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VISOA Bulletin - AUGUST 2017

Introducing The Strata Forum

By Jim Hooton

Computers are everywhere these days. Sometimes it seems nothing happens without their involvement and I for one occasionally wax nostalgic about the good old days. Really though, most of us would never go back to the day when finding a missing crossword clue meant a trip to the library, or telephoning family in Australia meant big bucks (and you couldn't even see who you were talking to!)

Computers excel at communications especially if distance is involved. There's a good reason that one of the earliest applications of computers and the internet was something called a "bulletin" board. These were sites on the web where somebody could go, post a message and get an answer to their question.

StrataCommons took out a business membership with VISOA last year so we could let the organization's membership know that we offer business software for property managers and councils. During that process, the VISOA Directors saw the potential for our work to help the larger strata community. We all know that you can contact VISOA if you need advice or guidance related to the SPA, bylaws, strata governance and related legal matters but where does one go to get an opinion on a good strata manager or landscape contractor? VISOA spotted a gap in their membership services when it came to advice on "hands on" issues, since for legal reasons VISOA cannot recommend specific contractors. StrataCommons aims to fill that gap. We think we've come up with a friendly and useful application called the **Forum** that does this at no charge to VISOA members.

What can the Forum do for me?

The Forum offers several free services to VISOA members including:

- conversation service
- events calendar
- business directory
- document library and web link service

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The Conversation Service

This service allows VISOA members to post their "hands on" questions to other Forum users in their local region. If you're looking for a new landscape contractor in the Comox Valley you can post your request and hopefully another Forum user will comment. You might also post questions about a good property manager or look for a recommendation on a painting company. To be clear, please refer your SPA, bylaw or other governance and legal questions directly to VISOA. This site isn't meant to compete with or replace their excellent service.

The Calendar Service

Do you know of an interesting strata related event in your region - perhaps a trade show or a strata related seminar? Feel free to enter this on our calendar so others can take note.

The Business Directory

StrataCommons invites all VISOA business members to take advantage of our free business listing. We're happy to take the information from your VISOA listing and repeat it here at no charge. Since our focus is hands on service, we hope people will come looking for you at the Forum. You may also become a member of the Forum and offer your comment and advice to others.

The Library

Have you found a good article on selecting a contractor that other councils might find helpful? How about a document that helps the gardening committee deal with pests responsibly? Maybe there's an excellent web site that others might find useful. The Forum has a place for you to load up your PDF documents or create web links that can make life simpler and easier for those hunting for answers.

How do I sign up?

You may log on at https://stratacommons.ca/forum/sign_up. To protect your privacy, the web application will ask you to set your password on this screen. We need you to check off the boxes giving StrataCommons the right to send you email (we don't do spam and will only send you email if something important has come up) and indicating you accept the agreements for use. Please remember your password although should you forget, StrataCommons Forum can send you a link that you can use to create a new one. You will also be asked to indicate where you live in B.C.

How do I find the Forum?

Once you've signed up, you may return to the Forum by visiting https://stratacommons.ca. We suggest that you create a bookmark in your browser for this web address. On this page you can select "Log in" at the top right and enter your credentials to log in to the Forum. The site will remember you for a period of time and you will not have to re-enter your credentials when you return. As well, there is a link to the Forum on VISOA's web page.

Is help available?

Yes, there is a section of the Forum set aside for questions and answers on using the software. In addition, the software offers help files that answer the most common questions.

Are there any rules?

Yes, when you sign in you must agree to behave. You need to agree to allow us to send you emails (few and far between but sometimes we need to let you know about something important.) You must agree not to misuse the software by spamming others and you need to abide by

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the Forum's rules of the road. This statement sets out common sense ways of making the service really useful and preventing bullies from turning this service to the dark side. The site will be monitored and every posting has an option for flagging the comment as inappropriate. The site moderators will review flags and may remove the comment and in the case of a repeat offence, revoke the offender's account.

Why would StrataCommons do this?

First, our company has its roots in a co-operative housing facility in Victoria and a strata in the Comox Valley. We developed this software to make life easier for our councils and we agree with VISOA that the Forum fills a gap. Secondly, the Forum is based on our strata service called the Organizer. If you like the Forum, maybe you'll have a look at what our subscription service can do for your strata.

So, we encourage you to sign up and get involved. By the way, while you're visiting our web site, check out our free curated news service to find the latest B.C. strata articles that will help you stay on top of things.

Jim Hooton is the Chief Executive Officer for StrataCommons Software. He is retired from his position as Dean of Student Services for Vancouver's Langara College and currently serves as the secretary treasurer for his strata in the Comox Valley. Jim can be reached at jlhooton@stratacommons.ca or (250) 871-4537.

YOU ASKED By VISOA Strata Support Team

Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. Questions may be rephrased to conceal the identity of the questioner and to improve clarity when necessary. We do not provide legal advice, and our answers should not be construed as such. However, we may, and often will, advise you to seek legal advice.

WHAT IS A "SMALL" DOG?

By David Grubb

Q. Our pet bylaw states that a resident may have one "small dog" but we have no definition of what a "small dog" is. A new owner has moved in with a medium sized dog. This is a Bylaw contravention, but is council bound to do something or can we wait for a complaint about the "size" of the dog??

A. The courts have made it abundantly clear that if council is aware of a contravention of a bylaw, they cannot wait for someone else to complain: they must take action because of SPA s.26:

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.*

However you may have a problem with respect to the term "small dog". Certainly no one would argue about a Great Dane or even a Rottweiler being a "large" dog. But while a Spaniel could be called "large" (compared with a Terrier) it is certainly "small" (compared with a German Shepherd). So what is the definition of "medium" if it is to be applied to the Spaniel?

Until your bylaw stipulates the height and weight of the pooch, you could be challenged and I suspect a CRT adjudicator might tell you that your bylaw is unenforceable at the moment - to some degree anyway. You should check with a strata lawyer about an appropriate amendment to the wording. And do be specific – if your bylaw states "16 inches high" there will be someone, for certain, who thinks that should be measured to the shoulder, another to the back, another to the head, and so on.

Decisions, Decisions, Decisions... An Overview of How to Make Decisions at the Strata Council Level

By Shawn M. Smith, Cleveland Doan LLP

While the *Strata Property Act* ("SPA") reserves the most important decisions for the owners (i.e. the enactment of bylaws, the raising of money, the winding up of a strata corporation) many important decisions are made by the strata council; most notably those related to the enforcement of bylaws, including whether to impose fines and whether to seek the assistance of the *Civil Resolution Tribunal* ("CRT") in enforcing a bylaw. Those decisions often come under attack, particularly by the owner(s) to whom the decision pertains. It is therefore important to make sure the proper steps are followed when making a council decision and to understand how those decisions might be treated if challenged.

