



Vancouver Island Strata Owners Association

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VISOA Bulletin - AUGUST 2011

# President's Report

I'm not sure if I should call this column the "President's Report" or the "Editor's Message" as I am wearing both hats these days. Tony Davis has asked to step down from his role as President for personal reasons, and so he and I have swapped roles: I am suddenly VISOA's President, and Tony is our Vice-President.

So please forgive me if I switch my two "hats" back and forth in this column.

You may recall at our Annual General Meeting we made a commitment to you, our members, to conduct a review of where VISOA is today and where we should be going in the future, covering such issues as our purposes and goals; our existing services and programs; new services and programs that would benefit our members; and the role of volunteers and contract help. Our goal is to present a full report at

the 2012 AGM. Your Board has engaged a consultant to assist us with this important task and a committee has been quite active thus far. The next step is to involve you, our members. We have drafted a survey for your input and I do hope you will all participate. If you are receiving this Bulletin by mail, there is a paper survey enclosed; or if you wish to fill in the survey online you may do so before September 9th at [www.visoa.bc.ca/survey](http://www.visoa.bc.ca/survey).

This edition of the Bulletin is different than others – this is the "YOU ASKED ISSUE".

In each Bulletin, our ideas and suggestions for articles are based on questions from members including the popular column "You Asked" but this time we are repeating that theme throughout the Bulletin. Our Helpline Team (Harvey

Williams, David Grubb, and Laurie McKay) answer over 100 calls and emails each month and I wanted to share more of their excellent work with you. While all Helpline correspondence is confidential between the questioner and the responder, the same questions crop up frequently. "You Asked" is a terrific way to help with our mandate of education for strata owners.

Other features include an article by lawyer Joyce Johnston telling us what's new in age restriction bylaws, and a chart compiled by member Karen Best to guide us in the confusing matter of document retention. If your strata's filing cabinet is overflowing, perhaps you can safely discard some out-of-date documents after checking out Karen's chart. In addition, VISOA's Harvey Williams gives us his thoughts on "Small Stratas, Big Problems".

Did I forget to mention my third VISOA "hat"? I also coordinate our seminars.

Our Fall seminars will be held October 2nd in Nanaimo, and November 20th in Victoria. Please note the announcement box on page 11 for details, and let us know which of Alex McGowan's proposed topics you would rather hear. You, our members, will help me decide. You may reach me, or my backup editor David Grubb, at [editor@visoa.bc.ca](mailto:editor@visoa.bc.ca) or 250-920-0222.

All the Board members are volunteers, each juggling many "hats". Next issue of the Bulletin, you'll get to meet the Board members individually, and learn a bit more about each of us, as well as discover how you might help us out by volunteering. We might have just the "hat" for you!

- Sandy Wagner, President

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# Age Bylaws - what's new

By Joyce M. Johnston

Age Bylaws, in the past, have been a confusing subject for strata corporations. This is because the validity of an age bylaw depends on the interaction of the B.C. Human Rights Code, and the *Strata Property Act* (SPA). The confusion also arises because people who reside in a strata lot can be owner/occupants, tenant/occupants, or just occupants. The word occupant is used in this article, although the SPA refers to residency. Occupancy and residency are terms with virtually the same meaning.

## OLD LEGISLATION: THE PROBLEM: "55 + ONLY" MANDATED RESTRICTION

Strata Corporations often restricted occupancy of the strata lots to persons 55 and older. There was not a problem with this restriction. There was a problem, however, with many other age restrictions. The problem arose with respect to renters, or the possibility of a rental.

Section 4 of the Human Rights Code states that, in the event of a conflict between the Code and another piece of legislation, the Code prevails. In addition, section 121 (1)(a) of the SPA provides that a bylaw is not enforceable to the extent that it contravenes the Code. However, section 121(2)(c) of the SPA indicates that strata corporations may enact an age restriction bylaw. While the SPA seems to allow age restrictions, the Code overrides any other legislation if there is a conflict. Therefore any age restriction cannot contravene the Code, and the Code must be looked at in more depth.

Several sections of the Code may apply to bylaw enforcement or operation of a strata, but the one that caused the uncertainty with respect to age restriction bylaws was section 10, discrimination in tenancy provisions:

*10(1) No person shall*

*(a) Deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or*

*(b) Discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space, Because of the...age of that person or class of persons....*

*10(2) Subsection (1) does not apply....*

*(c) As it relates to family status or age,*

*(i) If the space is a rental unit in residential premises in which every rental unit is reserved for rental to any person 55 years of age or older or to two or more persons, at least one of whom is 55 years or older.*

Strata Corporations who tried to restrict residency to 50+ or some age restriction other than the 55+ restriction, had a bylaw that was open to challenge, since there was always some possibility of tenancy in a strata. The issue became whether a bylaw was enforceable when rentals were allowed, and the additional layer of complexity was added, since under the SPA, a strata corporation could not restrict rentals to certain named relatives.

Did the bylaw apply to all occupants other than tenants, or was the whole bylaw unenforceable? There was uncertainty.

Moreover, Strata Corporations were unhappy because it appeared that they could apply an age restriction bylaw to themselves as owners, but it was not certain that they could not impose it on tenants (whether "family" tenants or regular tenants) because of the Code, even though, under section 146 of the SPA, the tenants were obliged to sign the Notice of Tenant's Responsibilities (Form 'K') which explicitly states that the tenant must comply with the bylaws and rules of the strata.

