VISOA
Vancouver Island Strata Owners Association

- 306 - 620 View Street, Victoria, B.C. V8W 1J6
- General Office Email: information@visoa.bc.ca
- Office Telephone: (250) 920-0688 or 1-855-38VISOA (1-855-388-4762)
- Strata Support Team: 250-920-0222 or 1-877-33VISOA (1-877-338-4762)
- Web site: www.visoa.bc.ca

VISOA Bulletin - AUGUST 2018

Editor's Angle

David Grubb, Editor

This has been a troubled time for both your editors! Both have been in hospital for different reasons, but recuperation sure cuts into the important times such as …going out to parties and…., er, collecting information, pleading with people for articles, actually writing something intelligible and getting the *Bulletin* edited and printed.

This edition contains all sorts of interesting stuff. The brightest article comes from the government! (See page 12.) Come November 30th, stratas will be able to regulate and even prevent commercial short term and overnight type use of their strata lots with a potential fine of $1,000 *per night*. Such a large sum won't please those who had anticipated great profits, but many others, including many politicians, like the idea that there should be more condos for "proper" rentals in a very tight market.

"Urban Legends", written in 2008, take us down memory lane only to realize that one has to spell such ideas out yet again as more and more people take to strata living. Oh, Dear!... But these points are always worth repeating for all of us!

Paul Mendes introduces us to the legalization of marijuana in Canada and its implications, and the Strata Support Team is starting to get questions about how to ban or restrict the smoking and cultivation of pot, as well as what to do about edible and other by-products of the plant. Over the next little while we will undoubtedly be gathering more answers to some of those questions and we will be bringing you more information as this issue evolves.

Over the past few months, as a dedicated crew of volunteers work to upgrade the appearance and contents of our web site, Claire Tugwell, Harvey Williams and I have been slowly examining and up-grading the "Frequently Asked Questions" page. At the same time, new questions come in for us to consider. Since the "FAQs - Access to Information" form is annonymized, we cannot respond to individuals, but we ask all of you to please ensure that the question is one that is likely to be asked by a number of people in a general sense: that is, a generic question on a strata topic that might be *frequently* asked. If the question is not somewhat generic, we will not include it in the FAQ page.

On the other hand, as a member, if you have a question that is specific to your strata or your situation, please use the Strata Support Team form on the website which will identify you and your strata and take your question to the Strata Support Team for an answer. We are sure that you will be more satisfied!

We often get questions which we can turn into useful topics of discussion for the *Bulletin*, but if any readers have gripes or solutions about any strata topic, please send your article to the editor@visoa.bc.ca for consideration!

In this issue...

FALL 2018 EDUCATION

Mark your calendars

Nanaimo – Bowen Centre Auditorium:

• Sunday September 16

Seminar – Strata Insurance, Everything You Need to Know. Guest speakers Vickie Kirk of BFL Canada Insurance Services Ltd; and Billy-Joe Checko of Waypoint Insurance.

Victoria – Comfort Inn:

• Friday September 28

Workshop – Rapid Damage Assessment Training. Presenters are from the Security and Emergency Services Dept. of BC Housing. (Higher pricing in effect for this workshop only.)

• Saturday October 13

Workshop – Best Practices for Strata Treasurers. This workshop will help treasurers or any strata owner understand the financial requirements of the Strata Property Act, as well as provide you with tools to make your task easier.

• Saturday October 27

Workshop – For New Strata Council Members. Just elected to council, or thinking of letting your name stand at your next AGM? This workshop will tell you all about your obligations and responsibilities, as well as tips for helping to keep your strata running smoothly.

• Sunday November 18

Seminar - Strata Insurance, Everything You Need to Know. Guest Speakers Shawn Fehr of Seafirst Insurance Brokers Ltd; Vickie Kirk of BFL Canada Insurance Services Ltd; and Billy-Joe Checko of Waypoint Insurance.

• Saturday November 24

Workshop – Best Practices for Strata Secretaries. The Act is not prescriptive on many of the strata secretary duties, but this workshop will share best practices for record keeping, correspondence, minutes and more.

• Pricing:

Seminars FREE for VISOA Members who pre-register, or $20 for non-members who pre-register. Additional $10 if not pre-registered.