In order for the strata council to make a decision it must follow the procedural rules set out in the strata corporation's bylaws. For the most part those will be the Standard Bylaws under the SPA (and for the purposes of this article those will be used).

In order for the strata council to be in a position to make a decision it must be properly constituted. That means it must be composed of the minimum number of members required by the bylaws. Standard Bylaw 9(1) sets the minimum number of council members as three. (That number can, of course, be changed by way of a bylaw amendment). Regardless of the number of members who are on council, the quorum requirements of the bylaws must be met in order for business to be able to be conducted. However,

where a council member resigns and the number falls below the minimum required that is not necessarily fatal to the council's decision-making capability. In *Clayton v. Chandler et al 2017 CRTBC 18*, the CRT held that where the strata corporation's bylaws do not make the replacement of a resigning member mandatory the council can continue to act so long as the quorum bylaw allows it to do so. For example, Standard Bylaw 16(1) provides that the quorum of the council is two if it consists of two, three or four members. In other words, if a council consisting of the minimum number of three is reduced to two by way of a resignation, it can continue to function so long as the two remaining members are both present at the meeting.

Decisions must also be made at a duly convened strata council meeting. Standard Bylaw 14 governs the calling of council meetings and provides as follows:

14 (1) Any council member may call a council meeting by giving the other council members at least one week's notice of the meeting specifying the reason for calling the meeting.
(2) The notice does not have to be in writing.
(3) A council meeting may be held on less than one week's notice if

(a) all council members consent in advance of the meeting, or

(b) the meeting is required to deal with an emergency situation, and all council members either

(i) consent in advance of the meeting, or

(ii) are unavailable to provide consent after reasonable attempts to contact them.

(4) The council must inform the owners about a council meeting

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as soon as feasible after the meetings have been called.

Any council member can call a meeting. It does not have to be the president. Whoever calls the meeting must give *at least* seven (7) days notice. As is the case with the notice requirement for general meetings, the phrase "at least" adds two extra days to the seven-day period. In other words, nine days notice is actually required. (This is not always observed and that bylaw should be amended to be consistent with actual practice). Notice must be given to all council members even if they are precluded from participating in the meeting pursuant to s.32 or s.136 of the SPA.

Meetings can be held with less notice on an emergency basis. The SPA does not indicate what would constitute an emergency. The Canadian Oxford Dictionary defines "emergency" as: "a serious, unexpected, and often dangerous situation requiring immediate action."

If a meeting is for the purpose of dealing with an emergency it may be held on less than one week's notice provided that all council members consent in advance to a shorter notice (they do not have to attend but simply have to consent) or they were unavailable to provide consent after reasonable attempts were made to contact them. What constitutes reasonable attempts will vary from circumstance to circumstance. If a council member routinely responds to email then emailing them asking for consent would be appropriate. If a council member does not have email then a phone call (or series of phone calls) would be appropriate. The use of the word "unavailable" is interesting. Does a failure to reply to an email constitute being unavailable? Arguably it doesn't. The failure to reply could just as well be taken as a refusal to give consent. Emails requesting an emergency meeting should be worded such that a failure to reply within a certain period will be deemed as them being unavailable to provide consent or the bylaw amended. If even one council member refuses to consent to the meeting then it cannot proceed on less than one week's notice no matter how urgent the matter is. In such a circumstance if there is a true emergency requiring action (such as repair to the common property) then Standard Bylaw 21(2) permits a single council member to spend the strata corporation's money if doing so is "immediately required to ensure safety or prevent significant loss or damage".

The holding of council meetings and the making of decisions by email remains a questionable practice. On the face of it, a decision by email does not comply with the provisions of Standard Bylaw 14. Decisions made by email are often made with less than one week's notice. They are often also made without the full participation of all council members. The court in both *Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428* 2009 BCSC 506 and *Yang v. Re/Max Commercial Realty Associates* 2016 BCSC 2147 has indicated that decisions by email can be valid council decisions. However, when a decision is made by email, the results of that decision must be recorded in a set of minutes. Alternatively, strata corporations should consider passing a bylaw specifically allowing for decisions by email. That bylaw should address things such as how long council members have to respond, whether a response from all council members must be received before the decision is deemed to be made and how to record those decisions. Decisions by email should not, however, be a routine practice.

Pursuant to Standard Bylaw 18(1) decisions of the strata council are to be made by a majority

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vote. (Since this is a bylaw it can be amended to provide for a different threshold, say 2/3, if the owners wish). Where the vote results in a tie, Standard Bylaw 18(2) provides that the president may cast a second tie-breaking vote. Standard Bylaw 18(3) requires that the results of any such vote be recorded in the minutes.

In *Yang* the court examined Standard Bylaw 18. The first thing it determined is that the definition of "majority vote" found in s.1 of the SPA does not apply to the bylaw. That of course makes sense since the definition refers to votes cast by eligible voters – a concept which does not apply at the council level. However, that decision raises the question about what to do with abstentions. Under the s.1 definition they are not to be counted. Under *Roberts Rules of Order*, however, an abstention is counted as a vote against. The court also held that the language used in Standard Bylaw 18(3) requires that there be an actual vote and that the minutes record the votes for and against the resolution. The minutes cannot simply reflect that it was "carried" or "decided".

The court in Yang confirmed that minutes do not require any particular level of information beyond recording the decisions made. However, where a decision is being made in respect to a certain strata lot (i.e. to impose a fine for a breach of a bylaw) the minutes should record the strata lot or unit number. This is to ensure that there is a clear record with respect to the decision being made and to what strata lot it applies. Recording the strata lot number or unit number is not contrary to the provisions of the *Personal Information Protection Act* ("PIPA"). Recording an owner's name is, however. (The only exception to recording strata lot or unit numbers is with respect to hardship applications under s.144 of the SPA. In that case the PIPA guidelines suggest the strata lot not be identified). Having a record of a decision to impose a fine, grant permission or take other action in relation to a strata lot is important. The strata corporation may need to prove at some later date that it did in fact make a decision. For example, if the strata corporation has made an application to the CRT to collect outstanding fines it will need to prove that it made a decision (after compliance with s.135 of the SPA) to impose those fines.