## THE CHANGE TO HUMAN RIGHTS CODE AND STRATA PROPERTY ACT

Now for the change that makes age restriction bylaws easier to enact and apply. Section 41 of the Human Rights Code was amended to provide that nothing in the Code prohibits a distinction of the basis of age if that distinction is permitted by legislation. Effective December 2009, the following subsection was added to the *Strata Property Act*:

*123(1.1) Without limiting a strata corporation's power to pass any other bylaws, a strata corporation may pass a bylaw that restricts the age of persons who may reside in a strata lot.*

It appears this subsection is, pursuant to the Code section 41, "a distinction on the basis of age ... permitted by legislation", namely

the SPA. There are not yet any court rulings on the new legislation. However, it appears that strata corporations can now enact bylaws with a restriction to any age, and that the bylaw applies to all occupants, whether owners, family and family members, or regular tenants and their families.

## AGE RESTRICTION –APPLIES TO OCCUPANCY/RESIDENCY, BUT NOT OWNERSHIP

Again, it must be emphasized that age restriction bylaws apply only to occupants or residents – section 10 of the Code and section 121(c) of the SPA would disallow an age restriction bylaw that prohibited the purchase of a strata law on the basis of age.

*Joyce M. Johnston practices law in Victoria, BC. This article is not intended as the provision of legal advice.*

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# Small stratas - big problems

By Harvey Williams

Strata shoppers often find duplexes, triplexes, and fourplexes with their lawns, landscaping and barbecue-ready patios irresistible. In most cases, their expectations are met or even exceeded. On summer weekends, they can step out onto their patios, surrounded by green grass and shrubbery, light up their barbecues, and sip a glass of wine while waiting for the steaks to brown. Their neighbours are friendly and thoughtful, sharing in the management and maintenance of the common property.

But in too many cases, their dream home turns into a nightmare. The first challenge to owners in any new small strata is adopting a budget for maintenance of the common property and paying the premium for an-

nual insurance required by the *Strata Property Act*. And yes, the Act requires that the budget cost be allocated on the basis of unit entitlement without exceptions for duplexes. But a shared bottle of wine and some crackers daubed with cream cheese on a Friday evening can smooth that process – particularly if the two strata units have the same entitlement. But what if they don't and one owner has to pay more than the other? "Not fair!" objects the owner with the greater entitlement and it's all downhill from there.

And then there's the 2-storey residential triplex, with one unit downstairs and the same liveable area upstairs divided into two equal size units, or vice versa. The owner of the larger unit has

to cough up half of the cost of the new roof while the other two owners pay only a quarter of the total cost each. "Not fair!" complains the downstairs owner. It may seem unfair, but it's the law.

Reasonable owners usually resolve such issues. In the case of the triplex, by either accepting reality or by a compromise that skirts the *Strata Property Act*. But duplexes can and often are shared by such unlikely neighbours as a motorcycle gang member and his family in one unit, and a retired teacher and spouse in the other. Two different lifestyles living in close proximity.

Triplexes can have two resident-owners and a rental unit owned by a distant investor who hasn't visited Vancouver Island for 10 years. Ditto fourplexes. The resident-owners, in effect, manage the absentee landlord's investment and deal with whatever problems renters may cause.

Would I personally buy a duplex, triplex or a fourplex strata unit? It is a trade-off between the risk of having troublesome neighbours and a lifestyle more like that we had when we owned our own detached home. It's a trade-off I haven't yet had to weigh.

## "You Asked"

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. VISOA's Helpline Team will share Helpline questions that they think will be of general interest to readers. 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.



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# You Asked: How can we fill council positions as owners age?

Answered by Harvey Williams

**Q.** Our strata has many elderly residents, and we have a very hard time getting enough owners who want to be on council. What can we do?

**A.** Finding a full slate of owners willing and able to serve on strata council is challenging for most stratas. Many owners are unwilling to commit time and energy to council service, some feel inadequate to the task, and long-serving council members may rightly believe it is time for others who have not yet served on council to take their turn. In older stratas, owners who have served effectively on their strata councils may have aged to the point that they either can no longer serve or are unwilling to continue serving.

But there is a potential pool of

council members often overlooked that could be accessed by amending your bylaws if you haven't already done so. Section 28 subsection (1) of the *Strata Property Act* limits council membership to those who are registered owners, i.e. names appear on title, individuals representing corporate owners, or tenants who have been assigned a landlord's right under sections 147 or 148 of the *Strata Property Act*.

But subsection 2 of Section 28 states that despite subsection (1) the strata corporation may, by a bylaw passed at an annual or special general meeting, held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to serve on council.

Such a bylaw could allow certain non-owners to serve on council such

as the adult children of strata owners, and the spouses and housemates of owners who are on title.

Stratas that focus on elder care, sometimes referred to as carominiums, have such bylaws and their councils are almost exclusively comprised of offspring of the resident owners.

It should be noted however that subsection 2 refers to classes of persons, not any and all persons. For example, the bylaw might include the following classes of persons: spouses of owners, common law partners of owners, and adult children of owners. The classes of persons who might be able to serve on council could also include stepchildren. The bylaw needs to address all of these and other possibilities. Properly drafting such a bylaw might require the services of a lawyer.

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# You Asked: Can a council member assign a proxy for council meetings?

Answered by David Grubb

**Q.** We elected an owner to council who agreed to serve provided that his spouse (and co-owner) could be a “co-councillor” in the sense that she could serve as his “proxy” at council meetings if he was unable to attend a meeting. This was accepted by the owners who presumed that it would be in their best interests at the time.

