

VISOA Bulletin - AUGUST 2016

The CRT is Accepting Strata Claims for Early Intake

By Shannon Salter



The CRT is now accepting strata claims for early intake. The CRT's early intake for strata has some significant benefits and limitations.

By starting early intake, we'll have a chance to test our process to make sure it works as well as possible for the public once we're fully open. It will also allow us to provide a little

help for people with ongoing strata disputes who are eager to take their first steps toward a resolution.

We've taken a lot of steps to prepare for early strata intake. The *Civil Resolution Tribunal Act* strata provisions and the related amendments came into force on July 13. The CRT's fees have been set and the CRT's rules are now finalized.

This how you'll start the CRT process:

1. You'll start with the Solution Explorer, to learn more about your dispute and how to resolve it without needing to start a CRT claim.
2. If you can't resolve your dispute using the support

from the Solution Explorer, you'll have the option to start a CRT claim from the Dispute Summary screen in the Solution Explorer.

3. You'll use our Application Checklist to make sure you have all the information you need to complete your online Application for Dispute Resolution.

4. You'll complete and file your Application for Dispute Resolution online. Paper forms are not available for the early intake process, but you are welcome to have a trusted friend or family member help you fill in the online form.

5. You'll have to pay the application fee, or apply for a fee waiver if you have low income. You can pay the fee or apply for a fee waiver online as part of the application process.

6. We'll provide you with a Dispute Notice to give the other parties in the dispute. We'll let you know how to do that, as well as next steps.

Please remember that the CRT is not completely implemented yet. We are not yet fully staffed, and the technology is not completely built. We'll use this time to test and improve our online intake processes for strata.

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Although we'll start accepting applications for strata dispute resolution, we won't be ready to resolve disputes right away. That will happen once we're fully open to accept and resolve strata disputes in the fall.

You may have to wait several months for your dispute to move to the facilitation phase. We're still getting ready for the large number of strata disputes we expect to see once we're fully open. We'll need everyone's patience as we learn and improve on the job.

Here's a reminder of some of the benefits and limitations of using the CRT's early intake process for your strata dispute.

Benefits of CRT early intake for your strata dispute:

- **It can pause the limitation period.** Many strata claims have a 2 year limitation period. The limitation period acts like a countdown clock, and when this time runs out, you may not be able to bring a claim to the CRT or a court. But, if the CRT accepts your dispute into its early intake process, the limitation period will be 'paused' and stop counting down. You can find out more about limitation periods here.
- **You'll be ready for CRT resolution.** As soon as we're ready to start moving strata disputes into our facilitation phase, you'll be ready for this next step toward a

resolution. Just making your early intake application might help to clarify the issues and encourage an early resolution by agreement among the parties in your dispute.

- **You'll help shape the CRT process.** Our early intake will help us test our online intake processes to make sure they meet your needs. You might get a chance to show us how you think things should work, which will make the CRT better for everyone.

IMPORTANT: Limits of filing a CRT claim during early intake:

- **The CRT's full dispute resolution services won't be available during early intake.** You will be able to start your claim, but this is mainly a testing phase for intake. Many disputes will need to wait until the rest of our processes are ready before they are resolved. We expect this to happen in the fall. Our timeline target of 60 to 90 days won't apply to the early intake testing.
- **Your ability to go to court may be limited.** If you apply for strata dispute resolution with the CRT, you and the other parties will be required to continue in the CRT, rather than going to court instead. If you start, and then decide you would rather go to court instead of waiting for the CRT to fully open, you'll need to ask the CRT's permission. If this happens, the CRT would probably agree to it during early intake.
- **Not everything will be online.** You'll be able to use the Solution Explorer for strata disputes and you'll be able to apply to the CRT using our online system. However, other dispute resolution processes will be done through email, video, telephone or mail, while we continue to build the CRT technology.

Carefully consider these benefits and limitations before deciding to file an application for CRT strata dispute resolution.

If you have questions about how the CRT works or how to take steps in the dispute resolution process, click the blue "How the CRT works" button on the main page of the CRT website at civilresolutionbc.ca.

