



VANCOUVER ISLAND STRATA OWNERS ASSOCIATION

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VISOA BULLETIN - AUGUST 2007

PRESIDENT'S REPORT

Harvey Williams

New Board Member

At its June meeting, VISOA's Board of Directors welcomed a new member, Sandy Wagner. Sandy, elected by the Board to replace Cathy Turner who resigned in May, brings to the Board her experience as a Hallmark card shop manager and eight years of service on her strata council. She credits

VISOA as a being a "great source of information" when she served on her strata's committee to update its bylaws in response to the *Strata Property Act*.

Sprucing Up Our Website

Readers who have checked the VISOA website will notice some changes. VISOA Board Members Daryl Jackson and Tony Davis have been applying their web-design skills to improving its appearance and making it more user-friendly.

Meetings with Ministers

In order to help our MLAs become better informed about the *Strata Property Act* and the workings of strata corporations, VISOA's Board of Directors sent letters to all Island MLAs who hold government cabinet positions and to the Minister of Finance, who is responsible for stratas, inviting them to meet with VISOA representatives. We have tried to have a VISOA member from the MLA's riding present for

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BOARD OF DIRECTORS 2007

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PRESIDENT'S REPORT

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the meetings. Board member Deryk Norton is coordinating this initiative.

The first to respond was The Honourable Murray Coell, provincial Minister of Advanced Education and Minister responsible for Research and Technology. Board Members Deryk Norton and Allan Anderson and myself met with him at his constituency office in Sidney on Friday, June 8.

The fact that Mr. Coell is a strata owner himself provided an opening for discussion of the following points:

>There are about 32 thousand strata corporations in B.C. and 1.3 million strata units. Perhaps as many as one third of B.C.'s 4.1 million residents are strata residents.

>Most strata owners, preoccupied with their personal lives, are not motivated to master the intricacies of the *Strata Property Act*, and others find it beyond their grasp.

>The *Strata Property Act* is self-enforcing, depending heavily on the court system, making it too costly for strata owners on low or fixed retirement incomes to seek redress when they have concerns.

>It is becoming increasingly clear that the self-enforcement feature of the *Strata Property Act* is no longer working.

We suggested that there is a need for a provincial agency to assist strata owners. Perhaps one patterned after the Residential Tenancy Branch, which supports an information website and provides an affordable programme of conflict resolution for landlords and tenants, would be of great assistance.

VISOA members should contact their MLAs and share their concerns regarding the *Strata Property Act* and strata managers. Also let Deryk Norton know of their concerns and what they have said to their MLAs.

Joyce Johnston, the attorney who spoke at one of our meetings, has become a regular contributor to the VISOA Bulletin. Her article on insurance deductibles addresses an issue that arises frequently in stratas. It merits careful reading. For her professional legal assistance, she can be reached at 382-0300.

WHO'S PARKING IN YOUR VISITORS PARKING STALL?

Laura Neilson

Our visitors parking stalls are at the rear of our building, protected from the weather by a building overhang. A few weeks ago, one of our owners emailed me to complain about a car parked in one of the stalls. A day or so later, as I was leaving the building, I began to take note of the cars parked in the visitors parking stalls.

After a few days, it became evident that one particular car was always parked there, so I went over and tried the door on the driver's side and found it unlocked. The inside of the

car was a clutter of paper bags, scraps of paper, and cigarette butts, and the car did not appear to have been driven recently. I rummaged among the trash and soon discovered a registration certificate which contained the name of the owner, a woman.

When I got back to my suite, I went to the phone book, looked up the woman's phone number and called her. In a rather brusque tone, I told her that she had to remove her car forthwith. I expected grumbling and excuses in reply, but instead a loud squeal

of delight made me hold the receiver away from my ear, "You found my car - where is it?"

Subsequent conversation revealed that the car had been stolen a couple of weeks previously from a nearby mall parking lot while the owner attended a movie. The theft had been reported to police, but by the time the owner received my call she had given up all hope of ever seeing her car again. But instead of heading for Port Alberni, or worse, Thunder Bay, the thief had merely driven the car around the neighbourhood for awhile then, tired of joy-riding, parked it, messy but undamaged, in one of our visitors parking stalls.

After hanging up, I called the police, who soon arrived and filled out the required reports, then the ecstatic owner drove her car home - a happy ending to a bizarre tale.

But what if there was damage to the car while it was parked on strata premises? Who knows what the strata's liability might have been?

The moral of this story: monitor your visitors parking stalls.

Laura Neilson is a former member of VISOA's Board of Directors and president, Strata 3444

MEMBER COMMENTS

We welcome member comments or questions regarding items that appear in The Bulletin.

In my column in the June Bulletin, "How An Operating Cost Audit Can Lower Fees," I suggested getting competing quotes on ele-

vator contracts before renewing and suggested that expensive monthly inspections were not required. I received an email from an alert reader suggesting that I check the provincial regulation on elevator maintenance, which I did.