But is such a “proxy” arrangement legitimate? And will any decisions of council where the “proxy” was in attendance and voted on issues be legitimate?

**A.** The SPA does not specifically address the issue, but arguably it would be illegal for her to act in her spouse’s place, or to make or second a motion, or to vote on any matter, and decisions by council quite possibly could be invalid.

First, SPA s.29 (2) states no two owners of a unit are permitted to serve on council at the same time.

One could try to make a case that there was in fact only one owner at a time from the unit at any council

meeting.

However, the persons on council were elected as individuals and under those conditions they are individually, as well as collectively, responsible for exercising the powers and duties of the strata corporation under s.26 and are subject to the council member’s standard of care in accordance with s.31. Thus they can also be sued individually and collectively for failing in their duties.

Moreover, under Standard Bylaw 11, a council member can be removed and a new council member elected to replace him/her.

A “proxy” would not be subject to any of those responsibilities, duties or standard of care, and couldn’t be removed from the council because he/she was not elected to it by the voters in the first place. This might also place the council in a position to be sued for permitting it, regardless of what the owners may have agreed to at the time of the election.

The B.C. Strata Property Practice Manual, an annually updated publication of the Continuing

Legal Education Society of B.C. written by lawyers for lawyers (and other interested parties), does not specifically touch on this matter, but does consider another aspect, with respect to a corporate owner having a representative on council, which could be seen as having a bearing on it.

...a corporate owner may not change its representative on council [...] once elected; this would require a new election. It may revoke the appointment of this representative, in which case arguably the representative can no longer sit on the council [...] with respect to that strata lot. [Section 6.27, p.6-22]

The implication here supports the view that only the individual who is elected (corporately or otherwise) can be a council member and cannot divest his/her duties and responsibilities to another person.

Finally, no level of government can accept a “proxy” in place of an elected MP, MLA or Municipal councillor. If one accepts that the strata council is a fourth form of government the same applies.

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- Denis Waitley  
(American Author and lecturer)



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# You Asked: Should we have a depreciation report done?

Answered by David Grubb

**Q.** Our strata is struggling with the idea of a Reserve Fund Study (also known as a Depreciation Report). At our AGM, the owners voted for us to pursue such a study and money was set aside in the budget. However, there continues to be a fair amount of dissent – both at council and among owners – possibly based on fear of what such a report might reveal.

One argument that is gaining ground is to wait until there are clear guidelines in the legislation – to be “part of the pack” and not ahead of it. We are having difficulty finding where the matter stands in the legislation – both the new Act and the corresponding regulations. I did respond to a government survey some months back. Are you any wiser? Can you hazard a guess as to when this may become the law? Any suggestions for a resolution of this as our strata goes forward?

**A.** As to the first question/remark -- please convince your owners that their fear of what a “Depreciation Report” (Reserve Fund Study) might reveal is like someone refusing to go to a doctor because he might find out that he is sick and require immediate treatment!

If a strata is warned early, the ability to fix some immediate danger now needs to be addressed anyway and may require a special assessment.

But, more importantly, the study will give them an opportunity to plan ahead now so that they will have “money in the bank” by the time any particular “system” (roof, building envelope, common heating system, recarpeting, common area repainting, windows and patio doors, elevators, fire prevention systems upgrade, etc.) requires major repair or replacement. This is far more

satisfactory than being forced to “fix” the most immediate crisis with a special levy each time.

When such incidents occur in quick succession, owners face a serious drain on their personal finances. Although it seems a burden to add an extra \$100/month to their contribution now to the Contingency Reserve Fund (CRF), it sure beats having to cough up \$300/month when something serious occurs -- which could have been anticipated in the first place -- and then face yet another serious issue the next year requiring as much or more.

My own strata has taken this seriously for a number of years. We ran into three years of big special assessments and decided to do such a study/report to avoid such instant special assessments in future. We started on our own but we have been very fortunate to have an owner, now retired, who has qualifications and extensive knowledge as a “Quantity Surveyor” in doing such Reserve Fund Studies.

Because of the SPA’s inappropriate restraints of requiring a 3/4 annual vote to increase the CRF once it has reached the equivalent of the operating budget, we passed a bylaw, that in addition to conforming to the CRF requirements of the SPA we would build up an adjunct CRF to meet the future needs of the strata. This adjunct CRF called, the “Long Range Asset Management Program” (LRAMP), is based on the anticipated expenditures for major repairs and maintenance, but is flexible just as the CRF is so that we can make those repairs sooner or later as the case arises. (Unlike special levies which must be used only for the specified purpose.) The bylaw provides for the owners to make contributions to the LRAMP a part of the annual overall

budget, so, although it will be analyzed, presented and discussed each year as a separate line item, the approval will automatically be included in the budget which requires only a majority vote approval (as opposed to the constraints of a ¾ vote for the regular CRF).

As a result of all this, we were able to reroof one of our buildings for \$85,000 last year without any special assessment. On top of that, one of our commercial hot water tanks “blew” earlier than expected. We had anticipated replacing it two years later. But because we already had all our (5) commercial hot water tanks in our LRAMP, the council did not have to resort to the “Regular CRF” which we keep for those other purposes designated in the SPA s.92 and the SPA Reg 6.1, nor to SPA s.98 (Unapproved expenditures).

Moreover, with new regulations being imposed by the government with respect to elevators, where we had anticipated some very serious expenditures a few years from now (and were accumulating the funds) we were advised we already conformed to that upgrade. Therefore, although we had not planned on it this early, we could make some other critical repairs and replacements to the elevators now and save ourselves about \$75,000 in anticipated costs. We can do that, and the funds we don’t have to spend are accumulating interest to the benefit of the other planned repairs and replacements.

