



Vancouver Island Strata Owners Association

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VISOA Bulletin - AUGUST 2012

President's Report

This is certainly “The Year of the Depreciation Report”. Since last fall, we have held 5 consecutive seminars on depreciation reports, and we thought perhaps our members would be tiring of this topic – but attendance at our June seminar in Victoria proved us wrong – you are still highly interested. June’s seminars often have low attendance, but 261 of you packed the Edelweiss Hall to hear our panel of experts speak on depreciation reports. We were prepared for 180 who had pre-registered, and thanks for all your patience while we processed the many attendees. We think we have all the kinks worked out for the next seminar, and have planned a much speedier way to check-in attendees.

We moved towards pre-registration for

just this reason – to enable us to better prepare our seminars for all attendees: to have sufficient chairs set, handouts printed, and refreshments ready. With our next seminar, September in Nanaimo, we will be asking all attendees to pre-register and this will be our standard practice going forward. In fact, we’re no longer calling it “Pre” registration – it is now simply “Registration” and can be completed by either email or phone, during the month leading up to each seminar. All VISOA members can register at no charge, as usual. Details will be in the seminar notice and on our website. As Depreciation Reports are still uppermost in your minds, that will indeed be the topic again in September.

We plan a repeat of the successful “panel

of experts” format from June, with some of the same guest experts and some new additions.

One of the things requested at our seminars has been a generic “Request for Proposal” form that a strata can use for assistance when beginning the process for their depreciation report. We know that obtaining quotes from several different companies can create challenges when evaluating those quotes – but using a standard RFP ensures that you are comparing “apples to apples” when the quotes come in. VISOA’s Harvey Williams has led a team and created an RFP form you are welcome to use. It is on our website, and if you are receiving this Bulletin by postal mail, a copy is enclosed.

In the list of Directors on this page, you will see that your Board has a vacant seat for a Treasurer; and we have added one new member: Cathy Turner. Cathy served on the board in 2006-2007 and has returned. We received authorization from you at our AGM to increase the size of the board to 13 members, and with 12 we are still looking for just the right member to serve as Treasurer – if you are interested, please email me at president@visoa.bc.ca

At our AGM, we spoke of the need to rent office space and hire a part-time Administrative Assistant – but I must report that neither have happened. It may be a case of “chicken or egg” - your board is working so hard at providing

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<p style="text-align: center;">BOARD OF DIRECTORS 2011</p> <p style="text-align: center;">President Sandy Wagner Vice President Tony Davis Secretary David Grubb Treasurer vacant</p>	<p style="text-align: center;">MEMBERS AT LARGE</p> <p style="text-align: center;">Deryk Norton, Harvey Williams, Laurie McKay, John Webb, Glenna Ireland, Cleve Patterson, Bev Grubb, Paulette Marsollier, Cathy Turner</p>
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services to you, that we haven't yet taken the time to hire the assistant, a person who would free up our time from administrative details and give us more time for planning new services. If it does not happen this year, the budgeted funds will of course not be spent.

Now, speaking of services: we are pleased to announce one additional seminar this fall, specifically for Bare Land strata owners. There is an informational note elsewhere in this bulletin.

We also plan to hold at least 4 hands-on workshops geared towards council members. There will be three on the topic of CRF Investments, and a fourth

especially for strata secretaries. These smaller workshops will be for members only, and will be held on a cost-recovery basis – that is, the registration fees will cover the cost of the venue, lunch, and handout materials. This has been one of our goals for several years and we are pleased to see our ideas coming to fruition. Full details will be on our website soon. These workshops are planned for October and November.

Now I have a favour to ask of you, our members.

With over 28% of all properties in BC being strata units (the figure is close to 50% in Greater Victoria and much of the lower mainland) we see surprisingly little newspaper coverage of the issues that matter to all of us. VISOA sends out news releases for all our seminars and also to

comment on legislation that affects strata owners – but it is rare to see a strata-focused article in the daily news. Some of the North Island weekly papers do short articles on our seminars and for that we are grateful – but here is the favour: Whenever you read a newspaper article that talks about an issue affecting you as a strata owner, please take a moment and write to the editor - whether a letter or email – to let him or her know that these issues do matter to you. That way, the papers will continue to research, write and publish more articles with a focus on strata issues. Strata owners in BC have the potential for a loud collective voice and I do encourage you to use it.

- Sandy Wagner

VISOA President

Important information for BC contractors, relampers, building managers and other end-users of lighting equipment: The BC Recycling Regulation:

The British Columbia Recycling Regulation requires the “producers” (typically first importers, including retailers, distributors and manufacturers) of all lamps, ballasts and fixtures sold into the residential, commercial and industrial sectors in BC to be part of an approved stewardship program by July 1, 2012. This program must be funded by these producers to provide a collection and recycling option for all generators of lamps, ballasts and fixtures in BC.

Expansion of LightRecycle Program:

Product Care's LightRecycle program began in 2010 and is currently limited to residential-use fluorescent lamps. On July 1, 2012 the LightRecycle program will be expanded by Product Care and will provide a compliance option for all obligated parties. The expanded program will include:

- **Lamps** (i.e. “lights” or “bulbs”),

all technologies including fluorescent tubes, CFLs, LED, HID, halogen, incandescent, etc.