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MEMBER COMMENTS

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What I found was that the *B.C. Safety Standards Act* classifies elevators as, not surprisingly, "elevating devices" and requires elevating devices to be inspected at least quarterly, *unless otherwise provided under an applicable code*. Unless there is an "applicable code" to the contrary in your municipality, then stratas are only required to have their elevators inspected quarterly instead of monthly, a provision that seems to be common in elevator contracts. Elevators in most strata complexes are not used nearly as heavily as elevators in commercial buildings, which would require more frequent inspections.

Before your elevator inspection contract

comes up for renewal, read the provincial elevator inspection requirements (URL below) and contact your local "elevating device" authority, likely the municipality, and find out if there are additional local requirements for elevator inspection. If there are none, quarterly inspections should be substantially cheaper than monthly inspections.

Provincial elevator inspection regulations may be found at the following website: http://www.qp.gov.bc.ca/statreg/reg/S/101_2004.htm. Elevator inspection requirements are in Section 12, Division 3 of the Elevating Safety Regulations.

WHEN CAN A STRATA CLAIM FOR AN INSURANCE DEDUCTIBLE?

Joyce Johnston, Attorney

Dispute Resolution for Stratas

- *Mediation*
- *Arbitration*
 - *Facilitation*
 - *Circles*

Kathleen McIsaac B.A. LL.B.
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Free Consultation

In my article "Who Pays for What?" (April 2007 Bulletin), I discuss the situation where a pipe bursts, water escapes, and damage occurs to the walls and floors of several units. I conclude that the pipe is most likely common property, and repair of the pipe is the strata's responsibility. I go on to look at the insurance sections of the SPA and Regulations. Because the strata must maintain insurance on the structure and some original fixtures, and because the strata must insure for water escape, the strata's insurance policy must pay for certain damages. I did not go on to discuss the situations in which a strata can then claim against a responsible owner for the insurance deductible. This was because the situation of the hypothetical pipe bursting involved damage emanating from the common property. What about situations where the damage occurs from a machine or fixture that is not common property? A recent case gives some guidance to those of us concerned with strata issues on when a strata can claim against an owner for the deductible that occurs because of a claim

on the strata's insurance.

In the case of *Mari v. Owners of SP LMS2835*, the Maris had a faulty water-level switch in their washer. They, of course, were unaware that it was faulty. Water escaped and damaged multiple units. The strata's insurance policy paid for repairs. The strata then claimed against the Mari's for the \$5,000 deductible.

Section 158 of the *Strata Property Act* says, in subsection 1, that a deductible, in respect of a claim on the strata's insurance, is a common expense. The Mari case involves an interpretation of section 158(2), which says:

Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gives rise to the claim.

It has always been uncertain what the word "responsible" meant in that section.

The leading case on section 158(2), prior to the Mari case, was the *Comissiona* case. That case decided that the strata corporation could sue a responsible owner for the deductible, so long as the bylaws allowed for this. It did not tell us what the word "responsible" meant. Did the owner have to be negligent in a legal sense, or did it mean that an owner was strictly liable if the water escape arose from something in his or her unit?

The judge in the B.C. Supreme Court decision in *Mari* sets out the opposing positions of the parties as the Small Claims judge had summarized them. The B.C. Supreme Court decision was an appeal of a Small Claims decision.

Counsel for the strata corporation insists that the word be interpreted in its ordinary grammatical sense. On the other hand, counsel for the strata owner maintains the

word requires a finding of fault, and since the water leakage was caused by a broken switch in the washer, section 158(2) of the Act and the bylaw are not applicable.

After canvassing legal dictionaries and several cases, the Court concludes that the Small Claims judge was correct and the Maris are responsible for the deductible. The Court distinguishes an Alberta case where a pet dog had chewed through a line and caused damage and the owners were held not responsible for the deductible as the damage was accidental. Alberta does not have a section equivalent to section 158(2). The B.C. Court instead adopts an approach consistent with an Ontario case where an air conditioner had caused damage, as our legislation is more in line with that of Ontario with respect to insurance deductibles.

The basis for the decision is a legal interpretation of the word "responsible" in section 158(2), in the context of the policy the Court believes the legislature to have had in enacting that section.

I am satisfied that the legislation is clear and that no finding of negligence is required. The Legislature used the term "responsible for" in s. 158(2) rather than terms such as "legally liable," "liable," "negligent." The choice of the term "responsible" provides the owners with the opportunity to allocate to a particular owner the cost of an insurance deductible in cases where an owner was thought to be responsible for a loss. The presence of washing machines, dishwashers, air conditioners, and water-dispensing refrigerators are examples of items that pose a risk for water escape. Unless there is a mechanism to direct payment of the deductible by an owner who keeps or installs an appliance that has the potential for water escape, owners are free to act without the consequence that affects homeowners in single-family homes, where the homeowner's insurance will repair the damage but the homeowner will be respon-

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INSURANCE DEDUCTIBLE

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sible for the amount of the deductible. The owner will be responsible for the deductible notwithstanding that the owner was not negligent. Section 158(2) simply allows the strata corporation to set the same standard for payment of a deductible as would exist in a single-family residence.