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Meeting Procedure Under the *Strata Property Act*

By Shawn M. Smith, Barrister & Solicitor



From time to time we, as humans, tend toward doing things the way we have always done them; even when we're not certain the way we have is entirely correct (and sometimes we continue even if we know its not). We do so because it is expedient. The strata world is no exception to this. For the most part, there are no immediate consequences to that course of action. It is only when an issue becomes contentious or something goes wrong that suddenly procedure matters. That is because a failure to follow proper procedure can be an easy basis to set aside decisions made at a meeting. Thus it is important, even when it seems like it might not matter, to do things "by the book". The purpose of this article is to review some of the basic issues regarding calling and conducting general meetings.

Notices of Meeting

The requirements for proper notice of an annual or special general meeting are set out in s.45 of the *Strata Property Act* ("SPA") which provides as follows:

- 45 (1) The strata corporation must give at least 2 weeks' written notice of an annual or special general meeting to all of the following:
- (a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;
 - (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification under section 60;
 - (c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.
- (2) A person who has a right to be notified under this section may, in writing, waive the right and may, in writing, revoke a waiver.
- (3) The notice of the annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote or unanimous vote.
- (4) If the meeting is an annual general meeting, the notice must include the budget and financial statement referred to in section 103.

- (5) A vote at an annual or special general meeting may proceed despite the lack of notice as required by this section, if all persons entitled to receive notice waive, in writing, their right to notice.
- (6) If 2 or more persons share one vote with respect to a strata lot, all of them must consent to the waiver of notice under subsection (5).

The first thing to note is who is entitled to notice. Owners always are, but where a tenant has been assigned the rights of the owner (either expressly or by virtue of renting the strata lot to a family member) notice must go to them as well.

Notice must be sent in the manner specified in s.61 of the SPA. For resident owners and non-resident owners who have not given an address other than the strata lot those include:

- by leaving it with the person,
- by leaving it with an adult occupant of the person's strata lot,
- by putting it under the door of the person's strata lot,
- by mailing it to the person at the address of the strata lot,
- by putting it through a mail slot or in a mail box used

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by the person for receiving mail,

- by faxing it to a fax number provided by the person, or
- by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.

For non-resident owners who have given an address other than the strata lot, the options for delivery are limited by s.61(1)(a) of the SPA to delivery or mailing to the address. Emailing the notice is not permitted in that case.

The contents of the notice of meeting must meet the criteria set out in s.45 in order for notice to be properly given. One matter which is often overlooked is the very specific requirements for budgets and financial statements. Those are set out in Regulations 6.6 and 6.7 of the SPA (to which s.103 refers). For example, a budget which is missing a schedule of strata fee payments would be a budget for which proper notice has not been given.

One common error which self managed strata corporations make is with the length of notice to be given. The “two weeks” referred to in subsection (1) is not 14 days (as one might readily think it is). It translates into 20 days when combined with the provisions of s. 61(3) of the SPA and s.25 of the Interpretation Act. (S.61 provides that “a notice or other record or document that

is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mail box, faxed or emailed”. The Interpretation Act requires that where the term “at least” is used, two extra days be added.

It is not necessary to prove that each owner (or tenant where the rights of the owner have been assigned to the tenant) actually received their copy of the notice. Just that it was delivered as permitted under s.61 of the SPA.

Lastly, Standard Bylaw 28 under the SPA sets out the order of business for a meeting. Item (d) is “present proof of notice”. There need not be a vote confirming that notice was properly given. All that is required is to confirm to the meeting that the notice was sent in time.

Quorum

S.48(1) of the SPA provides that business must not be conducted at a general meeting unless a quorum is present. This means two things: One, it is important to establish that a quorum is present at the start of the meeting. Two, it is important to ensure that a quorum is maintained as the meeting progresses.

With respect to the first of these issues, s.48(2) of the SPA provides that a quorum (unless the bylaws provide otherwise) is 1/3 of eligible voters holding 1/3 of the strata corporation’s vote. This means that quorum is always determine based on the number of strata lots in the strata plan, but only eligible voters count toward determining whether that number has been met.


An “eligible voter” is defined as someone entitled to vote under ss. 53 to 58 of the SPA. A person would not be an eligible voter if:

- They owe strata fees and the strata corporation has a bylaw disentitling them to vote if in arrears and the strata corporation is in a position to file a lien (meaning the notice provisions of s.112 have been complied with)
- They assigned their voting rights to a tenant (either expressly or by operation of s.142(3) or s.148 of the SPA);
- There are two or more owners who dispute who has the right to vote on behalf of a strata lot.
- Two or more proxies are given for the same strata lot;
- A proxy does not comply with s.56 of the SPA

If a quorum is not present within ½ hour the meeting

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is adjourned to the same time the following week unless the bylaws provide otherwise.