The second part of your inquiry: “Let’s wait and see what the Government will come up with in the Regulations” is, at present not something your owners should do “with bated breath”!

The Ministry folks behind all of this have involved us in some discussion. They

*Continued on page 7*

have been analyzing the data from their recent survey, although the demographic for people responding was not as wide as they had hoped. Even so they are working on it with input from other concerned individuals and organizations.

Their difficulty is, as ever, engaging the Minister and the Government to approve whatever recommendations they may produce, and with the current political situation, they don't anticipate much movement. So any decisions could take from six months to a year at a minimum.

I strongly recommend that you do the Study, and that you start working now on building funds to meet your future needs. Your owners might balk at the raise in contributions to the CRF now, but they will thank you for not being hit with a large special levy year after year in the future as your systems deteriorate and require serious repair or replacement.

I have noticed that prospective buyers are starting to ask whether a strata has such a Reserve Study (Depreciation Report) and how much is currently in the CRF to cover these anticipated expenses. If they come from Ontario or Alberta, where it is mandatory, they actually expect it.

To be ahead of the BC government is a "Plus" also for your owners who are selling! It shows the purchaser that the Strata Corporation is very involved in the proper maintenance of the property, and that there are no hidden surprises.

## You Asked: How many details in council meeting minutes?

*Answered by David Grubb*

**Q.** When assessing fines for violation of bylaws, NSF cheques, etc – is it legally necessary to record the council's decision in the minutes of the council meeting?

**A.** The answer is "Yes", but be careful of the wording. You cannot disclose the name of the person who was fined.

The Office of the Information and Privacy Commissioner (OIPC) has recently stated that a strata corporation

should record such information by using the Strata Lot Number (not the unit's "address" number) only. So, even though the address might be #14 - 1234 Jones St., the minutes would read something like "The owner of Strata Lot 45 has been fined \$25 for contravention of Bylaw 2."

OIPC recognizes that this would still be enough information for someone to go to the Land Title Office and discover the Lot #, but it is the best that can be done under the circumstances in order for there to be a record for legal purposes.

## You Asked: How to conduct a secret ballot?

*Answered by Harvey Williams*

**Q.** At our AGM, we were issued voting cards which we held up as a means of casting our votes. When a special levy was presented for a vote, an owner requested a secret ballot. The chair had us vote by writing "for" or "against" on our voting cards which were then collected and the votes counted by three owners. Those collecting the cards and other owners sitting nearby could easily see how I voted which I found intimidating. Is

this the way it's supposed to be?

**A.** The *Strata Property Act* leaves much up to the judgment and good sense of strata owners, often too much as in this case. For starters, voting cards are not meant to be used as ballots. They are a means of insuring that each strata lot casts only one vote.

Interesting that your question comes up shortly after a similar case was adjudicated in Supreme Court. In this

*Continued on page 10*

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# Strata - Document Retention Guide

TYPE OF DOCUMENT	MINIMUM RETENTION PERIOD
List of council members	Current copy
List of owners including: - strata lot addresses - mailing addresses (if different); - strata lot numbers as shown on the strata plan; - unit entitlements; - names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60 of the <i>Strata Property Act (SPA)</i> ; - names of tenants, - assignments of voting or other rights by landlords to tenants under sections 147 and 148 of the SPA.	Current copy
Strata Property Act and the Regulations.	Current copy
Strata Bylaws and Rules.	Current copy
Personal information collected in the course of a bylaw infraction matter.	One year from the date that the original decision was made by the strata corporation
All correspondence sent or received by the strata corporation and strata council	Two years
Bank statements	Six years
Book of accounts showing money received and spent and the reason for the receipt or expenditure.	Six years
Budget and financial statement for the current years and for previous years.	Six years
Cancelled cheques	Six years
Certificates of deposit	Six years
Income tax returns, if any.	Six years
Information Certificates issued under section 59 of the SPA.	Six years
Minutes of annual general meetings.	Six years
Minutes of special general meetings.	Six years
Minutes of strata council meetings.	Six years
Waivers and consents under sec. 41, 44 or 45 of the SPA.	Six years

# Strata - Document Retention Guide

TYPE OF DOCUMENT	MINIMUM RETENTION PERIOD
Financial records obtained under section 23 of the SPA, if any.	Six years after the transfer of control referred to in section 22 of the Act.
Insurance policies.	Six years after the termination or expiration of the contract or policy.
Written contracts entered into by or on behalf of the strata corporation by the owner developer.	Six years after the termination or expiration of the contract or policy
Written contracts to which the strata corporation is a party.	Six years after the termination or expiration of the contract or policy
All warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information respecting the construction, installation, operation, repair and servicing of any common property or common assets, including any warranty information provided to the owner developer.	Retained until the disposal or replacement of the common property or common asset to which they relate, or the expiration of the warranty coverage, whichever comes first.
Any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation.	Permanently
The registered strata plan as obtained from the Land Title Office.	Permanently
Resolutions that deal with changes to common property, including the designation of limited common property.	Permanently
Names and addresses of all contractors, subcontractors and persons who supplied labour or materials to the project, as required by the regulations.	Permanently
Any disclosure statement required by the Real Estate Development Marketing Act or section 139 of the Strata Property Act.	Permanently
All plans that were required to obtain a building permit and any amendments to the building permit plans that were filed with the issuer of the building permit.	Permanently
Any document that indicates the actual location of a pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the owner developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on a plan or plan amendment filed with the issuer of the building permit.	Permanently

This document was prepared in accordance with the *Strata Property Act* and Regulations, and PIPA. 2009-09-07

## You Asked: How to conduct a secret ballot?

Continued from page 7

case, a secret ballot had been called for and voting cards were used as ballots. The petitioners objected that the use of the voting cards as ballots and the method of collection deprived voters of a secret ballot causing some of them to

feel intimidated. The judge agreed with petitioners that in the “highly charged atmosphere in the meeting” the manner of voting did not constitute a secret ballot and declared the vote “null and void”. The judge ordered that the costs of the petition be paid by the respondent, i.e. the strata corporation. One can only guess what those costs were, but they must have been in the thousands of dollars.