- **Ballasts**
- **Fixtures**, ranging from flashlights to table lamps, chandeliers, “troffers” and street lights
- Supply/sales to all users including **residential, institutional, commercial and industrial sectors**

All generators of end-of-life lamps, ballasts and fixtures will be able to recycle these products through the program's collection system, without charge, after July 1, 2012.

Upcoming Eco-Fees:

The program will be funded by “eco-fees” applied to the sale or supply of new lamps, ballasts and fixtures sold in BC beginning July 1, 2012. The fees will be used by Product Care to fund all program costs including the collection, transportation and recycling of end-of-life products. The

fees will be paid by program members (manufacturers, distributors, retailers) who have joined Product Care to fulfill their legal obligation. Members have the option of “passing-on” this fee to their customers.

Purchasers of new lamps, ballasts and fixtures may therefore begin seeing eco-fees being charged on products purchased on or after July 1, 2012. These fees should be taken into account for bids and contracts that extend past July 1, 2012.

More Information:

Please visit www.lightrecycle.ca/ expansion to find out more about the expansion of the LightRecycle program, the products captured, eco-fee rates and information about how the program will affect your business.

For more information please contact: Mary Hanlon, Product Care Association at 1-877-592-2972 ext. 204 or mary@productcare.org.

Parking in strata corporations

By Shawn M. Smith, Cleveland Doan LLP

Parking is a topic that is often not given a sufficient degree of attention. Most people don't think too much about it until there is a problem. At times though it can be a "lightning rod" issue within a strata corporation for a number of reasons: misuse of the spaces, people with too many cars and not enough spaces to put them, or mistakes by the owner developer in assigning the parking spaces (which often involves someone believing they have rights to a certain spot when they don't). With the requirement beginning in January 2014 to list on the Form B Information Certificate the parking rights attached to each strata lot, problems with the assignment of spaces will soon come to light. Those will need to be addressed sooner rather than later in order to allow strata corporations to properly complete those forms. As such, it is necessary to understand how parking is designated within your particular strata corporation.

How parking spaces are designated and allocated will differ depending on the nature of each strata corporation. In apartment style strata corporations the parking garage is either designated as common property (with the strata corporation assigning the use of the stalls) or as limited common property with the individual stalls having been dedicated on the strata plan for the use of specific strata lots. (Under s.258 of the Strata Property Act this can be done by the owner-developer at any time prior to the first annual general meeting). In townhouse style strata corporations parking is usually found inside a garage which is designated as part of the strata lot (albeit as non-habitable area, thus restricting the ability of owners to convert the garage into living space). Parking outside of a garage (i.e. on a driveway apron) is sometimes permitted

and sometimes not, depending largely on the length of the driveways. The bylaws or rules of the strata corporation will ultimately govern that practice.

In some buildings parking stalls are assigned by way of individual sub-leases of each parking space. In such a scenario the owner-developer typically leases the entire parking garage (which is designated simply as common property) from the strata corporation and in turn enters into sub-leases or assignments of its lease to the first purchasers who are in turn supposed to assign the same rights to the subsequent owners. These subleases and/or assignments are what purport to give an owner the right to use a particular parking space. However, the system is rarely followed through and there appears to be significant reason to question the validity of these types of arrangements.

In *Strata Plan 1261 v. 360204 B.C. Ltd.* (1995) the court examined one of these lease arrangements and concluded it was invalid. The facts of the case are as follows: shortly after the strata corporation was created and before units were conveyed to the buyers, the strata corporation (still under the control of the owner-developer) entered into a 99 year lease of the parking garage with a subsidiary of the owner-developer (being 360204 B.C. Ltd). While the purchase of a strata lot did not include a parking space, buyers could lease them from the numbered company. Several years later the strata corporation challenged the lease arrangement. The court held that the lease was invalid because it was a breach of the owner-developer's fiduciary duty to the strata corporation. It was not a transaction entered into in the best interests of the strata corporation because the strata corporation derived no benefit from the transaction. Rather it was the owner-developer who profited

from the disposition of the common property in that it received payment in exchange for sub-letting the spaces out. In addition, such an arrangement was deemed to be contrary to Section 116(a) of the Condominium Act (now s.3 of the *Strata Property Act*) which held that the common property must be administered for the benefit of all the owners. Such an arrangement resulted in the common property not being administered for the benefit of all the owners, but rather for the owner developer.

To some extent in *Strata Plan 1261* the court followed the reasoning of the court in *Hill v. Strata Plan NW2477* (1991). In that latter case the parking was designated as common property, not limited common property. Each strata lot was to have the use of at least one parking stall. However, the owner-developer granted one particular owner the exclusive use of two stalls. None of the other owners had such an arrangement. The court set aside that granting of the exclusive use on the basis that it gave one owner a benefit to the detriment of the others. (Remember that all owners have an equal right to use the common property; which is different from the exclusive use rights found in relation to limited common property).