Establishing proper quorum is important as it can form a very easy basis for challenging and setting aside decisions at a meeting.

If a meeting proceeds with the bare number of strata lots required for a quorum (whether determined under s.48(2) of the SPA or under the bylaws) it is important to ensure that the chair keeps track of any owners who leave. If a quorum is lost the meeting must stop and business cannot be conducted. Owners wishing to leave should be encouraged to provide a proxy to another owner (even if that proxy is not voted).

Proxies

The SPA says very little about proxies. S.56 addressed proxies and provides simply that:

- They must be in writing
- Be signed by an owner of the strata lot

They can be general (ongoing) or for a specific meeting only.

Proxies can be revoked at any time. The SPA does not say how that is to be done but presumably it is in writing since the granting of the proxy is to be in writing.

Handing off a voting card is not granting a proxy. Where that is done, the vote which was “handed off” must not be counted.

The strata corporation need not look behind the granting of the proxy to ensure that the owner properly granted it. In one case the court said that even if an owner sold their proxy to another owner that would not make the proxy invalid.

Based on an Ontario decision, it is the chair who is to determine whether a proxy, if challenged, is valid (not the strata manager, a council member or other individual). The court also held that proxies must be challenged at the meeting, not afterward.

The SPA is silent on whether the strata corporation should keep the proxies. In the writer’s view it should. The proxy is a document authorizing a third party to vote on behalf of an owner. It may be necessary at some later point to prove that the proxy was granted. Some support for this proposition for found in a recent case where the court did not agree with the argument that the strata should not keep proxy forms. (The issue in that case was decided on a different point and the decision is thus not as definitive as it might have been).

Chair of the meeting

Under the Standard Bylaws the president is to chair the meeting. If the president cannot or will not, then the vice president fills that role. Only where both have declined or are otherwise unable to chair, can someone else be elected to chair the meeting. Preferably that person should be an eligible voter. However, Standard Bylaw 25(3) says the chair may be elected from “among those persons present at the meeting”. That language is broad enough to arguably refer to someone who is not eligible to vote but is otherwise present (i.e. a strata manager).

Only if the chair is the president or vice president can the chair cast a tie breaking vote. Even if the president does not chair the meeting, if they are present they can still cast the tie breaking vote (Standard Bylaw 27(5)).

The chair need not follow Roberts Rules of Order unless the bylaws require it. However, they can be used as a benchmark and for guidance (which lends an air of fairness to the process).

Voting

S.50(1) of the SPA provides that all business conducted at a general meeting is to be done by majority vote unless a $\frac{3}{4}$ vote is required.

Both a majority and a $\frac{3}{4}$ vote are determined by counting

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the votes cast for and against. Abstentions (unlike under Roberts Rules) do not count. It is still necessary to count abstentions, however, to ensure a quorum is present.

Based on a court decision the “yes” votes must be counted first. Although convenient to count “nays” and assume the rest are yes, that cannot be done given that there may be some abstentions. That same decision requires a secret ballot to be cast using voting booths.

A majority vote resolution (including a budget) can be amended in any manner so long as the amendment is approved by a majority vote (and so long as the amendment doesn’t make the nature of the resolution one that would require approval by way of a ¾ vote). In other words, the owners at the meeting could drastically increase or decrease the budget.

A ¾ vote resolution can be amended so long as the amendment is not substantial (s.50(2)(a) SPA). What is substantial is determined by the chair. It will differ from case to case but is generally something which would make the resolution very different than presented. (i.e. a bylaw prohibiting all pets being amended to allow for one cat would be significant).

Resolutions from the floor are not permitted with the exception of:

- Amendments to a resolution
- Procedural resolutions

- A resolution directing council under s.27 of the SPA.

Election of Council

Neither the SPA nor the Standard Bylaws discuss the precise method for electing a strata council. All that the SPA requires is that the council be elected by majority vote – s.50(1) SPA. (Although there is case law in support of acclaiming a council where there are less than the maximum number of members, that is not the preferred view any more).

The question which arises from the requirement that the council be “elected” is whether each council member must be elected by majority vote or whether it can be a single vote for all the candidates (assuming there is less than the maximum number allowed). Ideally the bylaws should provide for the method to be employed. In the absence of such a provision it would be best to have the meeting confirm by a vote, the method of election/confirmation to be used.