The decisions of the strata council are, of course, open to challenge. S.164 of the SPA permits a decision to be set aside or varied on the basis that it was significantly unfair to an owner. The CRT also has jurisdiction to intervene and set aside a decision of the strata coun-

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cil either on the basis of a failure to comply with the SPA or the bylaws, or on grounds similar to that of s.164. Generally speaking though, the decisions of the strata council are given deference – see *Dykun v. Cravenbrook Condominium Corp. No. 032 1893* 2009 ABQB 104. This means that an owner or tenant challenging a decision of the strata council has the burden of proving the decision was so unreasonable that it should be set aside. A failure to comply with the procedural requirements of the SPA or the bylaws would be grounds enough to do that.

In *3716724 Canada Inc. v. Carleton Condominium Corp. No. 375* 2016 ONCA 650 the Ontario Court of Appeal applied the "business judgment rule" (developed from corporate case law) in assessing whether the decision of a condominium board (i.e. strata council) was sound. In reviewing the lower court's decision, the Court of Appeal began by recognizing the general principle that the decision of condominium boards should be owed deference. What that actually means has not been made very clear by prior case law. Hence the court applied the business judgment rule which "recognizes the autonomy and integrity of corporations and the fact that directors and officers are in a far better position to make decisions affecting their corporations than a court reviewing a matter after the fact.…Where the rule applies, a court will not second guess a decision rendered by a board so long as it acted fairly and reasonably…". The court noted that the rule had been applied by American courts to condominium boards there. At paragraph 51 of its decision the court noted that "as representatives elected by the unit owners, the directors of these corporations are better placed to make judgments about their interests and to balance the competing interest engaged than are the courts". In the end, the court determined that so long as the board reached a decision within the range of reasonable choices, the court should not interfere. Applying the business judgment rule to the decisions of strata councils means that those decisions will not (and should not) be interfered with where they are otherwise reasonable. Just because an owner, a judge or an adjudicator would have reached a different decision does not mean that the decision made is wrong. In short, simply because an owner does not like the outcome of a decision does not mean they can continue to flout it.

In contrast however, in *Condominium Corp. No. 072 9313 v. Schultz* 2016 ABQB 338 the Alberta Court of Queens Bench was asked to review a decision of a condominium board with respect to a fine imposed against an owner. The challenge against the fine was brought pursuant to s.67 of Alberta's *Condominium Act* which is similar in nature to s.164 of the SPA. In considering whether deference should be given to the decision of the board, the court applied administrative law principles arising from the Supreme Court of Canada's decision in *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9. Where the decision of the strata council is an exercise of discretion, the test against which the decision is made is that of reasonableness. (Where there is no discretionary element, the test is correctness).

What is most interesting about the decision in *Schultz* is the court's conclusion at paragraphs 30-33 that when making a decision such as imposing a fine the strata council should provide reasons for its decision. In other words, what was the basis on deciding to impose a fine and how doing so would bring

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about compliance with the bylaws? Specifically, the court stated:

A reviewing court might just as well assume that the absence of reasons means that the decision is arbitrary, or that there are no proper purposes for it. And this may not be such a wild assumption here; there is no apparent reason how a fine could correct Ms. Schultz's behavior or to cause her to do anything other than what she had diligently been doing.

No reasons are provided. We cannot tell what the Board had in mind. …There is no consideration of the purpose of sanction in the Board's decision. The fines levied here appear to be pointless except, possibly, from the standpoint of deterrence. Otherwise the decision seems to be punitive and to serve no useful purpose. It might have been different if Ms. Schulz was unwilling to comply.

If the decision in *Schultz* were to be applied in British Columbia, it would require that strata council making a decision (whether that is to impose a fine, deny permission to rent on the basis of a hardship or to refuse permission for alterations) to record in the minutes an explanation with respect to its decision. Based on *Schultz*, in order for fines to be applied there must be an explanation as to the rationale for doing so. If it were some other sort of request, then there should be an explanation as to why the criteria for approval were not met. S.34.1 of the SPA [request to appear before council] requires the strata council to advise the owner of its decision following a hearing. That requirement arguably goes farther than just a 'yes' or a 'no'. In light of *Schultz* it may require setting out the basis for the decision made.

Following procedure and process (although at times cumbersome) helps to ensure that a decision is validly and properly made. It also goes to strengthen the argument that deference should be given to the decision. A decision which is reasoned and explained is one to which deference can much more readily be given than one which appears on the face of it to be arbitrary (even if that is not the case). While most decisions of the strata council would perhaps not warrant this degree of attention to detail it is nonetheless a good habit to develop to ensure that all decisions, if challenged, can be properly and fully upheld.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a 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.

Privacy Matters

USE OF DRONES FOR REAL ESTATE LISTINGS

VISOA's Strata Support Team received the following question:

"A realtor has used the services of a drone operator to video a unit that's just been listed. The drone was flown over a number of units, without Strata approval. We have talked to the realtor and received an apology, but wonder what we can do to control any further use of a drone over a condominium development. From what I have ascertained an operator needs a license and must carry liability insurance. We have seen no evidence that this operator was licensed or insured. Has any guidance been provided by the real estate industry, to realtors? What can we do to protect our property/privacy?"

To answer the question, we went straight to the Real Estate Council of BC.

The following material is reprinted from the October 2016 issue of the Report from Council newsletter, available at www.recbc.ca, with the permission of the Real Estate Council of BC.

Do's and Don'ts for Drones

Drones – small unmanned flying vehicles, controlled remotely by someone on the ground – are becoming increasingly popular in a number of industries. Fire services use drones to spot and track the spread of forest fires. International aid organizations use them to drop supplies. Amazon is considering a delivery service using drones. And real estate licensees are using drones to offer potential buyers panoramic images of properties.

However, licensees who use drones to photograph properties risk violating aviation regulations and may be infringing on the privacy rights of neighbouring property owners. So before you launch that drone, read on, and ensure that you're staying within the law.

Q: I see that some licensees are starting to use drones to take aerial photographs of properties. I'd like to use a drone for my new property listing. Is there anything I need to be aware of before I send it up?

A: While using a drone may seem like an easy, affordable way to get some great aerial views of your client's property, there are a number of considerations to be aware of.

Transport Canada Regulations

If you plan to fly a drone for any work purpose (such as taking photos of a property) you must apply for special permission from a Transport Canada Civil Aviation Regional Office. See "Getting permission to fly your drone", on the Transport Canada website. You should apply for a certificate of permission at least 20 days in advance of the date you wish to fly the drone. The permit specifies how the drone may be used, including maximum altitudes and the minimum distances from people and property.