In *Bea v. The Owners, Strata Plan LMS2138* (2008) the court dealt with the issue of the ability of the strata corporation to regulate the use of the parking garage. As in the other cases the parking garage was designated as common property. In 2006 the strata corporation passed a bylaw which provided that "Owners and residents may only park in the parking space(s) assigned to their strata lot by the strata council". The Beas objected to their assigned parking space and tried to rely on a license agreement entered into

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between the owner-developer and the strata corporation (which in turn was only assigned to one purchaser). The court upheld the bylaw and the strata corporation's ability to regulate common property parking, relying on s.3 of the Strata Property Act. Irrespective of what other arrangements may have been entered into at some point in the past, the ultimate authority over the parking garage lay with the strata corporation whose powers were exercised through the council.

Where a strata corporation has common property parking (as opposed to a limited common property designation) it can allocate the exclusive use of those stalls by way of an exclusive use designation passed by the strata council pursuant to s. 76 of the Strata Property Act. This must be done each and every year even if there is no change in the designations otherwise no owner will have the exclusive use of any particular space. It must also be done where the strata corporation rents spaces to residents (in that case it may have to make the designations more often than on an annual basis). Strata corporations who rent spaces should keep in mind the requirements of s. 110 of the Strata Property Act to set out user fees in the bylaws or rules as well as the requirement that those fees be "reasonable" (i.e. related in some way to the costs incurred in providing the service). Tax advice should also be sought as to the effect that rental income might have on the strata corporation's not for profit standing.

When it comes to allocating parking spaces the strata council should bear three things in mind. First, it must act in the best interest of all the owners. In other words, does the arrangement benefit everyone? Keep in mind that in certain circumstances this may not mean benefiting everyone equally. The strata council's duty is to achieve the greatest

good for the greatest number (see *Sterloff v. Strata Corp of Strata Plan No VR2613* (1993), which had nothing to do with parking but nonetheless established this guiding principle). Secondly, it must not act in a manner which is "significantly unfair" to one or more owners. The decisions it makes must be fair and done in good faith. If not, an aggrieved owner may be entitled to relief under s. 164 of the Strata Property Act. Lastly, what do the bylaws say about how stalls will be allocated? Where there is a formula or a process for the allocation of stalls (for example in a mixed use building), that procedure must be followed. If not, the court will have the right to intervene to set matters right (see *B.P.Y.A. 1163 Holdings Ltd. v. Strata Plan VR2192* (2008), which involved the allocation of parking spaces in a commercial strata corporation. In that case the strata corporation failed to follow the formula set out in the bylaws and that was found to be significantly unfair to one of the commercial owners).

The need to make an annual exclusive use designation can be avoided by designating the spaces as limited common property pursuant to s.74 of the Strata Property Act. This is a relatively simple process and enshrines the assignments with some degree of permanence. A sketch plan showing the parking spaces and the strata lots to which they are each assigned must be prepared by a land surveyor. That plan is then approved by way of a $\frac{3}{4}$ vote at an annual or special general meeting and filed in the Land Title and Survey Authority. Those assignments will remain that way until changed by a later $\frac{3}{4}$ vote. (Where the stalls were designated as limited common property by the owner-developer, those designations can only be changed by way of a unanimous vote).

The manner in which one parks (including the use of visitor parking) can be regulated by way of bylaws or rules. The primary advantage of doing so by way of a bylaw is that a higher fine (up

to \$200) can be imposed for breaches. The maximum fine for breach of a rule is \$50. However, rules are much more easily changed. Although rules need to be ratified by the owners at the next annual general meeting, they can be put in place by the strata council. Thus rules have greater flexibility.

The enforcement of parking rules (and here I use the term in its most general sense) will be primarily through fines. However, on occasion the need to tow a vehicle may arise. S.133 of the Strata Property Act provides the authority for the strata corporation to do so. However, before requiring an owner to pay the costs of the same they are required by s.135 to be given the opportunity to respond to the allegation that the breached the bylaw or rule. A bylaw permitting vehicles in contravention of a parking bylaw or rule to be towed, may be of assistance in bolstering the strata council's right to do so.

On a final note, strata corporations should bear in mind that the Human Rights Code can apply to parking arrangements as well. In *Ganser v. Rosewood Estates Condominium Corp* (2002), the Alberta Human Rights Tribunal held that the strata corporation acted in a discriminatory manner when it revoked Ms. Ganser's use of a parking stall because she did not drive. The discrimination was held to have arisen as a result of the fact that the stall was used by Ms. Ganser's caregivers and that there was little or no visitor or street parking available. To revoke her right to her stall meant that she was effectively denied in-home care.

Shawn M. Smith is a partner with the law firm of Cleveland Doan LLP located in White Rock and may be reached at (604) 536-5002. He practices primarily in the area of strata property law. He frequently lectures and writes for various strata organizations. This article is intended for information purposes only and nothing contained in it should be viewed as the provision of legal advice.