In hindsight, the strata council made an expensive mistake by not considering the possibility of a call for a secret ballot in advance and preparing accordingly. It should have provided ballots that could be folded, a voting arrangement that made voters feel that their privacy was protected, a ballot box to receive the folded ballots, and a neutral panel to count the votes.

## Who pays for unauthorized inspections? How should we react to the report?

Answered by Laurie McKay

**Q.** We are a 36-unit apartment type building about 20 years old. We recently discovered that we have some leaking around the windows on one corner unit on each end of our building and there seems to be some mold present. Without discussing the problem with council, our property manager asked his company’s usual handyman/contractor to investigate the extent of the problem and present council with

his assessment and recommendation. He submitted a report based on his examination of these 2 windows that we should have all the siding on the entire building torn off and replaced. He presented us with a bill of \$2000 for this unauthorized inspection. Next, the property manager suggested that the handyman will do a good job and it would be a quick way to get the work started. Council feels that not enough investigation has been done and we would like other opinions. We do not feel that we are responsible for this bill

for \$2000 as we did not authorize the work. Are we obliged to pay this? And how should we proceed?

**A.** As the handyman was hired without council’s authority, the strata corporation should not be held responsible for the bill, and a bill for \$2,000 just for an inspection seems excessive. However you should check your contract with your property manager. You may need legal advice.

Continued on page 11



### Water Savings You Can Bank On

Looking to reduce operational costs in your multi-residential complex? Take the first step towards saving money — conduct a water audit!

Our step by step guide helps strata members, property owners and managers to measure water use and find potential savings.

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Some restrictions apply. Limit one per water bill account number or multi-residential complex.



Moreover, your council is correct to question the solution offered by the property manager. You could be facing either a relatively minor repair to one window in each of the two end units or this could be the tip of the iceberg. Before any remedial work begins you need to obtain at least 3 opinions from contractors skilled in window replacement and building remediation. You could start with a reputable window company representative, explain the leaking situation and ask

for their opinion on the possible extent of the damage and what repair will be required. This may save you money if the problem is minor and requires less repair than the handyman/contractor has indicated. But be prepared with a list of questions: you may find that if the damage is more severe you require the advice of an engineering company. It is very important that the state of the building is thoroughly assessed and that council keep the owners informed every step of the way. Certainly no

one wants to enter into an expensive remediation, especially if it is not required, however, it would be much worse to allow a quick cover up and some minor repairs to hide a worsening situation for another few years before a major (and very expensive) remediation is required. As you go through this process, if it becomes apparent that the situation is very serious, you will need to involve your strata lawyer when contracts are being drawn up.

## Upcoming Seminars

**October 2nd in Nanaimo, Doug Page and Greg Steves** from BC's Office of Housing and Construction Standards will review recent developments with the *Strata Property Act* and Regulations and how stratas fit into the government's overall housing strategy. This seminar will be held at the Nanaimo Yacht Club.

**November 20th in Victoria, Alex McGowan of Levelton Consultants Ltd.** has given a choice of speaking to us on financing and conducting remediation projects, or preparing depreciation reports. Let us know what you would like to hear about. This seminar will be held at the Victoria Edelweiss Club.

### Nanaimo Yacht Club



**400 Newcastle Avenue,  
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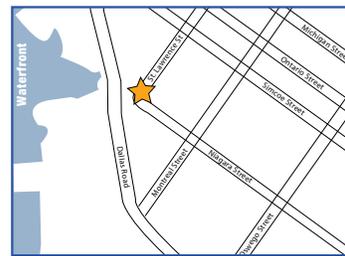
There is no charge for  
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*(If your strata plan is a member,  
all owners in your strata may attend)*

**Non – Members \$20**

*Memberships will be  
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**108 Niagara Street,  
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There is no charge for  
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# YOU ASKED:

(Answered by the Helpline Team)

**1.** I am in a new strata that is not yet organized. What special issues do we, the first-time owners, face? i.e. How do we establish our first Strata Council? How do we start building a contingency reserve fund?

*This question requires a lengthy answer. Purchasers of strata lots in new strata developments should read Part 3 of the Strata Property Act for complete information. Briefly, the owner-developer calls the first annual general meeting and establishes a Contingency Reserve Fund. It is essential that purchasers of units in new strata developments read Part 3 of the Act very carefully immediately after purchasing or even get together informally to discuss its provisions to make sure the developer has fulfilled his obligations.*

**2.** A unit has water leaking from somewhere onto balcony floor. This unit has enclosed ½ of the balcony with glass and new posts and outer balcony railing wall. Repaired and replaced balcony floor – still leaking (puddles). Unit directly above also repaired and replaced balcony floor – still puddles in unit below. Further investigation seems leaks might be coming from overhanging wall onto lower unit balcony floor. Who is responsible for repairs? Strata or owner? Or both?