Where there are more candidates than positions available, the usual method is to have a ballot whereby owners indicate their top 7 (if that is the maximum) candidates. The seven candidates who receive the most votes are then elected. That method is both practical and fair. However, each person must receive at least a majority of the votes cast. In other words if there are 100 strata lots which cast votes, each successful candidate must receive at least 51 votes. It may be that not all 7 positions actually get filled.

Lastly, ensure that all candidates are eligible to be elected to council. Are they in arrears of their strata fees and, by virtue of a bylaw, ineligible for election? Are they actually an owner? Have they assigned their right to sit on council to a tenant or family member, thereby disentitling them from election?

Summary

In the heat of the moment it may be difficult to remember all of these things, but a good chair is required to try. Doing so, even if it seems laborious at the time, can save a lot of grief later on. The chair can rest knowing that they have done their job well.

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

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PTSD - Post Traumatic Strata Disorder

By strata101



What is it about strata living that causes so much conflict and divisiveness?

The concept of strata living is straight-forward. A group of people agree to contribute fairly and equitably to the maintenance of the property they all own based upon - for the most part - a mathematical equation. This is no secret. Prior to purchasing, buyers get to read all the bylaws and rules of the strata corporation and they are advised of their share of the maintenance fee to be paid for common areas.

Generally, owners like to pay their fees, skip the AGM and live a polite, neighbourly existence staying away from scrutiny or participation in governance. Many would say, "Live and let

live", and they think that bylaws and rules are meant to be ignored if they are inconvenient. These owners don't like to participate until there is some sort of issue they can take a perceived moral position on.

Take for example an owner who thoroughly researched strata living and studied the corporate bylaws before purchase. This owner was a regular Joe with a family and kids and a job. He got together with his neighbours and liked a good laugh once in a while. He did read every set of Minutes and compared them to previous sets. If he had questions he asked. He attended AGM's and Special General Meetings. Without realizing it though, his questions needed the Council, who have never been asked to clarify their actions. Rather than dialogue with the owner, the Council started

a quiet smear campaign while continuing to act like good friends and neighbours. After a time, the owner became a little frustrated that he received no answers from Council regarding his questions. Over the course of a few months the owner noticed he was no longer receiving invitations to socialize, although he was always acknowledged on the street.

Joe decided he should get some outside advice because he had some real concerns about the corporate monies and how the Council was governing; Joe believed the Council was withholding information. He sought advice from a homeowner's association and was advised to send a written request to see the strata documents - a right given to him through the

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Strata Property Act – but Council denied the access. The whispering became audible and now people stopped talking whenever he walked by: council members as well as neighbours he used to share laughs with, before he started asking questions.

Joe started to feel on edge. Frustration, confusion and anxiety were making him snap at his family and soon he dreaded driving into the community after his workday. But he is also still investigating, researching and networking with strata educators and other strata owners.

Eventually, one strata council member started looking into Joe's requests after Joe strongly suggested a lawyer might have to represent his interests to Council.

This particular strata council member was new to council, and well liked by everyone in the community. She hosted parties and invited everyone – including Joe and his wife - but she was also a bit of a people pleaser and intimidated by the older, entrenched council members. Because she tried to please everyone, she resisted any action that might make the Council appear lacking in knowledge or contributing to Joe's perception he was being ignored. She also listened to gossip about Joe and was constantly seeking clarification from him.

Joe began to feel worse because now his integrity was being questioned and the Council was still not providing him opportunity to access documents. Then, the gossip became outright slander and the council was

sharing private information with anyone who would listen. His neighbours labelled Joe an ungrateful troublemaker who was ruining their quiet, happy little community while taking no responsibility for their actions and inaction.

One morning, Joe found his car keyed and a bag of garbage dumped all over it. Next morning, his wife's flower pots were destroyed and his kids' bicycle tires were slashed. Joe's wife was distraught and begged him to stop harassing the strata council so everyone could be friends again. Joe felt diminished but he remained steadfast. As soon as he got to work, he called a strata lawyer and made an appointment.

Joe eagerly went to his meeting with the strata lawyer. His jaw dropped when he was told it would cost about \$850.00 to write a legal letter to the strata council advising it of Joe's right to see documents. He went home defeated.

Later that evening he answered a knock at his door. It was the strata council member trying to fix things. She asked to come in and after exchanging a few niceties, asked Joe to answer the gossip. "It is untrue," he replied. The councillor asked Joe what he was looking for to which Joe responded, "Respect for the process and my rights as an owner." The councillor went off on a rant about the goodness of their neighbours and council members and managed to spin it as though Joe's constant questions had caused terrible harm to the feelings of good council volunteers.