Depreciation Reports: One strata's experience

By Jan Craig, VISI578

I recently had the privilege of participating in a VISOA seminar on depreciation reports as a member of an expert panel. My "expertise" on the subject springs solely from the fact that my strata corporation commissioned a depreciation report in 2008 and as Council President, I have been working with the document since that time. Since I have "been there and done that", it was thought that I might be able to share our experiences and allay some of the fears that are naturally being experienced by strata owners as they consider their options in the face of a December 2013 deadline. The questions from the audience at the seminar certainly revealed a variety of perspectives – from concern over the costs, to fears over the potential findings and their consequences, to anger at being coerced by the government.

These are all understandable reactions. However, let me assure those of you who are still not convinced that a depreciation report will be useful or worth the cost, that it is both. The report that we commissioned in 2008, well before it was a legislated necessity, has become the single most important tool at our Council's disposal. With the aid of the report, we are in a position to manage our physical assets more effectively; to manage our funds more efficiently, and to provide owners, as well as prospective buyers, with a clear roadmap so that they can adjust their own financial plans. Our report is helping us to save money. Let me explain how.

The Need for A Report

When I found myself elected president of a new Council in 2007 (the job that no sane person wants), I had no experience with strata living and no knowledge of the Strata Property Act. A quick immersion in the Act revealed that we did not have the tools that were necessary for Council to fulfill its fiduciary responsibility of managing the physical and financial assets of

the corporation. To perform those duties, one needs a full inventory of the physical assets, a current condition assessment of those assets, an estimate of their likely remaining life and an estimate of replacement or renewal costs. We had none of those things, and without them, I was not sure how we could even create a budget for the upcoming year, let alone develop a short-term or long-term capital plan.

What we needed was a depreciation report so we took our dilemma to the owners. Of course we faced some initial opposition and therefore created an educational campaign to explain what a report would do for us and why it was essential. Our arguments centered around two key themes: smarter management and owner protection. By having objective data on the status of our building's assets, we explained that Council would be in a position to make smarter decisions on their maintenance, inspection and replacement, thus saving the corporation money. And by having a long-term capital plan and funding plan, owners would not only be better able to manage their own finances, but would have a tool to assess whether Council was taking the appropriate steps to safeguard their investment in their home.

As we talked to owners before taking that vote, it became clear that everyone understood the necessity of having a study performed. There is an old business adage: "You can't manage what you can't measure." We simply didn't have the measurements to do the job. Our building was 21-years old at the time, and we all knew that we were about to enter the most expensive replacement period in a building's life-cycle and that we would be doing so with an underfunded reserve. People's resistance to the report stemmed less from a desire to "play ostrich" in the face of potential bad news, than from a concern that our fees would have to rise.

That fear was well grounded. We

would indeed need to play catch-up for the years in which the CRF had been underfunded, and we would need to do so quickly since we faced some expensive, looming replacements. We explained that whether we obtained the report or not, our contributions to our reserve fund would have to increase. The question was, therefore, whether we wanted to manage in the dark, or to take control of our fate. Once the matter was fully understood, the decision at the 2008 AGM was unanimous in favour of proceeding with a depreciation report.

With the assistance of our management company, we developed a Request for Proposal which was sent to three engineering firms. After a careful review of the bids, we selected one whose proposal most closely met our needs, and as the original engineers, they possessed a familiarity with the building, which made our job of furnishing records and drawings easier. While theirs was not the cheapest proposal, we knew that we would be working closely with them in the future and were assured that we would be given attention and support after the report was completed.

The Benefits To Date

The first thing we did on receiving our report – which arrived in a binder filled with narrative, photographs, charts, graphs and spreadsheets – was to flip to the spreadsheet that itemized the costs of all of the components in order to find the total of our liabilities. It was a sobering number. We then, of course, mentally divided it by the number of suites to estimate our individual share of the long-term costs. Knowing that number is one of the first benefits of performing a depreciation report. Many of us purchased a strata under the assumption that strata living is less expensive than owning a house. The long-term costs of maintaining a

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stand-alone house are rarely calculated, but if we were to do a fair comparison, we might find that strata ownership is not necessarily less expensive. In addition to purchasing our suite and our share of on-going operating costs, we also buy a portion of the debt that the strata corporation carries, if any, and a portion of the future replacement costs of all the common elements. It is critical that owners and prospective buyers understand the full extent of those costs so that they can determine if they can truly afford to live there.

In addition to answering the Big Question ("How much will it cost to live here?"), here's what the depreciation report delivered and how we've made use of it:

- A detailed inventory of the common assets. The developer had left us with a woefully inadequate list of fewer than ten items that would eventually require replacement. The depreciation report produced a list of over forty items. A complete inventory is of course the starting point for any maintenance program. Extending the life of assets should be one of the chief goals of any council. A solid maintenance program with regularly scheduled inspections can help preserve the life span of most components; converting a 25-year roof into a 35-year roof is money saved.

Armed with a complete inventory, we were in a position to extend our maintenance program and to expand the job description of our resident manager to cover a broader scope. Most importantly, we have been able to look ahead to major future replacements and to begin implementing structured life-extension programs to ensure that we preserve the component as long as reasonably possible. The data within the report is providing us with the means to perform cost-benefit analyses on these programs to determine if they are financially smart. We anticipate significant future savings from our life-extension programs.