*The strata corporation is responsible since the source is definitely identified as coming from the wall. It's too bad all questions aren't this simple.*

**3.** Under “hardship clause” would selling a unit for less than you purchased fall under the clause and be considered a justified reason for allowing renting? We have a no-rental bylaw.

*Although every hardship clause application requires individual consideration, some cases cited by lawyers indicate that the courts don't consider that a justifiable reason.*

**4.** If an owner claims hardship and wants to rent their unit, are the other owners entitled to know the circumstances? Our bylaws prohibit rentals.

*This is a personal matter, and very sensitive since the council ought to investigate the financial circumstances of the owner in some detail to determine if the hardship claim is valid. Such an investigation would have to be strictly “in camera”. Standard Bylaw 17(4) prohibits observers at rental restriction hearings. However, if the council finds that the claim is valid, it should suffice that council publishes a decision in the minutes that the*

*owner of the unit has been permitted to rent the unit in accordance with Section 144 (1) of the SPA.*

**5.** Pet bylaws are not being enforced by our council.

*Strata councils have a duty to enforce bylaws (SPA s.26). Unfortunately, there are no independent “strata police” to ensure that your council follows the Strata Property Act. It is up to the owners to keep communication lines open with council, and remind the councilors of their duty if necessary.*

**6.** If the bylaws state “one small dog” but one owner has two dogs that preceded the passage of the bylaw, should the unit be penalized?

*A bylaw prohibiting pets does not apply to a pet living with an owner, tenant or occupant at the time the bylaw is passed. (SPA s. 123(2)). This owner should be “grandfathered”, but when one dog dies, the current bylaw would prohibit him/her from getting another.*

**7.** Our strata recently amended the bylaws. We have a “no pets” bylaw but the lawyer advised that the bylaw must allow seeing-eye dogs or certified assistance dogs – this is a requirement of BC Human Rights legislation, according to the strata’s legal advisor. Is this correct? We now have absentee owners who have moved their daughter into their unit and she has an assistance dog. This situation did not arise until the bylaw was amended.

*Human Rights legislation takes precedence in this case, assuming that the dog is officially certified as a seeing-eye or assistance dog (ask for the papers).*

**8.** What does a length of tenancy mean? Does it mean if you rent, you can only rent for the period of one year and then have to kick them out? Or that you can't have the tenant sign a lease longer than one year?

*141 (2) (b) (ii) permits the strata corporation to limit by bylaw the period of time for which residential strata lots may be rented. The strata could also include procedures to renew the rental agreement with the applicant, or permit the strata to assign rental privileges to another owner. Within the bylaw, provision may also be made for “long term lease”, in which case, if it is for three years or more, (s. 148) the tenant may assume many of the duties and responsibilities of the owner.*

**9.** Do council meetings have to be open to owners? We did not adopt the Standard Bylaws.

*All strata corporations have the Standard*

*Bylaws. You do not have to adopt them – they automatically became your bylaws unless you had an alternate bylaw registered.*

*Owners may attend council meetings as observers (Standard Bylaw 17) except when council is hearing a bylaw contravention, a rental restriction exemption or any other matter that might interfere with an individual's privacy. You may modify or expressly remove any of the Standard Bylaws.*

**10.** Is there a set number of council meetings required by the council so owners know what decisions have been made within the complex, when a management company is on board? To date we have received one set of minutes in a year of office?

*There is no set number of meetings specified in the Act. However, if council meetings are being held, the meeting minutes must be published no later than two weeks after the meeting, whether they are approved or not (Standard Bylaw 19).*

**11.** Is it an owner's right to request any copies of expenses paid out and collected by the council members?

*As an owner you can request any information about money received or spent by the corporation including the reasons for the receipt or expenditure. See also question 26 below.*

**12.** What do we do if no one wants to sit on council?

*The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation. Note that the owners will be responsible for the administrator's remuneration which can be very expensive.*

**13.** What if no one wants to be president?

*Standard Bylaw 13 states that council must elect a president, a vice president, a secretary, and a treasurer; although a person may hold more than one office at a time, other than the offices of president and vice president. If no one will stand as president then owners should be advised that the next step is to seek a court appointed administrator and that they will be responsible for the remuneration of this administrator.*

**14.** How many votes do you need to raise strata fees per month?

*Continued on page 13*

The budget for the upcoming year is approved at the AGM by a majority vote. Individual strata fees are calculated using unit entitlement from the approved operating fund. No vote is taken on strata fees per se.

**15.** As a strata owner who has been notified of a special levy for a large expenditure – am I entitled to a detailed cost breakdown of the expenses? I am a council member and the property management hasn't provided us with the details, just the total cost!

*As an owner and council member you have the right to approve this expenditure and the property manager is obliged to present complete details. Before giving your approval you should demand to see those details. A special assessment must be approved at an Annual or Special General Meeting by 75% of those attending.*

**16.** If a strata property is managed by a management firm – after council meetings and the AGM – what is the guideline to receive the minutes of the meetings?