"Well," Joe sighed, "if asking for

documents is such an offence then describing the council as "good volunteers" is a contradiction." Joe continued, "The Council does not want to lose its perceived status or be accountable to any owner. That bothers me as a business person and an honest person. Council doesn't have to like me but they can't bully me into going away. I have visited a lawyer and I am prepared to use the very tool Council disrespects to get some respect."

The strata councillor appeared taken aback but asked Joe to give her some time and she would do her best to turn things around. It wasn't lost on Joe that she only took a small step toward action after he told her he sought legal advice.

Three days later Joe received a letter from Council advising him he could see the documents. He was also given an apology for Council's refusal to let him see the documents citing "unfamiliarity with the *Strata Property Act*" and, "Council is taking proactive steps to fully understand its duties and obligations to all owners so this doesn't happen again". The letter ended with a request for Joe to write Council and acknowledge their, "...extra efforts to properly respond to his written requests and present a formal apology." Joe laughed and thought that in this case, silence would probably be the best response.

Despite council's conciliatory effort, relationships did not heal. Joe stopped reading the Minutes and going to meetings because he felt it was a waste of time. The

Continued on page 11

councillor who tried to “fix” things became the President and soon, in an effort to win the recognition and appreciation of her neighbours was hosting parties again but not inviting Joe and his wife. She also spent a lot of time with the bully councillor because he became the Secretary-Treasurer. Joe figured no one would dare question the big guy about anything.

The unhappiness became too much to bear and Joe and his family quietly found a buyer for their property and moved out on a Monday when all their good neighbours were at work. Despite the beautiful strata properties out there and the availability of those properties, Joe and his wife bought their own house on their own lot and now discourage people they care about to avoid purchasing in a strata.

This story only goes to show the influence a group of people can

use to control a larger group of apathetic people. The emotional duress and stress of standing up against your neighbours because they are not following the rules is very real and can have very detrimental and long lasting effects. Some people snap under that kind of pressure. Other people bear the stress, bend under the weight but they don't break. In the end, when you are suffering from p.t.strata.d, you have to make some very careful decisions about how important the rules and process are to you and if the risk is worth the cost. I'm on the “bend don't break” side of things and use my blog as a form of stress relief for other owners out there trying to negotiate a strata life where there is far less conflict.

strata101 blogs at <https://strata101.wordpress.com/> and welcomes comments. Opinions are those of the author.

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A compromise is the art of dividing a cake in such a way that everyone believes he has the biggest piece.

— Ludwig Erhard

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David Grubb

“If She Can, Why Can’t I?”

Q:

An owner planted a decorative vine to cover a common property fence beside her yard. Clearly this is not allowed, however, a past council member agreed she could do this and has admitted that he gave the go ahead. Council understands the logic – it is indeed an unattractive fence, and the strata’s future plans are to remove the fence once an adjacent hedge thickens. Now I’m facing complaints such as “If she could do this why can’t I?” and “It’s against the bylaws, take it out”.

How do I deal with this since the owner did have the go-ahead a couple of years before?

A:

First it depends on what either your bylaws or rules respecting the garden state with regard to

“permission” to plant items on the common property. If the “chair” of the garden committee was entitled to give permission, then presumably he did so in good faith. Even if he was in error at the time, it does not alter the fact of the “contract” between him (as council member) and the individual, in accordance with SPA s.30:



Contracts not invalidated

30 (1) *The validity of a contract made or a certificate issued by the strata corporation is not affected by*

(a) a defect in the appointment or election of the council member or officer who makes the contract or signs the certificate on behalf of the strata corporation, or

(b) a limitation on the authority of the council

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member or officer to act on behalf of the strata corporation.

(2) A person who knew or ought reasonably to have known of the defect or limitation at the time the person made a contract with or received a certificate from the strata corporation may not rely on subsection (1) to bind the strata corporation with respect to the contract or certificate.

The council has made efforts to rectify the situation as best it can, and cannot be accused of doing nothing to mitigate the circumstances.

However, the council could decide to remove the vine with some sort of compensation to the owner.