- A condition assessment. We had received conflicting estimates of life

spans of building components from the local trades, and as lay people, those of us on Council felt ill-prepared to make decisions based on widely varying opinions. The depreciation report provided us with an objective assessment. Here we received good news and learned that a number of projects we had planned were not essential. The report thus helped us avoid unnecessary or premature expenditures, thus saving money.

- A list of suggested improvements or upgrades. Since our building was constructed in the late '80s, it does not meet all the current codes or take advantage of current technologies. We are 'grandfathered' on some and only need to achieve the current standard when the item in question is replaced. However, the report informed us that some upgrades are mandatory and that failing to comply exposes the corporation to increased liability and possible penalties. An example: We did not have a Fall Protection Program. On learning more about our exposure on this, it was one of the first projects that we embarked upon. While this was not an expenditure that we had anticipated (or one that we welcomed), by installing roof anchors we have not only reduced the possibility of a grave accident, but we have subsequently saved significant money by reducing the on-going costs of access to the building envelope.

The report also suggested a number of electrical and mechanical upgrades, which once implemented, quickly paid for themselves through improved operational efficiency. Our Hydro savings alone soon paid for the cost of the depreciation report. The detailed information within the report makes it possible to perform return-on-investment analyses so that informed decisions can be made on the timing of potential upgrades. We were able to determine that some were "no-brainers", providing easy-to-calculate savings; other upgrades could be delayed and will be performed when replacement becomes necessary since the benefit is likely to be more modest.

- A timetable for renewals and replacements. Knowing when a replacement is likely to be required and knowing its approximate cost allows us to build a savings plan to ensure that the funds will be available when needed. The timetable provided by the depreciation report also allows us to structure and schedule projects more cost-effectively. In one instance, by combining envelope renewal work (through the delaying of some projects and the advancing of other components), we were able to dramatically reduce the costs of the overall project.

- Three funding models. We elected not to adopt any of the funding recommendations provided within the report. The legislation does not require that a strata corporation commit to a particular long-term funding plan, and since we performed our report before the legislation was even drafted, there was no necessity for us to do so. However, we did develop our own model since we believed that having a funding plan provides a useful framework for council's operations, as well as being in the best interests of individual owners. We tweaked and modified one of the scenarios proposed by the report in order to create our own, less onerous, plan. This has allowed owners to gauge our long-term funding requirements and adjust their own financial plans accordingly.

Saving Money

When approached with the right discipline, a depreciation report can help you save money by avoiding unnecessary or premature expenditures, by preserving the life of components through comprehensive maintenance programs, and by helping to find operational efficiencies. It's about managing your money smartly by providing your councils with the data they need to make informed and prudent decisions. To date, we have saved tens of thousands of dollars by working with the report and we anticipate that those savings will continue to grow.

In addition to saving costs, the report will also help you to avoid costs. These are more difficult to quantify but include

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avoiding expensive repairs (e.g. when, say, the envelope is damaged due to delayed maintenance), or avoiding legal liability by identifying areas where you may not be in compliance.

Peace of Mind

For most people, your home is your single largest investment. We all wish to be assured that our equity in our homes is being preserved and that our investment is being well managed; that there are maintenance programs in place; that necessary replacements are being scheduled so that the building does not deteriorate or erode in value; and that the funding plans are adequate to meet these obligations. Without the detail provided by a depreciation report, you cannot be assured that your investment is being properly protected.

A report also decreases the possibility of nasty surprises. For those owners on fixed incomes, this is an important consideration. Reducing the likelihood of sudden special assessments does indeed furnish peace of mind.

An Asset

A depreciation report should be viewed as an asset of the corporation, not a liability. The market will demand it. New buyers and banks will demand it. It is simply a tool that will help you prepare for, and shape, your shared future. So don't fight it! Embrace your depreciation report and begin putting it to work for you!

Bare land strata seminar is on its way

By Deryk Norton

From time to time some members have expressed an interest in our association holding a seminar focused on bare land strata issues. A survey two years ago did not show sufficient interest among the membership to justify the expense of such a seminar. However, much has changed since then.

Our more recent 2012 survey has shown considerable interest among members so we are preparing to hold a bare land strata seminar in late October in Duncan at the new Vancouver Island University building. We have chosen Duncan because it is central to most of our bare land strata members from Nanaimo in the north to Victoria in the south. 82% of survey respondents said they would attend a seminar in Duncan.

In response to comments and suggestions received we are planning for two guest speakers. Darryl Tunnicliffe of McElhanny Consulting Ltd has expertise in depreciation reports and the infrastructure of bare land stratas; and Lawyer Justin Hanson of Stevenson Luchies and Legh will speak on typical legal issues in bare land stratas.

Mark your calendars for October 27th. We will post complete details of the seminar on the VISOA website and send a notice to our bare land strata members.

SPA Copies for Sale to Members

A current unofficial consolidated version of the **Strata Property Act** (includes the Regulations)

is available from the Queen's Printer for **\$35.53**

- includes GST and shipping.

To order directly from the Queen's Printer, phone **1-866-236-5544.**

VISOA made a bulk purchase of these and will have them for sale for \$20 at our seminars while quantities last.