Unless you have obtained specific permission, Transport Canada recommends that you avoid flying a drone over populated areas, moving vehicles, highways, bridges and busy streets. See "Do's and Don'ts for flying your drone safely and legally" for more information.

Operators who fly drones for business purposes without permission risk penalties from Transport Canada including fines of up to $5,000 for an individual and $25,000 for a business.

Licensees are reminded that they must promptly notify the Council in writing if they are charged with (or convicted of) an offence under a federal or provincial enactment or under a foreign law, as per section 2-21(2)(d) of the Rules. Any licensee found to have violated Transport Canada regulations is subject to investigation, which may result in disciplinary action by the Council.

Privacy and Trespassing Risks

Drones equipped with cameras could be breaching privacy rights of neighbouring property owners. Licensees operating drones must be aware that under BC's *Personal Information Protection Act*, individuals have the right to sue others for violating their privacy without permission, and for unauthorized use of photographs of people, buildings or properties.

Under Transport Canada regulations, drone operators must respect laws regarding privacy and trespassing.

It is recommended that you inform neighbouring property owners, and seek their permission before photographing listings from the air.

Potential for Property Damage

Drones may cause property damage if used irresponsibly. After an unauthorized drone grounded water bombers and fire fighting crews in southern BC for several hours during the summer of 2015, the BC Wildfire Service prohibited the use of drones within five miles of a forest fire. Violators can face fines of up to $100,000.

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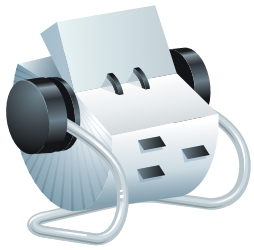

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Strata Properties and Earthquake Insurance

By Shawn Fehr, BA, CAIB, CIP

More than a million British Columbians live in Strata properties. In some urban communities, most of the residents are in Strata buildings. It follows, therefore, that the prosperity of everyone in the community depends to a large degree on the understanding they and their neighbours have of their responsibility in managing their shared property – and of being resilient in the event of an emergency.

Strata owners each own a share in properties that may be valued in the millions of dollars. The *Strata Property Act* provides a framework that helps to ensure the rights of owners and their responsibilities to manage the asset. The Act requires that all strata corporations obtain and maintain property and liability insurance for the common property. The requirement includes bare land stratas, detached housing stratas and even duplexes. The Act stipulates what perils the policy must cover and the level of coverage. Although earthquake coverage is not one of the mandatory perils under the Act, any strata in a known earthquake zone – almost all of VISOA's members - should certainly consider adding this coverage. The strata corporation must review the adequacy of the insurance policy, annually.

Owners should take note of the level of deductible for each peril covered, noting specifically that the earthquake deductible is typically shown as a percentage of the value of the property (which can range from 5% to 20% of the building value) and NOT THE AMOUNT OF THE LOSS. There is often confusion over this concept and it is important to understand the difference.

It is also important to note that the insurance policy arranged by the Strata Corporation covers the building and common areas. A Unit Owners policy will insure several other situations that could arise as a result of an Earthquake or other loss such as:

- Personal Contents – the strata policy will not insure furniture, belongings or appliances that are not permanently attached to the building
- Upgrades and Improvements that have been made to the unit since the original construction, e.g. addition of hardwood floors, new appliances, etc.
- Loss Assessment coverage for losses to common property or other owners' units for which the strata owner is deemed responsible.
- Contingent Loss Assessment coverage in case the strata corporation's insurance coverage is inadequate.
- Living out expenses may also be

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covered to compensate the additional costs incurred to live in another location until the unit is repaired.

It is also advisable that Strata owners of units which they rent to others should have a landlord's insurance policy and should have their tenants agree to purchase tenant insurance.

After an Earthquake

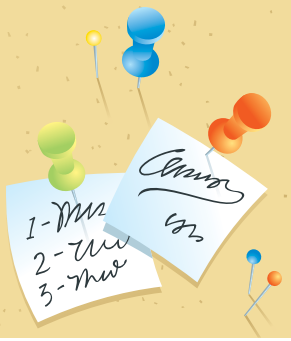
• Remain calm. If you are able, take care of life threatening situations first. Remember, you may be on your own for several days before emergency help arrives, so have your emergency kit ready.
• Check for injuries and administer first aid as needed.
• If safe to do so, check your home for structural damage and other hazards.
• If you are evacuating, bring your disaster safety kit with you.
• Do not shut off utilities unless they are damaged. Don't light matches or turn on light switches unless you are sure there are no gas leaks or flammable liquids in the area. Don't flush the toilet if you suspect that sewer lines may be broken.
• Wear gloves, protective clothing and sturdy shoes.
• After looking after your family, check on your neighbours if you are able.
• If you need assistance, place HELP signs in all your windows.
• Turn on your battery-powered, hand cranked, or car radio for broadcast emergency instructions.
• Don't use your land-line telephone or vehicle, except in an extreme emergency.
• Stay at least 10 meters from downed power lines.
• Avoid waterfront areas because of the threat of large waves and currents.
• Beware of secondary effects, such as landslides and flooding.

Shawn Fehr, BA, CAIB, CIP, is a Commercial Insurance Producer at Seafirst Insurance Brokers Ltd (Westshore) and can be reached at sfehr@seafirstinsurance.com or (250) 478-9110.

Anyone who keeps learning stays young. Anyone who stops learning is old, whether at twenty or eighty.

- Henry Ford

SAVE the DATES



VISOA 2017 Planned Seminar Dates

SEPTEMBER 17

Nanaimo, Bowen Centre Auditorium

Guest Speaker, Lawyer Shawn Smith

Topic: Changing Bylaws For Changing Times. Shawn will talk about amending your bylaws to account for Air BnB; Marijuana smoke; Electric vehicles; Home-based businesses and more.

NOVEMBER 19

Victoria, Comfort Inn

Topic: Planning Now For Spring Landscaping.

Panel of experts will talk about the planning process, best practices for getting bids, and the important votes you may need before beginning landscaping or garden changes.

Weeding Through the Law

The Stoned, Cold Truth About Medical Marijuana And Strata Corporations

By Naomi R. Rozenberg

When it comes to responding to complaints about medical marijuana in a condominium, strata councils are held to a high standard. But navigating this area of law can be hazy.

All puns aside, the laws affecting medicinal marijuana are constantly changing. A strata corporation that mishandles this issue can expect a human rights complaint, a Supreme Court action or a complaint to the Civil Resolution Tribunal.

