget that they share the ownership of all of the

common property because homes might be spread out much more than other styles. An owner on one side of the property might not understand the concerns of those on more distant areas.

Enjoy your property, and try to be reasonable and tolerant. Whatever style of condo/strata you have chosen, it is great to see property values increase. You've made an excellent investment and taken pressure off of the rental housing market.

Elaine McAndrew is semi-retired after a 30-year career in property management, arbitration and condominium education.

PET BYLAW ENFORCEMENT

A recent newspaper article described a case of a court quashing a strata council fine for violation of a pet bylaw prohibiting cats. This ruling has been interpreted by some as meaning that the courts would not uphold pet bylaws.

The ruling was **not** against pet bylaws per se. The fine was quashed because the strata council did not follow the procedure laid out in the *Strata Property Act* for levying fines.

Strata corporations are well advised to read Instruction Guide 17, ***What to Know About Pet Bylaws***, before adopting a pet bylaw, and strata councils are well advised to read Instruction Guide 14, ***How to Enforce Bylaws and Rules***, before levying fines for bylaw and rule violations. The complete set of instruction guides can be downloaded from the Financial

Institutions Commission of BC's Web site: **http://www.fic.gov.bc.ca/responsibilities/strataowners/instruction_guides.htm**

NEW WEB SITE

Your Board of Directors is pleased to announce that VISOA's new Web site will soon be on line. The only similarity to the old Web site is the URL (Universal Resource Locator) **visoa.bc.ca**.

While visitors to the VISOA Web site will find a more pleasing appearance and links to a wider range of resources, they will also find something else. Only corporate and individual members of VISOA will have access to the entire Web site.

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VISOA'S 2006 WORKSHOP SERIES

September 10
 Qualicum Beach: Strata property - Home or Investment. John Grubb, Strata Maintenance Consultant

November 19
 Victoria: Dispute Resolution: Mediation & Arbitration. Kathleen McIsaac & Gwen Taylor, Attorneys

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For more information regarding Business Memberships please contact Elsie Lockert at (250) 920-0222 or membership@visoa.bc.ca

DISCLAIMER

The material in this publication is intended for informational purposes only and cannot replace consultation with qualified Strata professionals.

Legal advice or other expert assistance should be sought as appropriate