Nevertheless, for the people who use the “If she could do this, why can’t we?” approach: two wrongs don’t make a right. Such people should be informed that council will be much more vigilant in future and it would be appreciated if any owners who notice someone else contravening the bylaws or rules should send a complaint in writing to the council so they can deal with the situation right away in accordance with SPA ss.129-135.

YOU ASKED Why Don’t Duplexes Have Strata Fees?

Q:

I am considering selling my condo and purchasing a duplex that is a strata. Can you tell me how that would work? I’m familiar with a large strata but have no idea how a duplex one would work. Some of the duplexes say there are no strata fees. Seems strange to me.

A:

Be very careful with duplexes and triplexes. There are plenty of strata lawyers who say that any complex under 7 (some say 10) units should not be stratas: there needs to be some different law for them – but at present, the SPA is what we have!

The difficulty with duplexes and triplexes is that the SPA was not written for them. For a simple

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start, how do you get a 3/4 vote passed? (Answer: You don't! All decisions must be unanimous.)

How do you conduct an AGM? By law you must hold one and there needs to be included an insurance review, a financial statement and a budget for the coming year. My bets are that most duplexes have absolutely no idea about this. Moreover, where is the documentation required by SPA s.35?


Regardless of the owners' lack of understanding of what a strata plan is in the first place, the SPA does apply insofar as it can, although many duplex owners feel that they don't need to pay any attention to it. Hence, they don't consider strata fees for operating and contingency reserve funds are necessary. Their attitude is "You take care of your half and I'll take care of mine." They hope that when it comes to major issues like a new roof or repainting the building exterior that they can simply agree to share the expense. What if one owner wants to paint his exterior portion one colour and the other wants to paint his with a colour which clashes violently? What happens if one owner won't pay to replace the roof just because his half doesn't leak? How about leaking

windows which cause damage to the structure of the building? That is a strata responsibility; not an individual owner's. And it is all too easy to forget that both owners are "tenants in common with an indivisible share of the common property".

In some duplexes there may seem to be little requirement for an operating fund because each unit is pretty much self-contained as far as utilities are concerned. But this may not be true, so how are the common hydro bills or water bills handled – simple handshake agreement to share the bills? Moreover, at a very minimum the strata corporation is required to carry property and liability insurance. If someone is injured on the path to the front porch, both owners could be sued. If there is a leak in the dividing wall or floor, the strata's insurance comes into play (and possibly the "strata corporation's" right to sue the unit owner for the deductible! Another potentially rancorous dispute waiting to happen!)

Do they know about unit entitlement? How do they treat it? If they do know, quite possibly they have established that SPA s.99 will not apply and

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they will each pay equally. But is that properly registered at the LTO in accordance with SPA s.100? (As one strata lawyer has stated, “If it isn’t in writing, it never happened!”)

So there is a clear requirement for you to investigate whether there is a CRF.

How are the grounds managed? Are separate portions of gardens and grounds marked as part of each strata lot, assigned as LCP or simply left as common property? How are responsibilities handled? What if one owner won’t maintain his grass and lets everything go to weed?

Are basements and attics common property? If so, how is responsibility of the strata corporation handled? What if, in an up & down duplex, the basement accessible only to the lower suite is common property and the downstairs owner decides to turn that basement into extra living space? In some cases, that question could be applied to the attic space as well

I dealt with one duplex where the one owner (a psychologist) was laid back and didn’t want to establish any of this sort SPA organization, whereas the other (a para-legal) wanted to get everything to conform as much as possible to the Act. As a result there was a huge blow-up when major building exterior refurbishment and responsibility for LCP garden areas became issues. The para-legal moved out.

I attended another duplex where unit entitlement was based on square footage. When it came to do a major repair of a large LCP deck in the smaller unit and a roof replacement where the roof covered each unit almost equally, the owner of the larger unit, who had no idea about the SPA, was really upset at having to pay considerably more than the owner of the smaller unit (and with a minimal CRF, it was a Special Levy).

There is also the consideration that, even if everything is smooth between two owners now, when one sells there is no guarantee that the new owner will agree to what the seller and the remaining owner have treated as being acceptable.

A buyer should be aware of all of these sorts of issues in order to make an informed decision, and possibly consult with the other owner to establish a proper working relationship in accordance with the SPA.

That is not to say that many duplex and triplex owners don’t get along: so often they do over many years, and they manage to find a way of resolving problems without any animosity (even if they don’t know about the SPA).

You can always find such residences. But you should go into a duplex with your eyes wide open so that you can avoid future complications that might have been avoided.