*The property manager carries out council's instructions. Standard Bylaw 19 states that council must inform owners of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved.*

**17.** The Agenda – for any meeting. Should the agenda be given, or can it be given, to all our strata owners?

*An agenda must be given to all owners as part of their package for the AGM. The agenda for council meetings need not be circulated to owners, although you may request it if you wish. The resulting minutes must be circulated within 2 weeks.*

**18.** Can any of the following hold proxy votes: Manager? President? Board Member?

*Manager (Strata Agent) or any employee of the strata – No. President and other Council members – yes.*

**19.** If a management company collects the strata fees, do they have to be audited each year?

*There is no requirement for an annual audit in the SPA, but there is a general requirement for the company's accounts to be audited under other provincial statutes.*

**20.** How long can a person be on council?

*There is no set limit to the number of terms an owner may be on council. Each term of office*

*ends at the Annual General Meeting and an election is held.*

**21.** Are owners entitled to vote on renewal of different contracts re the maintenance in the complex, or is that a council decision?

*You elected the council to "exercise the duties and perform the duties of the strata corporation" which includes entering into contracts. The strata corporation (meaning all the owners) may direct the council in its exercise of these duties by a resolution passed by a majority at an AGM or SGM. This means that the owners could direct the council to bring the matter of any specified contract to all owners for a vote. In matters of contention, a proactive council will already handle contracts this way.*

**22.** No confidence in board – how best to manage this? e.g. Extraordinary meeting? What % of votes are required for meeting? What % of votes required to carry a motion?

*The terminology used in the Strata Property Act is "council" and "special general meeting". In accordance with SPA s.43, 20% of owners can demand a Special General Meeting for the purpose of removing one or more members of council and electing a new council member(s) in accordance with Standard Bylaw 11. A motion to remove the council needs a majority vote to pass.*

**23.** Our strata President (of many years) is semi-retired and out of town frequently on his private business. He declines to have council set schedule for regular meetings. Instead, he emails one member of council and calls meetings at his discretion. I'm frustrated – business is not being done regularly, and he has called 3 meetings in five weeks. What do you suggest?

*If your fellow council members are unhappy with the President's current performance, have a confidence vote and replace him/her. If you are alone in your frustration, you should ask to be heard at the next council meeting, explain your frustration and ask for a vote on meeting schedules. The majority rules. Next year, elect a new president.*

**24.** Are accounts required to be formally recorded? i.e. ledger, computer?

*We're not sure what you mean by formally recorded. The Act speaks only of "books of account" (SPA 35(1)). There is nothing in the SPA to specify what manner in which to record accounts, but owners should be able to understand and interpret the accounts so they know how much money is collected and how it is spent. A balanced cheque-book and*

*bank statement are the minimum. All income and expenditures must be accounted for. A computer makes the task simpler but is not necessary. Operating funds must be accounted for and reported separately from Contingency Reserve Fund.*

**25.** Are audits a requirement? If so how often, if not why not?

*Audits are not required by the SPA at the present time. The Strata Property Amendment Act ("Bill 8") is a step in the right direction - it proposes that "the financial statement to be distributed with the proposed budget must be audited by a qualified person" for most stratas, but the strata could waive the requirement by a 3/4 vote. However, we are still awaiting the Regulations for this part of the Act so it is not yet in force.*

**26.** Are full accounts required to be available to unit owners?

*Section 36 of the SPA says that owners are entitled to inspect and/or receive copies of specified documents listed in Section 35. Section 35 lists "books of account showing money received and spent and the reason for the receipt or expenditure" among those documents.*

**27.** Does council have to provide photocopies of contracts between the strata and other parties, for example a contract for paving, or a contract with a strata management company, to an owner if they request in writing?

*Section 36 of the SPA provides for this. "Written contracts to which the strata corporation is a party" are listed in Section 35 as a document which must be made available for inspection by an owner. In most cases, the strata must comply within 15 days. You cannot be charged a fee for inspecting the records, but the strata corporation may charge you up to 25 cents per page for photocopies of the records.*

**28.** Can a strata council and/or management company forbid an owner from receiving a copy of a contract of which the strata corporation is party? Strata council/management company is allowing owners to view contract but not to receive a copy.

*See # 27 above. Owners are entitled to receive a copy, if requested. A photocopying fee of not more than 25 cents per page may be charged. If the management company wants to recover any costs associated with this service, the manager must build that cost into the management fee that is charged to the strata corporation – it may not be charged directly to the owner making the request.*

# THE CONDOMINIUM MANUAL

VISOA has recently arranged a referral partnership with *The Condominium Manual*. Our Helpline team uses this book as one of their resources in answering members' questions and you may have seen our "sample copy" on display at our seminars. Although we do not sell this book, we now receive a small commission when our members purchase it directly from the publisher.

## Why Do You Need It?

If you own or live in a strata property, you are directly impacted by the laws and regulations that govern how stratas operate. While 1/3 of all properties in British Columbia are governed by the *Strata Property Act* (and over 50% in many municipalities), most people are not aware of the special rules and regulations that directly impact their property. Even fewer fully understand the complex rules that govern how one of their biggest investments is managed. You don't have to live in the dark.

## What's Inside?

This book is one of the top resources in British Columbia for owners, renters, strata council members, property managers, real estate licensees and lawyers. Written in plain language by Mike Mangan, a respected lawyer and teacher who has taught thousands of real estate licensees, this book will help you protect your investment and deal with common strata problems such as: noise complaints, common property, record keeping and minutes, paying for repairs, insurance, age restrictions, rental restrictions, bylaws and how to change them, voting, hardship exemptions.... and much more!

## Level the playing field.

Whether you are an owner, strata council member, real estate licensee, lawyer or property manager, this book will provide you with the information you need to make informed decisions and protect yourself. This book is used extensively by real estate licensees and is a key resource

in Property Manager licensing courses. If you work in real estate, you need to stay up-to-date. If you are on a strata council or need to interact with your strata's property management company, you need the same guidebook that your property manager has!