As of 2016, Canadians who need access to cannabis for medical purposes are permitted to produce (grow) a limited amount of medical marijuana for their own medical purposes, or designate someone to produce it for them.

Does this translate to open season on grow operations in condominiums? Not exactly.

Strata bylaws provide for the control, management, use and enjoyment of strata lots and common property. Strata councils have an obligation to enforce the bylaws in a fair, impartial and consistent manner.

Carefully drafted and properly enforced bylaws can be an effective means of regulating and restricting the production and use of medicinal marijuana at a condominium.

If an owner, tenant, occupant or visitor is growing or smoking marijuana at a condominium, consider whether there has been a contravention of a bylaw.

For example:

Have there been unapproved alterations to the unit or common property? Most stratas require owners to obtain written permission before carrying out certain renovations. Large-scale grow operations often necessitate modifications to the plumbing, electrical and ventilation systems. If there have been unapproved alterations that constitute a bylaw infraction, the strata may do what is reasonably necessary to remedy the contravention, including (a) doing work on or to a strata lot, the common property or common assets, and (b) removing objects from the common property. Further, the strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention.

Is the strata lot being used in a way that causes a nuisance? The smell of marijuana plants or smoke may constitute a "nuisance" if it unreasonably interferes with a neighbouring owner's ability to use and enjoy their own property. Determining whether something is a nuisance requires an objective test; not every smell or whiff of smoke will constitute nuisance. Rather, it depends what an ordinary, reasonable person would consider to be a nuisance. Factors to consider include: the nature of the injury suffered, the frequency of the occurrence, and its duration. For example, continuous and pervasive cigar smoke that aggravates a person's asthma is more likely to constitute a legal "nuisance" than an occasional cigarette on a patio. The law of nuisance has evolved to reflect the unique nature of condominiums. Owners cannot expect to be free from interference by their neighbours. On the contrary, they must expect some degree of interference in the use and enjoyment of their own property, otherwise the common ownership principle of condominium living is defeated. The question in every case is whether the interference is unreasonable.

Does the strata corporation have a smoking bylaw? A smoking bylaw provides clear rules regarding smoking and avoids having to determine whether second hand marijuana smoke constitutes a "nuisance" or an unreasonable interference. The bylaw can set out where smoking is permitted (if at all) and which substances are banned (i.e. tobacco, marijuana, e-cigarettes). That said, a lack of a smoking bylaw does not prevent a strata from responding to owners' complaints. To the contrary, in 2016, a BC strata corporation was held accountable for failing to deal with second hand smoke complaints.

Is the strata lot being used in a way that is illegal? Individuals who need to produce or use cannabis for medical purposes should have a medical document

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(i.e. prescription) from an authorized health care practitioner. If a resident insists he or she requires the use of medicinal marijuana but refuses to disclose any documentation to verify that claim, and if there is sufficient evidence that the strata lot is being used for illegal purposes, the strata council may conclude that there has been a bylaw infraction. There are other laws that impact smoking. For example, the *Tobacco Control Act* restricts smoking in or near certain places such as in public buildings, common areas of condominium buildings such as hallways, elevators, parkades and laundry rooms, and within a certain distance of doorways and windows. However, it is not clear whether the *Tobacco Control Act* applies to marijuana smoke.

Municipal bylaws could also impose prohibitions on smoking – for example the City of Vancouver Health Bylaw No. 9535 which extends to marijuana smoke.

Has there been a refusal to permit a person authorized by the strata corporation to enter the strata lot? Bylaws often provide that access to a strata lot must be granted on 48 hours' written notice to inspect, repair or maintain the property. An owner that repeatedly refuses to grant access for those legitimate purposes may be in breach of the bylaws.

Has the grow operation resulted in increased utility costs? In 2015, an Ontario court ordered an owner operating a grow operation to reimburse the condominium for increased utility costs. Whether or not a BC court would follow that example remains to be seen.

It is extremely important that bylaw infractions are dealt with properly and legally. Lesperance Mendes is frequently asked how a strata corporation should respond to complaints that residents have breached a bylaw. In general, we recommend that a strata council follow a "three step process" when a complaint is received to ensure the response complies with section 135 of the *Strata Property Act.*

Keep in mind that a bylaw is not enforceable to the extent that it contravenes the BC Human Rights Code or any other enactment or law. For example, users of medicinal cannabis often have a physical or mental disability. Strata corporations must not, without a bona fide and reasonable justification, discriminate against a person regarding any accommodation, service or facility because of the physical or mental disability of that person.

A strata corporation that uses its bylaws to limit or prevent a disabled resident from growing

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or using medical marijuana at the condominium must show that its decision was bona fide and reasonably justified. It would therefore need evidence that:

- the policy, action or decision was reasonably necessary to accomplish a legitimate purpose or goal;
- the policy, action or decision was implemented in good faith, in the belief that it was necessary to accomplish that goal; and
- the strata corporation would incur undue hardship accommodating the resident.

Strata corporations may face human rights complaints from both marijuana smokers and their non-smoking neighbours. As such, these instances require a careful and objective analysis of the facts, a sensitive approach and a solid understanding of the law.

In conclusion, the blunt truth is that strata councils dealing with a grow operation in their condominium should seek legal advice before embarking on a path that could lead owners to get their noses out of joint.

Naomi R. Rozenberg is an Associate with Lesperance Mendes Law in Vancouver, and can be reached at nrr@lmlaw.ca or (604) 685-3911. This article is not be considered legal advice.

STRATA ALPHABET SOUP

BCREA – British Columbia Real Estate Association
CMHC – Canada Mortgage and Housing Corporation
CRF – Contingency Reserve Fund
CRT – Civil Resolution Tribunal
FAQ – Frequently Asked Question
FICOM – Financial Institutions Commission
HPO – Homeowner Protection Office
HRT – Human Rights Tribunal
LCP – Limited Common Property
LTSA – Land Title and Survey Authority
OF – Operating Fund
OIPC – Office of the Information and Privacy Commissioner
PIPA – Personal Information Protection Act
RECBC – Real Estate Council of British Columbia
REDMA – Real Estate Development Marketing Act
RESA – Real Estate Services Act
SPA – Strata Property Act
VISOA – Vancouver Island Strata Owners Association

Strata Rentals – What Are Your Thoughts?

With an apparent intent to create a larger pool of rental accommodation in B.C., the *Strata Property Act* (SPA) was amended in 2010 to permit developers to place rental rights on any and all strata lots for any number of years provided that a specific date (e.g. 31 January, 2099) is written on the Rental Disclosure Statement.