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How you manage your money: VISOA survey results

by Cleveland S. Patterson, MBA, PhD, VISOA Board Member

In May, we sent out a survey questionnaire to our members asking them some questions about how they managed the funds in their contingency reserve funds (CRFs). More than two thirds of you replied. What are your characteristics? What are your problems? What do you invest in? How can VISOA help council treasurers do their job better?

A major proportion of responding members are relatively small, with one-third having 15 or less units, and 83% less than 50. More than a quarter administer CRFs containing less than \$25,000. About half are in the \$25,000-\$100,000 range. One in four are over \$100,000; the largest reported was \$1.5 million. The median size was about \$70,000.

Almost four out of five stratas manage their own investments

without professional help, with only a fifth using the services of a strata manager or a financial advisor.

78% of respondents have no target return or specific goal for their CRF portfolio. Of those that do have a specific objective, a quarter aim for a return greater than 3%, and another quarter aim for a return in the range of 2-3%, or a return "that matched inflation". 39% do not have a numerical target, but attempt to achieve "the best GIC rate", or "the best savings rate", or "as high as possible".

What did they actually achieve last year? One-fifth don't know how they did. Of those that do keep track of their performance, 27% earned less than 1%, and 48% earned somewhere in the 1-2% range. Only 6% reported a return more than 3%. These are

discouraging results at a time when inflation is running in the 2-3% range, and indicates that the majority of stratas are failing to maintain the real value of their CRFs each year.

One reason for these low returns is that strata treasurers appear, on average, to be very cautious investors, with most funds being restricted to conventional bank business savings accounts or to term deposits with a term less than one-year. Less than half of respondents invest in GICs having terms of more than a year, and only 13% invest in higher-yielding on-line accounts even though these are fully insured by CDIC. Virtually no treasurers invest in any other kind of security, such as government bonds, although these are permitted by the SPA

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regulations.

Fully half of respondents have never read the provisions contained in SPA Regulation 6.11 which governs what securities are legal for CRF investment. Given the complexity of these provisions, this is perhaps not surprising. Of those that said that they had read them, about half agreed, or partially agreed, that they needed to be substantially revised in order to make them useful.

In sum, although there is a wide variation in strata treasurers' situations and skills, the survey indicates that the "typical" treasurer self-administers the strata's CRF, and is responsible for about \$70,000 in funds. It also shows that treasurers are perhaps overly conservative, that the return earned on the typical fund is less than the rate of inflation,

and that many treasurers need help to improve this performance within appropriate risk and liquidity constraints.

What kind of help? 133 respondents wrote answers to the question "If a workshop or seminar were to be held on CRF management, what questions or topics would be most useful to you?" The answers can be roughly categorized under the following headings:

1) Many simply said YES, or PLEASE!, without specifying any particular needs.

2) A large number asked for help to determine the appropriate size and future growth rate of their CRF. Many of these also wanted help in educating owners about the need for adequate CRF levels.

3) The largest group of responses pertained to the assessment of investment alternatives. What are the risk and return characteristics of different kind of investment opportunities? Where are the best

places to put cash that may be needed in the near future? Where should funds be invested if they are not required for several years? Which financial institutions offer the best rates? How do you determine the appropriate mix of cash and non-redeemable investments?

4) There were also a number of questions concerning the legal rules constraining investment choices and councils' legal liability for poor investment decisions. A related set of questions concerned the best ways to delegate CRF administration to strata managers with appropriate safeguards and monitoring.

5) Finally, there were a number of queries from members of very small stratas concerning their unique problems.

VISOA intends to put on a number of small-group workshops addressing these matters in October and November – watch our website for details.

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You Asked: Manager or Administrator?

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.

QUESTION

I have taken my turn as council president numerous times, and no one else is willing to replace me. The owners have voted against contracting with a property manager several times. Our treasurer is moving which means the accounts management will also fall apart without help. I have a resident/owner who is acting as

a volunteer property supervisor on a temporary basis. I will only stay on as chair if we have a property manager. I need to know what happens if they refuse again at the Special General Meeting I will be calling soon.

ANSWER

You have already proposed a management company to your owners and they have rejected it, presumably because they don't like the added expense, which would possibly be in the range of about \$13,000 per year (based on an average of about \$31 per month per unit in this case).

The council is duty-bound to administer the affairs of the strata corporation in accordance with Sections 3, 4 and 26 of the SPA.:

Responsibilities of strata corporation

- 3 Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

Strata corporation functions through council.

- 4 The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the

bylaws provide otherwise.

Council exercises powers and performs duties of strata corporation

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

If the council as a whole is unwilling to manage the strata in accordance with their duty and no other owners are willing to do so, you might ultimately be forced by an owner (or several of them) who applies to the Supreme Court to have an Administrator appointed to set the strata on a proper course. This will cost the owners a great deal of money since if an administrator is appointed that person's remuneration will be set by Court order. That will include his fee and there will be all his "add-ons" for various expenses. This financial burden will be in addition to your normal budget.

More significantly, it could very likely be far more than \$13,000 per year.

So if the owners are willing to spend all that extra money for the sake of having a "stranger" tell them -- pretty much without their consent (there are some exceptions) -- how their money is going to be spent and how the strata is going to be run then they will have to live with it.