## About the Book

This informative, plain language book has become the standard guide for condominium owners, including strata council members and investors, and real estate professionals across the province, including licensed strata property managers.

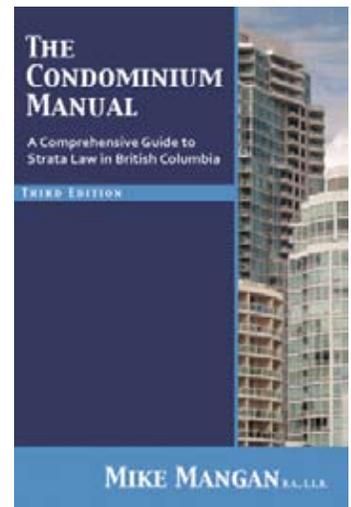
The first two editions of *The Condominium Manual* were published by the British Columbia Real Estate Association and the third edition is a popular textbook used by the University of British Columbia Sauder School of Business, Real Estate Division.

The third edition explains the December 2009 amendments to the *Strata Property Act*, and updates to the law in connection

with dozens of court cases since the last edition. The third edition also provides extensive new coverage concerning repairs, lawsuits and arbitrations, and insurance and captures all significant legislative changes and court cases since 2004, when the last edition was published.

VISOA recommends this book to all our members. Order your copy at:

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# YOUR PAGE



## letters to VISOA

Dear Editor,

My strata is a member and I want to thank you for putting the Bulletin together for us, I read it when I find it is available. I would like to have my own copy of the Bulletin – my strata council sometimes puts a copy in the lobby but I don't always find it there. I check your website and if I see the new Bulletin is there I read it online, but could I please get my own copy, or maybe an email to tell me when it comes out online?

Marilyn Atkinson  
Strata xxxx

Editor's Reply:

Dear Marilyn – that's a good question! I checked with our Membership Chair who coordinates the mailing of the Bulletins and this is her reply:

“Currently, our policy is to provide Bulletins to corporate members in one of two ways – by postal mail and/or by email. VISOA will send out one postal copy if requested, plus up to five emails to each corporate member. Four of the email addresses are reserved for the executive members (president, vice-president, secretary, and treasurer) and the fifth one is reserved for a strata plan email address (eg strataXXXX@gmail.com). If you don't already have one they are easy to develop and the strata can then provide password access to all or some of their strata owners. This is becoming a very popular trend. So, if you are a corporate member and have a corporate strata email address just email it to membership@visoa.bc.ca and we will add it to our database.

For Individual Members, again you have your choice of a postal copy, or an emailed notice (not both). Some corporate members have chosen to purchase their own individual membership (\$20 per year) so they can receive their own copy and not have to rely on the council to share the corporate copy.

As an all-volunteer organization with limited capabilities of our database, we are unable to send personal email notices to all owners in all our member stratas. It literally takes 3 days to send email notices currently, and we simply don't have the resources to send them to each owner. We aim to have our Bulletins online for the 1st week of February, May, August, and November so do check the website at those times; while there you can view or print your own copy.

Non-members of VISOA can subscribe to our Bulletin as well. The cost is \$15 per year by email or \$25 per year to receive a postal copy of each issue. Forms are on our website (see “Becoming A Member”).

To submit letters to Your Page:

Email us at [editor@visoa.bc.ca](mailto:editor@visoa.bc.ca)

Write us at Box 601, 185-911 Yates Street, Victoria BC V8V 4Y9

Please include your name, strata number and telephone number.

Letters and emails may be published on-line.

## VISOA MEMBERSHIP SURVEY

At our recent AGM it was agreed that your Board would carry out a survey of VISOA members to help guide the development of future programs and services. It was also agreed that we would involve members in this survey. We have created a survey that members may fill in on our web site,

<http://www.visoa.bc.ca/survey>

or simply go to our website and link to the SURVEY page. Members who do not have internet access may fill in the survey form enclosed with this Bulletin and mail it to: VISOA, Box 601, 185 - 911 Yates Street, Victoria, BC V8V 4Y9.

Please take a few minutes to answer the survey on-line or the enclosed paper version.



VISOA's popular publication, the “Sample Residents' Manual” is now available in a newly-revised edition. It includes a CD which contains the resident's manual template. This publication is designed to assist stratas with development of their own Strata Residents' Manual and includes samples and templates for everything from a welcome letter to maintenance schedule and security issues. It can be easily tailored to your own strata's needs by using the included CD, and sells for \$12 plus \$4 for postage and handling OR purchase at one of our seminars and save the postage charge.

## YOUR AD IN THE BULLETIN FOR JUST PENNIES A DAY!

Members in good standing may place ads in the VISOA Bulletins. Rates are based on 4 Bulletins a year, and are as follows:

- Business Card Size: \$75/yr (\$22.50/single issue)
- ¼ Page Size: \$150/yr (\$45/single issue)
- ½ Page Size: \$300/yr (\$90/single issue)

[Please note: 1/4 and 1/2 page size ads are restricted to Business Members only.]

Ads must be paid for in advance, and are subject to VISOA Board approval. Ads must also be “camera ready”, in BMP, PDF or TIFF format. Additional fees for scanning or layout may otherwise apply.



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VISOA provides four information-packed bulletins each year. Non-members may subscribe to these bulletins at the following rates:  
By email: \$15.00 per year  
and by postal mail \$25.00 per year

## **~ DISCLAIMER ~**

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