If the owners, at a later date, wish to institute a rental restriction, it will be extremely difficult to do so. In addition to a ¾ resolution approval, they must get the developer to agree to change the Rental Disclosure Statement and submit an amended copy to the Superintendent of Real Estate as well as all owners. There is no requirement that the developer must agree to the owners' request even with their ¾ vote. Moreover, there is no provision in the SPA for a situation where the developer is no longer available to file a new Disclosure Statement. In such situations the owners currently have no ability to alter the "2099" date to conform to a rental restriction bylaw which they would prefer.

Rental disclosure by owner developer

139 (1) An owner developer who rents or intends to rent one or more residential strata lots must

(a) file with the superintendent before the first residential strata lot is offered for sale to a purchaser, or conveyed to a purchaser without being offered for sale, a Rental Disclosure Statement in the prescribed form, and

(b) give a copy of the statement to each prospective purchaser before the prospective purchaser enters into an agreement to purchase.

(2) The owner developer may change the statement by changing the number of strata lots to be rented or the rental period for the strata lots, or both, if the owner developer

(a) owns all the strata lots in the strata plan, or

(b) obtains the prior approval of the change by a resolution passed by a 3/4 vote at an annual or special general meeting.

(3) For the purposes of the 3/4 vote referred to in subsection (2), the following persons are not eligible voters:

(a) a person voting in respect of a nonresidential strata lot;

(b) a person voting in respect of residential strata lot which is currently rented;

(c) the owner developer.

(4) An owner developer who changes a statement under subsection (2)

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must immediately

(a) file the changed statement with the superintendent,

(b) give a copy of the changed statement to each purchaser who received a previous version of the statement, and

(c) give a copy of the changed statement to each prospective purchaser before the prospective purchaser enters into an agreement of purchase.

What are your thoughts on this? Do you live in a strata affected by this section of the SPA, and if so, how is it working for you and your fellow owners? Has it worked as intended?

In addition to Section 139, the Victoria city council has decided to "get into the act" with the following recommendation that was considered (and sent back for more information) at the city council meeting on 13 July, 2017, which would prevent all stratas from having any right to restrict rentals.

Recommendation:

That Council endorse the following resolution and request that the Mayor, on behalf of Council, write to the provincial Minister Responsible for Housing and Members of the Legislative Assembly representing constituencies in the Capital Region, forwarding a copy of the resolution and requesting favourable consideration:

Resolution:

WHEREAS Many communities in British Columbia face acute housing affordability and housing availability challenges, with low vacancy rates and escalating housing prices contributing to economic insecurity for seniors, youth and people with low to moderate incomes who cannot afford safe, stable rental housing;

AND WHEREAS Provisions in the Strata Property Act have enabled strata councils to introduce bylaws that restrict rental housing as a permitted use, resulting in many dwelling units remaining vacant or underutilized rather than contributing toward the supply of rental housing in local communities;

AND WHEREAS more than 20 percent of property owners who responded to a recent City of Vancouver survey cited rental restrictions in strata bylaws as the reason why these units were unoccupied;

THEREFORE BE RESOLVED THAT the Province of British Columbia amend the Strata Property Act to prohibit bylaws restricting rental housing in strata-titled residential property, while retaining the authority of strata councils to introduce bylaws to restrict short-term vacation rentals.

This recommendation does not have the endorsement of VISOA. We believe that strata owners have the right to decide on the bylaws and rules that regulate their communities.

Further, we do not believe that there are "many dwelling units remaining vacant or underutilized rather than contributing toward the supply of rental housing".

On the other hand, some years ago the province of Alberta banned rental restriction bylaws in condos. And it seems to have worked out for them. After some initial resistance, Alberta condo owners seem to have reconciled with the fact that their neighbours have the right to rent out their homes, just like any house owner.

We'd like to hear from you, the strata owners who could be affected by such an amendment to the SPA. We've heard all the pros and cons – "renters don't value the common property or contribute to the community" and the reverse "there are just as many bad owners as there are bad renters"; as well as the feeling that absentee owners care little about contributing to common expenses, and worry only about their own rental profit. But if you have strong thoughts one way or the other, please let us know (editor@visoa.bc.ca), as well as your MLA and the province's new Minister Responsible for Housing, Selina Robinson.

Defamation: Condos Must Protect the Reputation of Directors

By Rod Escayola

Everyone knows that being on a condo board can be a difficult and thankless job, often attracting criticism from other owners. But what is a corporation to do if owners send defamatory emails? An Ottawa judge has drawn a red line.

Facts of the case

In this case, a condo owner sent vitriolic and defamatory communications to all owners and residents of the corporation, harshly criticising the board of directors. What is interesting about this case is that this owner did so while hiding behind an anonymous "yahoo" email address. To further camouflage his identity, this owner adopted the alias of Ian Fleming – the famous author of the James Bond series. The result of this is that no one knew who was Ian Fleming or what was his relation to the corporation.

In his communications, he accused the board (and specific directors) of receiving "kickbacks" and of "giving free reign" to contractors at the expense of the owners. He also accused them of lacking transparency and of turning a blind eye to alleged incidents of employee harassment. None of these allegations were true and none were supported by any evidence.

When asked to identify himself, Ian Fleming refused to do so and continued to hide behind the anonymous email address.

The board brought a court application seeking an order compelling Yahoo! to turn over information which could allow them to identify Ian Fleming.

The Decision

The Judge recognized that these kinds of orders are intrusive and extraordinary remedies, to be exercised with caution. Indeed, what the corporation was seeking was the disclosure by a third party (Yahoo!) of information which may otherwise be expected to be confidential (Ian Fleming's identity). In its decision, the court was required to balance the interest and obligations of the corporation, of Yahoo! and of Ian Fleming.

Yahoo! took no position in this matter.

The words were defamatory

As a starting point, the judge agreed that Ian Fleming's words were capable of being defamatory. This was therefore not a case of an oversensitive board taking umbrage to reasoned and balanced criticism from owners. This was an owner who sent a mass-email to owners and occupants, raising all sorts of defamatory statements – all along while hiding his identity. A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers. One which causes the person to be regarded with hatred, ridicule, contempt or dislike. The words used by Ian Fleming were capable of having such effect on board members according to the judge.

Expectation of privacy?

Her Honour also balanced Ian Fleming's expectation of privacy (as the originator of the defamatory email) with the interest of justice in disclosing his identity. She agreed with the corporation that the email originator could not have a reasonable expectation of privacy in relation to the use of the internet for the purpose of publishing defamatory statements to a wide group of recipients. She concluded that the interests of justice strongly favoured the corporation.