This will also have a serious effect on the saleability of their units. Who would want to buy into a strata with so many problems?

On the other hand, even if you

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You Asked: Manager or Administrator?

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do contract with a management company, the owners must realize that the manager is not responsible for the decisions made by either council or the owners at large. The company provides services (such as accounting, record keeping, hiring maintenance people, etc. -- depending on what is included in the contract) and advice based, one hopes, on a good knowledge of the Strata Property Act (SPA). But it is the council which is ultimately responsible for the proper management and governance of the strata corporation and they are legally accountable to the owners for that good management.

That means they must be fairly familiar with the SPA so that they can give direction to the management company (not the other way around which happens

all too frequently).

The owners must be made aware that when they bought their units, they also bought into a proportionate (in this case about a 1/35th) share of the common property which all of them own and the value of their unit is directly tied to the value of that common property. That is why it is called a strata corporation. If they allow that property to deteriorate through poor management and a lack of interest, then the value of everyone's share diminishes. Would they be happy investing in a company whose shares were becoming valueless because the shareholders and the Board of Directors couldn't be bothered to look after the company's assets?

If they bought into the strata on the belief that they could close the front door to their unit, pay a few dollars for operational maintenance, and everything thereafter would

be taken care of, they bought for entirely the wrong reason. They wouldn't buy a house in the belief that all the maintenance, major repairs and bills would be taken care of by someone else, so why should a strata be any different? The only major change is that they must take care of the place in agreement with the other shareholders.

This is going to be even more significant because of the requirement for a depreciation report, which has now come into effect with the proclamation of Section 94 of the SPA. The owners could be facing a considerable increase in strata fees as a result.

I realize this is somewhat of a "rant" but I feel very strongly about the owners taking charge of their own affairs and protecting their assets which are jointly worth millions of dollars. If this will serve your purposes to convince the owners at your SGM please use it.

You Asked: Must owners provide a key of their unit to council?

QUESTION

Is it legal to require owners to provide a key to their unit to the council? This would be for entry in emergency situations. Currently we are just strongly suggesting that, but a few owners have not done so and we are worried that it could cause problems down the road. (We had a resident die last year and had to call the fire department to break into his unit.)

ANSWER

There is no law that can force anyone to give his or her key to anyone else! As Tino di Bella, a lawyer who has addressed several of our seminars, once indicated: "If your lived in a house,

would you give your front door key to just anyone who told you that you had to? The same holds true for stratas."

Not giving council your key, however, does not mean that you can categorically refuse to admit "the strata corporation" from entering your strata lot for very specific purposes. That would contravene the provisions of the SPA. If the council must enter and no resident is available to let them in, the council will have the right to take steps to gain entry in some other way.

You can encourage owners to give council a key and specify in your bylaws that all keys will be kept in a secure (common) area accessible to only a few designated people (e.g. council members) and keys will be permitted

to be used only under strict conditions (spelled out).

The bylaw can contain another clause which states that if the strata corporation requires to gain access to the unit but does not have a key, they will call a locksmith if the matter is not urgent or authorize an emergency response worker to break down the door or gain entrance through an alternate route (e.g. a ground floor window) and that the cost of the locksmith or a forced entrance will be that of the unit owner/occupant to pay.

I understand your concern over your neighbours, but you must be ever careful when you suspect a person is having difficulty just because they don't answer a phone call or the front door.

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You Asked – Should we hire an appraisal company or an engineering company?

QUESTION

We have a 3-storey wood-frame building with 24 strata lots, built around 1990. We would like to have a depreciation report done in the next fiscal year, but we wonder what kind of businesses we should get quotes from. Should we hire an appraisal company or an engineering company? Is there a difference in price and qualifications?

ANSWER

You have asked the \$64,000 question!

In Ontario, the Condominium Act specifies a limited number of professions which include Architects, Engineers, Appraisers, etc. who may do the reports. In Alberta, there is very little definition.

The BC version is in between. It does not specify any particular qualifications, but Regulation 6.2 says what must be in the report and that a “qualified person” (which, of course, can include a company) must be able to do all of those things in producing the report. It is a tall order for one person!

It is therefore important that you to make certain to ask the right questions when interviewing/selecting your Depreciation Report provider including the nature of their qualifications and a list of clients they have worked for.

Those people and companies who are doing depreciation reports for the most part have high professional qualifications and ethical standards they must maintain with their regulating bodies in order to retain their right to practice (and in most cases, insurance coverage) – Engineers, Real Estate Appraisers, Architects,

Technicians and Technologists in those fields, RPAs, SMAs, etc.

Many stratas are going for engineering companies based on our general expectation that they know a lot about structures so they can evaluate the condition of buildings. But does the company also have (in house) mechanical engineers, electrical engineers, civil engineers and other technical specialists who may be required for a variety of evaluations for which the structural engineer may feel unqualified?