Quotes on compromise

I simply do not think that yelling, swearing, threatening or belittling will get you to the place you want to be faster than kindness, understanding, patience and a little willingness to compromise.
- Rachel Nichols

You can cooperate and not compromise your core values. But I’m a realist with the philosophy that sometimes you’ve got to take bites out of the apple instead of the whole apple.
- Jason T. Smith

Let no one think that flexibility and a predisposition to compromise is a sign of weakness or a sell-out.
- Paul Kagame

The ability to compromise is not a diplomatic politeness toward a partner but rather taking into account and respecting your partner’s legitimate interests.
- Vladimir Putin

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The Art of Compromise

By Laurie McKay, VISOA Board Member

Last month the Civil Resolution Tribunal opened for business, after what seemed like a very long wait. The article from Shannon Salter, Chair of the CRT, on page one explains how early intake works.

There are several stages in the CRT process but one thing that stratas can do before they get to the state of “irreconcilable difference”, or needing the CRT, is to think about compromise.

Many strata disputes are about principles. We all like to be “right” and don’t want to appear to “give in”. But as we learned in our April seminar, sometimes just giving the other party an opportunity to be heard, and listening with compassion, can go a long way. It’s hard to imagine yourself in someone else’s position in a dispute – but try to imagine

a relative. I always picture my mother, who by anyone’s definition could be called a cranky old lady, but if she were being wronged I’d be the first to see her side.

Sometimes the strata council may be able to reach a compromise. There are some points that council cannot negotiate without breaching their own bylaws, but many stratas have an element of choice in such matters as bylaw fines. For example, do your bylaws state a fine will be “up to \$200”? If so, this is your negotiating tool.

A first-time breach of a bylaw by a normally quiet and cooperative owner should be treated differently than a blatant and frequent flouting of the bylaws by a different owner – don’t you agree?

There are also degrees of “seriousness” in bylaw enforcement. An owner hanging a quilt over their balcony rail for an hour to air it out is not, in my opinion, the same as an owner blasting their tunes at 90 decibels until 3 a.m. every Saturday night.

So then, let’s go back to that bylaw fine of “up to \$200”. If you had complete discretion what fine would you give the owner who

took his winter quilt out of storage and found it needed a little airing before use? What fine would you give the music lover for her tenth infraction? If it was totally up to me (which it isn’t!) I’d give the first owner a short letter reminding of the bylaw, full stop, no fine mentioned. And the second owner might get the full \$200 fine.

If your fine bylaw, on the other hand, is prescriptive and states “a fine of \$200 will be assessed for every breach of these bylaws” or words to that effect, then the council’s hands are tied and Mr. Quilt would have to receive the same fine as Ms. Music.

If my mum was the music lover and asked for my help, I’d try to find out if there were any written complaints; whether it was merely hearsay or was there confirmation that the music was, in fact, coming from her unit; was she even advised that the music bothered others; was proper process followed by the strata council; was the council decision recorded in the minutes. In short, I’d try to see both sides and persuade the council to do so as well. Perhaps a letter to the “cranky old lady” advising her that neighbours have complained about her loud playing of Dean Martin at 3 a.m., and asking her to use headphones in future would head the problem off right away.

That is the art of compromise.



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Harvey's Helpline Stories – a typical morning:

Caller: One of our owners is seriously ill and his father has his power of attorney. We are a small strata with an aging ownership and have difficulty finding enough owners to serve on the strata council. Could his father serve on the strata council?

Helpline: The best information that I have is that a power of attorney cannot serve on the strata council because of an inherent conflict of interest. A power of attorney has a fiduciary duty to the client; strata council members have a duty to the strata corporation. Moreover, there is no provision for it in the *Strata Property Act* although a bylaw might make it possible.

However since it is a father-son relationship, the father could be put on the title to the strata lot and would then be able to serve as an owner. I'm not a lawyer, so this is not legal advice, but it seems a reasonable solution and if the owners find it acceptable, it seems unlikely that there will be a problem.

Caller: I am council president of a townhouse strata development. One of our owners has rented out their unit. Yesterday the rental manager for the unit called me and asked if I would check out a plumbing problem in the unit. I said I could not enter the unit without permission of the owner. Was I correct?

Helpline: You certainly have no *a priori* right to enter the unit. It would have been OK for the tenant to let you in but the rental manager is being paid to look after the unit. He/she is the one who should contact the tenants and check the plumbing not the council president.