More importantly, in the context of condominium governance, her Honour concluded that the corporation had a statutory duty to take all reasonable steps to ensure compliance with the Condo Act and with the corporation's governing documents. In this case, the Corporation relied on section 117 of the Condo Act, which prohibits owners from carrying on an activity which is likely to cause injury to an individual.

Her Honour concluded that this court application was exactly that, a step reasonably taken by the corporation to ensure that its board members and employees are not subjected to defamatory statements.

Only time will tell if Ian Fleming will be unmasked, but Agent 007 is zeroing in on him…

Rod Escayola is a partner at Gowling WLG, an international law firm. Rod is based in Ottawa and specializes in Ontario condominium law. He can be reached at rod.escayola@gowlingwlg.com

Alterations – An Overview

By Shawn M. Smith, Cleveland Doan LLP

Not surprisingly, strata corporations do not wish to allow owners the unfettered right to make alterations to their strata lot and the common property. There are many reasons for this; maintaining the structural integrity of the building, protecting the exterior appearance of the building, ensuring there is no negative impact on neighbouring owners, etc. Most strata corporations simply rely on the Standard Bylaws under the *Strata Property Act* ("SPA") as the basis for requiring owners to obtain permission before making any change to the strata lot or the common property. However, those bylaws do not protect strata corporations to the extent they may think.

Alterations to a strata lot and to the common property are governed by Standard Bylaws 5 and 6. Those provide as follows:

Obtain approval before altering a strata lot

5 (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:

(a) the structure of a building;
(b) the exterior of a building;
(c) chimneys, stairs, balconies or other things attached to the exterior of a building;
(d) doors, windows or skylights on the exterior of a building, or that front on the common property;
(e) fences, railings or similar structures that enclose a patio, balcony or yard;
(f) common property located within the boundaries of a strata lot;
(g) those parts of the strata lot which the strata corporation must insure under section 149 of the Act.

(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.
(3) This section does not apply to a strata lot in a bare land strata plan.

Obtain approval before altering common property

6 (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

(2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration

Both bylaws use to the term "alteration". Most people, not surprisingly, presume that applies to any change to the strata lot and common property. However, that is not the case.

The term "alteration" was first given judicial consideration by the Ontario Superior Court of Justice in Wentworth Condominium Corporation 198 v. McMahon 2009 CarswellOnt. 1273. That particular case dealt with the installation of a hot tub in the backyard of a townhome. The hot tub was simply placed on the patio and connected to the building by way of an electrical cable. The issue before the court was whether the placement of the hot tub was an "addition, alteration or improvement" that would require approval of the condominium corporation's board pursuant to s. 98 of the Ontario Condominium Act. In making its decision the court considered what each of those three words meant, stating:

> 22. Therefore, I find that the word "addition" means something that is joined or connected to a structure, and the word "alteration" means something that changes the structure.
>
> 23. I find that the word "improvement" means the betterment of the property or enhancement of the value of the property. I also accept that an "improvement" refers to an improvement or betterment *of the property.* That is, to be an improvement there must be an increase in the value of the property. If the item increases the enjoyment of

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> the property, but does not increase the value of the property, I find that the item is not an improvement.

In the end, the court concluded that placement of the hot tub on the common property did not constitute an addition, alteration or improvement since it did none of the things those words encompass. (A similar decision was reached by the British Columbia Supreme Court in *The Owners, Strata Plan LMS4255 v. Newell* 2012 BCSC 1542). The decision in Wentworth was upheld by the Ontario Court of Appeal, which affirmed the definitions used by the trial judge.

The decision in Wentworth was recently applied in British Columbia in The Owners, Strata Plan NWS254 v. Hall 2016 BCSC 2363. In that particular case, Mr. Hall proceeded to replace four windows and a patio door which the strata corporation had refused to repair. He then proceeded to sue the strata corporation for the cost of doing so. (As an aside, the court held that the windows and doors were in such poor condition that they needed to be replaced as opposed to repaired and awarded Mr. Hall the costs he expended in doing so). In its defence, the strata corporation argued that Mr. Hall should not be entitled to any compensation because he did not obtain the permission of the strata corporation to alter the common property as required by Standard Bylaws 5(1) and 6(1). In rejecting that argument the court applied the decision in Wentworth and concluded:

> [41] Here, the work involved the removal and replacement of four windows and the patio door. The replacement of the windows and door did not change the structure of the respondent's unit, or the common property. I conclude that the replacement of the four windows and the patio door was not an "alteration" within the meaning of ss.5(1) or 6(1) of the Standard Bylaws requiring the prior approval in writing of the Strata Corporation.

What becomes evident from the decision in Hall is that Standard Bylaws 5 and 6 are not as far reaching as most strata corporation's would think. Under the Standard Bylaws an owner can do virtually anything they want to a strata lot without permission of the strata corporation so long as it does not change the structure of the strata lot. Unfortunately, the court did not decide what constitutes "structure" of a strata lot. The Canadian Oxford Dictionary defines it as:

> 4. A whole constructed unit, especially a building (i) the way in which a building etc. is constructed. A set of interconnected parts of any complex thing; a framework.

Common sense would interpret it to mean the framework underlying the strata lot.

Under the Standard Bylaws it is unclear whether an owner would require permission to install a new kitchen, renovate their bathroom or replace flooring. None of those on the face of it would necessarily alter the "structure" of the building.

Given the decision in Hall, strata corporations should be considering revising their bylaws pertaining to alterations to strata lots and the common property. Even referring to such things as "additions" and "improvements" may not be sufficient to capture all aspects of work that may be done to either of these. Broader wording may be required. Each strata corporation will need to consider the degree of control it wishes to have with respect to changes to strata lots and to the common property. It may be that a much broader degree of control is desired over the latter. Bylaws may even need to be amended in order to address specific issues such as changes in flooring or the enclosing of balconies.

It is also important to note, based on the decisions in Wentworth and Newell, that merely placing an item on the common property does not constitute altering it. It may also be necessary for strata corporations to consider a bylaw that specifically restricts what can be placed on the common or limited common property.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a 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.

Save the Date 2017 Fall Workshops

VISOA
Vancouver Island Strata Owners Association

These are hands-on interactive workshops. Registration is limited to 25 for each date, in order that all can fully participate in discussions.
Workshop fees for each date includes USB of reference materials, and lunch.

Workshop fees are:
$75 Corporate members;
$85 Individual members;
$95 Non-members.