Real Estate Appraisers are highly qualified to give a good estimation of the value of a property often for sales purposes but also for insurance purposes. We can assume they have a significant knowledge about building systems sufficient to permit them to evaluate how much a building and its components are worth if they were to be destroyed, in whole or in part. Each individual appraiser may or may not have the training or education to assess the actual condition of systems of the structure, such as the HVAC systems, plumbing, electric, fire prevention, etc. and they too may have to rely on other specialists to tell them. Their strength may be more in designing the financial considerations based on current and future costs of replacements and major repairs.

There may be building inspectors (all of whom in BC must be licensed after taking an exam) but will they have sufficient on-going training and education or do they rely more on a wealth of hands-on experience?

There are people who have

credentials little known outside the industry such as Systems Maintenance Administrator (SMA) or Real Property Administrator (RPA) which are internationally recognized under the Building Owners and Managers Institute. They have considerable education, training and experience from a more “hands on” point of view because they have to know a lot about all the systems in buildings.

All these “qualified persons” will have to have the ability to estimate the current condition and the life of all the components in a strata and the possible costs of replacing something or making substantial repairs or upgrades (probably based on experienced prediction to a great degree since they cannot know future cost of labour and materials).

The person who completes your Depreciation Report will also have to design a financial report which allows owners to see at least three scenarios based on the strata’s current finances (especially the CRF) and what they may face in the next 30 years in raising the money for any particular component replacement. That means that the qualified person must have a solid understanding of strata finances as well as the Strata Property Act with respect to common property, limited common property and strata lots insofar as anything the strata is responsible for.

Some companies will use a basic spreadsheet, but many have a more sophisticated computer program that allows the strata to play around with many more “what if”

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You Asked: Should we hire an appraisal company or an engineering company?

Continued from page 12

solutions.

Some companies have add-on services with or without an added fee for such things as annual updates until the next full report is due in three years, or a maintenance record system that the strata can access to file information about replacements, major repairs, warranties, etc.

Very important also is that they should have Errors & Omissions Insurance since the strata could be sued by an owner, a buyer or a mortgage company if the report and calculations resulted in some very expensive repair or replacement cost because of poor evaluation or a component which should have been identified but was totally missed or underestimated. The strata doesn't need the grief and the "qualified person" should be held

responsible. That means you don't want a "fly-by-night" outfit that has no insurance and will disappear in a hurry!

As for price, there is nothing in the SPA to regulate the market. Companies will base their quotes first on the size and complexity of the building. In your case, I imagine that it is not particularly complex. But they will also base their bid on the expertise they bring to the job, the outside specialists they may have to sub-contract, and the length of time they will take on the project. Moreover, there may be few companies operating in your area (though there are quite a few from Alberta who are setting up shop in several areas of BC) so they might charge more. That would go also for companies outside your area who are willing to do the report but travel costs could be added.

In your case, you would be wise to put away between \$6,000 - \$8,000 (the next one in three years should be cheaper since most of the data

will have been recorded).

Most importantly, you should get at least three bids using the same Request for Proposal to send all the companies so that they are quoting on the same criteria. (Add-on Services can be listed by the companies separately.) You can download a sample RFP from the "What's New" page on our website. Although it is basic, you can add or change it (for example, give a more detailed description of the buildings and grounds) to suit your requirements.

You can also find a list of companies doing Depreciation Reports on Vancouver Island on our website.

Depending on when you plan to start on your RFP, you may want to gather more information at our seminar in Nanaimo on September 9th where we will have a panel of experts from various professions -- legal, engineering, real estate, etc. -- who will be answering questions such as yours.

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You Asked: Must owners provide a key of their unit to council?

Continued from page 11

There was a story of a council member entering a unit (unaccompanied) under such an impression using a key provided by the owners. He thought that there was something wrong since he had been unable to make contact by telephone for more than three hours although the lights were all on in the unit. He was just trying to be a concerned and helpful neighbour. It turned out that his assumption was incorrect and the owner was fine although very deaf and unable to even hear the heavy knocking on the front door. However, the owner subsequently made a public issue out of the incident suggesting that the council member was guilty of "break & enter" and had a dark and perverse intent with respect to the 80-year-old person!

So if you suspect anything except danger to the building (flood, fire), it would be most advisable that a council member (or other authorized person) has one other owner to accompany him or her in attending at the unit with emergency response people. That way there is a witness that the council member gave authority to the emergency response team to enter the premises if they suspect a case of personal injury or distress to the occupant that would require their intervention. The council member and companion owners should also independently write a complete report afterward for council's record as well as that of the occupant.

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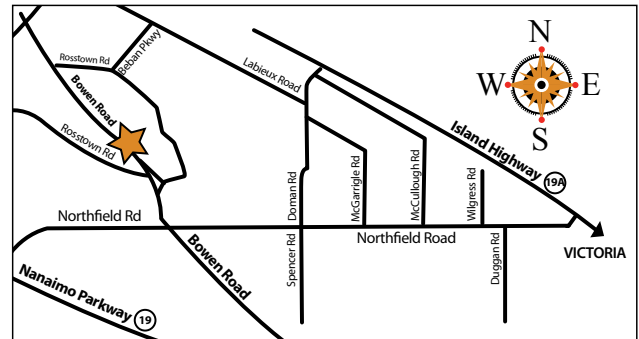
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