Caller: Where do I find the strata council?

Helpline: Every strata corporation has a strata council. Your strata should have a council.

Caller: Aren't you the strata council?

Helpline: No, we are an organization of strata owners and this is phone helpline service we provide to our members.

Caller: Isn't there a strata council somewhere that I can call for information?

Helpline: Your strata should have a council. You should have been given a list of council members when you bought your unit.

Caller: Oh, I don't own a condo, I'm a real estate agent and I only plan on selling houses but I want to be able to contact the strata council so I can get information if I need it.

Helpline: You really need to learn a lot more about stratas if you plan to sell real estate, there are probably more of them for sale than houses.

Caller: Thanks for the information. Bye!

I did not make this up!

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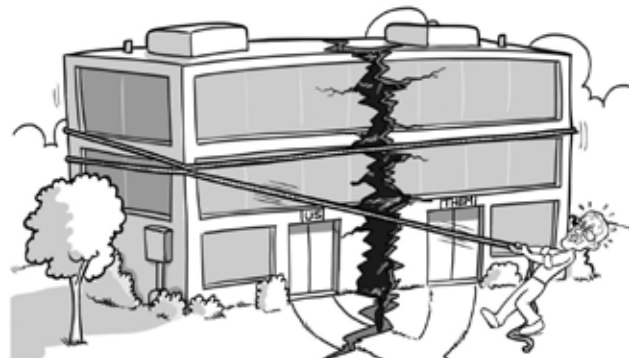


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President's Report



Sandy Wagner

How has your summer been going so far? Here in strata-land it's been an exciting time. As you can read on page one of this Bulletin, the long-awaited Civil Resolution Tribunal (CRT) is now accepting strata disputes for early intake. I know you have all been awaiting the opening. Shannon Salter has graciously shared the CRT's progress along the way and we at VISOA think you'll be pleased with the result.

Strata meetings are the important foundation of all our strata business. But the details of holding these important meetings can sometimes be overlooked, and so on page three, Lawyer Shawn M. Smith has provided us with a primer on how to conduct those meetings.

A Vancouver-area strata owner's blog (strata 101) caught my attention earlier this year, and in this bulletin I share one of her articles, entitled PTSD – Post Traumatic Strata Disorder. The details on how to find this blog are found at the end of the article, which begins on page nine.

Board member Laurie McKay has written a short article on resolving strata disputes via compromise – timely information given the recent opening of the CRT. And, just for fun, we are including "Harvey's Helpline Stories" in this issue. Harvey Williams, as many of you know, is the main telephone responder for our Helpline. Harvey shared details

of three recent phone calls with the board, and I wanted to share them with you. (No identifying information included, of course!) The third caller was a real humdinger!

In our last Bulletin we promised articles with opposing viewpoints on strata council elections, and due to lack of space these will be featured in our November issue instead, along with planned articles on short-term vacation rentals, and smoking concerns in your stratas.

Many of you have asked about upcoming seminars and workshops. September 18 at Bowen Centre in Nanaimo, the seminar topic will be "Handling Large Repair/Renewal Projects" with a moderated panel of strata owners like yourselves, who have taken charge of large projects. They'll share their expertise, letting us know what went right and what went wrong – because of course no project goes exactly as planned.

Then November 6 in Victoria, at the Comfort Inn, our afternoon seminar topic will be "Rentals in Stratas". A big topic, but with an excellent guest speaker we aim to do it justice.

Our fall workshops are not yet finalized, but we do intend to hold our more popular workshops again: Basics for Strata Council Members, Strata Secretaries, and Strata Treasurers, along with one new topic currently under development. In addition, we plan to schedule our "Before You Buy a Condo" workshop again.

With summer half over and a busy fall planned, it won't be

long until your board begins working on next year's budget. We have not had a membership fee increase in several years and hope to hold the line again. If you have any thoughts or concerns on our income or expenses, please contact me at any time. As VISOA is supported solely by membership fees, and those fees go to provide services to you all, we welcome your comments on how we allocate the funds.

Sandy Wagner,
President@visoa.bc.ca

Community

One is a member of a country, a profession, a civilization, a religion. One is not just a man.

~Antoine de Saint-Exupéry,
Wartime Writings 1939-1944,
translated from French by Norah Purcell

While the spirit of neighbourliness was important on the frontier because neighbours were so few, it is even more important now because our neighbors are so many.

~Lady Bird Johnson

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