Watch VISOA's home page for registration information or email workshops@visoa.bc.ca to be advised when registration opens.

Phone 250-920-0688
Toll Free 1-855-38VISOA
Web: www.visoa.bc.ca

Saturday, October 14 – Victoria
For New Strata Councilors

If you've recently been elected to strata council but are unsure of what your responsibilities are and how to carry them out, this workshop will help you to become an effective contributor. Or, if you've been thinking of joining your strata council and have fears of what will be expected of you, this workshop will help you make the decision.

Topics include:

- What are the responsibilities of strata council members?
- Your guidelines – the Strata Property Act, the Regulations, Bylaws and Rules
- Council organization and effective meetings
- Looking after your property
- Budgets, financial statements
- Depreciation reports and contingency reserve funds
- Keeping records
- Communicating with owners
- Overview of the Civil Resolution Tribunal

Saturday, October 21 – Victoria
Best Practices for Strata Treasurers

Did you move into your condo, townhouse or bare land strata and suddenly find yourself serving on the council? This workshop is open to any council member or owner. This "how-to-do-it" workshop will review all financial aspects of managing your strata, and is designed for both self-managed stratas and for those who employ a strata manager.

Topics include:

- Budget preparation and presentation;
- Banking arrangements;
- Investment of the CRF, and
- Strata insurance requirements.

Saturday, October 28 – Victoria
Strata Maintenance Plans

This popular workshop is designed for self-managed strata councillors.

The workshop will cover these facets of maintenance:

- Who is responsible;
- Identifying and planning ongoing maintenance needs;
- Planning for longer-term renewals and replacements;
- Do-it-yourself or not;
- As well a short review of bylaws governing maintenance responsibilities of the strata corporation and the owners

Saturday, November 4 – Nanaimo
Working With A Strata Manager

This workshop will be useful to both self-managed and professionally-managed strata councils.

Topics include:

- If you are contemplating a strata manager and want to know about options, benefits, costs, and what to expect from a management company.
- If you have made the decision and want tips for choosing a good company, negotiating agency agreements and more.
- If you currently have a manager and want to know how to work more effectively with them (or get out).

Saturday, November 25 – Victoria
Best Practices for Strata Secretaries

This workshop covers a wide range of topics of interest to secretaries or any council member or owner.

Topics include:

- Recording the minutes of council meetings and AGM's - what goes in the minutes; what doesn't. PIPA regulations; Strata Privacy Officer.
- Correspondence – how to respond to requests in between council meetings; timelines for responses; procedures for drafting letters from council.
- Record keeping – which documents to save; for how long; how to ensure privacy.
- Requests for records – what documents owners and others are entitled to; what they are not entitled to; timeline for requests.
- SPA Forms – how to fill in correctly; importance of timelines.
- General Meeting Resolutions – how to word them.
- Bylaw Changes – how to file them with LTSA; how to inform owners.
- Resident's Manual – purpose and benefits. (INCLUDED - our publication Sample Resident's Manual - $12 value)

President's Report

It's hard to believe summer is half over – is it just me, or is time moving quicker these days? Perhaps because we receive so much news electronically and instantly, matters that would have taken weeks to get to us are now in our inbox in a matter of hours.

Stratas in BC (and particularly Vancouver Island) have been in the news lately – and some of these stories went "viral" very quickly. Part of VISOA's mandate, as you know, is education of strata owners. It's a pity we can't educate those who write and read news stories as well. Lack of education inevitably leads to conflict.

First example – June 30th, the day before Canada Day, there was a news story about a strata owner in Qualicum Beach titled "Strata fines senior $50 for hanging Canadian flags on his property." If you drilled into the story, and know anything about strata bylaws, you will know that his infraction had only to do with attaching a flagpole to the fence, by drilling holes into it – it had nothing to do with which flag he chose to fly. But the comments on social media – even their local mayor got into the fray – all said "bad strata, poor guy, I'd never live in a strata, etc."! Did the reporter ask him if he had a flagpole that wouldn't require putting holes in the fence, which the strata corporation is responsible to maintain and repair? No! The previous year, did he try to ask all the other owners (the strata corporation) to change the bylaw? Don't know, but if he did the other owners did not agree.

Second example – again from Qualicum. Although it is known as a retirement community, an effort is being made to attract young families. But where does the blame fall for lack of affordable homes for those families? According to the news, it's the "nasty stratas who have 55+ age restrictions" so "strata councils shouldn't be allowed to do that". The story was angled such that seniors are to blame for the lack of affordable housing for families, and recommending the *Strata Property Act* be changed to forbid age restriction bylaws. The general public was quick to comment about "mean stratas" as usual. Those of our members who appreciate the relative quiet of an age-restricted building may disagree!

Finally (and the subject of a longer article on page 18) the subject of rental restrictions in stratas has come up with Victoria city council. One councilor has put forward a motion, asking the mayor to write to the government recommending that the *Strata Property Act* be revised to forbid rental restriction bylaws. According to the news and the motion, the lack of rental housing is tied to strata councils who won't permit owners to rent out their units, and point to a study that backs up their "statistics". As I'm sure VISOA members know, there are just as many of us who prefer a building with restricted rentals as there are those who want to rent – and a 2016 CHOA study showed that strata units in buildings without rental restrictions had vacancy rates between 19% and 35% and a high turnover in sales; whereas buildings with rental restrictions had vacancy rates below 2.5%. But again, the social media comments were all about the bad strata councils who won't let owners rent out their units.

The news writers almost inevitably blame the strata councils and ignore the fact that it is the owners themselves, as a strata corporation, who have passed those bylaws to have such restrictions and that therefore strata councils are required by the SPA to enforce them.

We know that more than 90% of you are on your computers daily, and if you see one of these inaccurate stories in the news, we hope you will comment with the truth! With such a large percentage of BC being strata-titled, and with single-family homes reaching unaffordable prices, the numbers of stratas will only increase. Let's all do our part to help with keeping the news media (and associated commentators) honest.

Lack of knowledge inevitably leads to conflict. The solution? Education.

Sandy Wagner, VISOA President

~ DISCLAIMER ~

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

Bulletin Subscriptions

VISOA provides four information-packed bulletins each year.

- Corporate membership fees include emailed bulletins to up to 4 council members.
- Individual membership fees include emailed bulletins.
- Postal mailed bulletins are available to members for $15 annually per address. Non-members may subscribe to these bulletins at the following rates:

By email: $15.00 per year and
by postal mail $25.00 per year