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ANNUAL MAINTENANCE SCHEDULES: PART 2 - AUTUMN SEASON

John Grubb SMA, RPA, RRO

Working on the basic premise that the real purpose of a Strata Corporation is to operate and maintain the property on behalf of its Owner/Shareholders, we offer the following series of articles with the hope of providing readers with some pertinent information and a practical approach to the task.

As Fall approaches (yes, already) there are a number of basic maintenance tasks, which apply to most properties that should be scheduled with various contractors.

Early Fall: September - Mid-October

- The Maintenance Committee should make its quarterly property inspection to identify issues that should be addressed before winter sets in.

- While the weather is still good, a competent Roofing Contractor should be brought in to inspect and make necessary repairs to the (flat roof) membrane and/or the (steep roof) shingles. He should also review all the metal flashings and the condition of caulking and repair or renew as required.

Don't forget to ask for the written report on repairs made and the roof's general condition.

- Arrange the contract for snow removal if one is not in place, or call your regular con-

tractor and confirm his rate and availability. Make a photographic diary of the placement and condition of curbs, wheel-stops and sidewalks. This is best done accompanied by the snow-removal contractor so there is no dispute when it comes to necessary repairs in the spring.

- Check on the growth of plantings and trees to ensure wind-blown branches won't damage adjacent buildings and their systems. Add these to the list for the Grounds Maintenance contractor to attend to before he closes down for the season.

- Check all the exterior stairs, walkways, handrails, doors and hardware to confirm operation, and make any repairs required.

Late Fall: Mid-October - November

- Once the majority of the leaves have fallen, have the gutters and downspouts cleaned and leaks repaired. Don't forget to clean out the flat roof drains.

- Check and service all exterior lighting and automatic/timer control systems, including any underground parking areas, and make any necessary repairs.

- Blow out the irrigation lines.

- If it hasn't been done for a few years, have

the building perimeter drains flushed out. We recommend that this be a scheduled operation every 3 to 5 years.

- Inspect all roadway catch basins, and drains/oil separators in all parking areas to ensure they're clean. Service as required.
- If it wasn't done in the spring, clean and inspect all chimneys and clothes dryer vents.

Interior Common Spaces

- In condominium buildings, we recommend a cleaning of the *traffic lanes* of the carpets. This is not a full carpet cleaning but just those areas of heavy foot traffic such as lobbies and other entryways, mail box areas, elevators and elevator landings on each floor.
- Check on the condition and operation of interior doors and their hardware, stairs and hand railings, exhaust fans and controls. If you're in a townhouse complex, don't forget that this applies to the Clubhouse or other Common Property facilities.
- Clean out the Electrical Rooms. Under the B.C. Electrical Code, storage of **any** materials, tools or equipment is not permitted here.
- Clean out that "catch-all" Storage or Hobby Room where owners tend to put that half-used can of varnish, paint or other "substance" because "There's nowhere else to put it, and someone else might be able to use it." While we usually put this in the spring schedule (after all the winter hobby work), if it hasn't been done recently, it's time.

Any container without its original, legible label should be disposed of without a second thought. Even with a label in place, if there is any question that the contents are not what the label states, it should be disposed of in an appropriate manner.

Any item left in a Common Area, by default becomes *the responsibility* of the Corporation even if it doesn't become its *property*. While we're sure no individual owner wishes any harm to anyone else, their "gift" can become a serious liability for the Strata.

- Have common Boiler and Hot Water Systems checked and serviced. Ask the contractor for a report on the system(s) condition and any potential *major short-term* service requirements (1-5 yrs).

Administration

- In early fall, we suggest that the Maintenance Committee completes the development of Specifications and Tender Documents for major projects scheduled for the following year (you know, the ones that have been in planning since the early spring). This is also the time to generate a list of preferred, available, and qualified bidders for those projects.

In the present, over-heated construction climate, we suggest the Strata be prepared to go to tender for these projects in December or early January to ensure that contractors can "get you on the list" once a suitable bid has been chosen.

Summary

While some will consider these as just simple maintenance procedures, we hope you appreciate that they also have much to do with one of the primary responsibilities of any Strata Corporation - Risk Management.

Fall is the time to get your property ready to "hunker down" for the winter. While these suggestions can only approach the work from a very broad perspective, we hope that the "list" will trigger your thoughts on some specific systems that we haven't mentioned here.

John Grubb is a Facilities Maintenance Consultant and welcomes Member inquiries at usc@shaw.ca

YOU ASKED:

Our strata corporation pays a contractor to clean and service all of the dryer vents in our town house complex. Shouldn't we reduce our strata fees by making that an individual owner responsibility?

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.

Offloading cost-items onto individual owners may be an effective way to minimize strata fees, but in the long run could be more costly to all owners. It is often more economical for the strata corporation, as well as individual owners, to pay the cost of repairing or replacing items that are common to all strata units and tend to fail at random intervals. And there are cases in which offloaded costs may be challenged in court as violations of the strata corporation's bylaws or the *Strata Property Act*, which can become very expensive indeed.

This column is about maintenance items that a strata might defer to individual owners without a great risk of law suits but which also might result in cost savings to all owners if responsibility for them were assumed by the strata corporation. Examples of such maintenance items are painting and reroofing of units in bare land and town house stratas, cleaning and maintenance of fireplaces, replacing water heaters, zone valves in hot water heating systems, replacement of faulty dual-pane windows in apartment-block complexes and town houses, and the like.

In addition, over time prudent use of the corporation's purchasing power could save money for all owners. An added bonus to

such an enlightened approach is that friction between owners and strata council over who pays for such items will be largely eliminated.

For example, it is unlikely that while all the units in a bare land strata would be in serious need of painting or reroofing at the same time, owners could achieve significant savings by contracting through the strata corporation to have all done at the same time. Such savings could make it worthwhile to accelerate these maintenance items for some units.

The failure of water heaters, fire places, clothes dryers and dryer vents, fire alarms in suites, and the like can be costly to the entire condominium complex and can endanger the lives of occupants. Accordingly, it is in the best interests of all owners in apartment blocks and town houses to make sure that they do not fail by practising preventive maintenance and/or replacement.

Everyone knows that all water heaters will eventually fail, usually shortly after the warranty expires. So why not just replace all water heaters near the end of their warranty periods at the expense of the strata corporation? I know of one case in which a failing water heater damaged several suites on floors below, resulting in a strata insurance claim of more than \$100,000. Even though the owner paid the strata deductible, such a large loss could affect future insurance premiums, and many such failures would surely result in an increase in the annual insurance premium.

All dual-pane windows will also fail eventually. Some just take longer than others.

Failing dual-pane windows can allow water ingress into the building, and a failing water heater often causes damage to common property and other suites in the building. I recently received a phone call from an owner in a large condo complex whose dual-pane sealed windows had become cloudy because the seal between the two panes had leaked, allowing moist air to enter. Although these were the original windows installed by the developer, the warranty had expired.

The owner had checked the strata bylaws and found that Section 8 (d) (iv) of the Standard Bylaws, which lists common property items for which the strata is responsible, had not been amended or deleted. The list includes *doors, windows, and skylights on the exterior of the building or that front on common property*. However, the strata council refused to repair or replace the windows on the grounds that they were still waterproof.

This case raised two related issues: Is it necessary to repair dual-pane windows that have become cloudy but do not leak, and who should pay for their repair/replace-ment, the owner or the strata corporation? Unless one of the parties were to back down, this case could go to court, an expensive and lengthy process with an uncertain outcome. A common sense approach by the strata corporation could avoid such an expense, with the accompanying unpleasantness and uncertainty, and not be viewed as "backing down."

The downside to the strata corporation assuming responsibility for items such as those discussed above is that in strata complexes with a wide range of unit entitlements, owners of suites with higher unit entitlements may object to paying a higher percentage of the cost of, for example, each water heater. But they should realize that, in the long run, they may save money.



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Legal advice or other expert assistance should be sought as appropriate.

The Vancouver Island Strata Owners Association

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Questions from the floor will be addressed

SUNDAY SEPT 16, 2007

1:00 - 4:00 P.M.

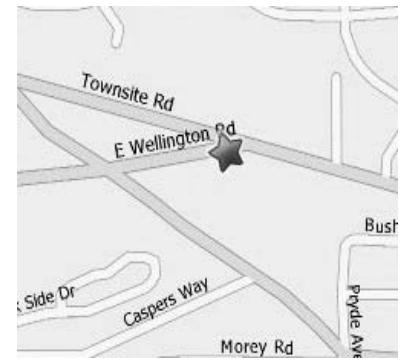
Registration begins at 12:30 p.m.

Memorial Hall - Legion 256
1630 Wellington Rd. East,
Nanaimo

There is no charge for VISOA members

(If your strata plan is a member, all owners in your strata may attend)

Non - Members \$20 Memberships will be available at the door



VISOA'S UPCOMING 2007 SEMINAR SERIES:

Date :	Sunday, November 18, 2007
Location:	Trafalgar/Pro-Patria Legion, Victoria
Topic:	To Be Announced
Speaker:	To Be Announced

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