Workshops: $75 VISOA Corporate Members; $85 VISOA Individual or Associate Members; $95 Non-Members. All are full-day interactive workshops with plenty of time for questions. Lunch and handout material included.

In creating a law, you cannot write it so that the average person can understand it: You must write it so that the average person cannot fail to understand it.

— F.E. Grubb, 1949

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.

COURT COSTS IN CANADA

For years we have seen bylaws tout "on a solicitor and own client basis", but never knew what that meant precisely. Checking around on the internet, we found the following:

In Canada and the UK, the victor in a lawsuit is entitled to their costs from the other side. There are three ways to award costs:

1. Party-and-Party Costs: this is the normal award. The Rules of Court in each Canadian province contains a schedule that awards so much money for each step that has to be taken in the lawsuit: so much for pleadings, so much for each half-day of trial etc. It is standardized, and often results in payment of only about 30-50% of the actual legal costs incurred by the victor. The idea being that while the victor is entitled to costs, the loser should not have had to pay for the most expensive lawyer out there--you get the same regardless of whether the lawyer billed you at $150 per hour or $400 per hour. You still have to pay your lawyer's full account, but part of that is covered by the other side.

2. Solicitor-Client costs: the loser has to pay the full account issued by the other lawyer minus "frivolous extras" ie, the account is scrutinized for flagrant bill padding, as may occur when an award of solicitor client costs is awarded. The courts will award this in exceptional circumstances, such as where the loser's case was so weak, it amounted to an abuse of the process that the loser made the victor take the case through the court process. Or where the loser's conduct has

been egregious. Also, if a contract applies for solicitor-client costs, the judge may award them there, but be forewarned--not always. The judge may ignore the contract on this point and say, there was a legitimate issue to be tried even if "I the judge" ruled against the loser, and I the judge will not award costs on this basis, but will award party-and-party costs.

3. Costs on Solicitor-and-own-client basis: The loser is required to pay the FULL legal bill issued to the other party, without removal of any charges the court deems "frivolous extras." Very rare. Only if the judge absolutely despises the loser will such an award be given. Often, contracts will provide that if A has to sue B to enforce rights under contract, costs will be on a solicitor-and-own client basis. Do not truly expect the court to award this just because it is in the contract.

An added piece of information that may be helpful to you is that most Canadian provinces also have Formal Offers rules. What happens is a party can make a formal offer to settle to the other in the proper form and must leave it open for so long in order for it to qualify as a formal offer--in my province, 45 days.

At trial, the judge does not know what the offers were until after the judge rules. At that point, the judge says "lets speak to costs" and the formal offers are opened up. If the victor made a formal offer of $x, and trial was awarded the same as or more than x, the victor is entitled to double costs past the point of the formal offer (on a party-and-party scale). If the loser made a formal offer and at trial was ordered to pay the same as, or less than, that formal offer, the loser gets their costs past the point of the formal offer (reverse costs).

So consider: there's a lawsuit. Pleadings, document production, oral discoveries are done, party-party costs at that point are $3,000 say. The victor makes a formal offer to settle for $x. Another $15,000 in party-party costs are incurred through to the end of trial, and at trial the judge gives $x + y. Solicitor-client costs are $28,000 (the actual bill issued). The double costs penalty would give $3,000 + 2 x $15000=$33,000. It would be even better than solicitor-client costs (you could argue for double solicitor-client costs but would be unlikely to get it).

Or, imagine that $10,000 in party-

Continued on page 4

party costs are incurred then the loser makes an offer of $ x. Another $10,000 incurred through to the end of trial, at which point the loser is ordered to pay $x-y. IE less than their offer. Now, party-party costs, being based on the steps taken, are the same for both sides. So, the victor gets their party-party costs up to the point of the offer ($10,000) the loser gets theirs thereafter ($10,000) so on a party-party scale the costs to each side would be $0= $10,000-$10,000. Now, the victor says "under the contract that the loser signed with independent legal advice, we get solicitor-client costs which come to $30,000". The judge could then say OK, well $30,000 minus the $10,000 reverse cost penalty I will give you $20,000. OR the judge--having thought the case was only worth $x-y, is just a likely to say "?!?!?! What?!?!?! They offered you $x and you didn't take it!!!!! What a waste of all our time!!! that was more than you deserved, are you mad??? I will not grant you solicitor-client costs. $10,000 party-party costs to the point of that incredibly generous offer minus $10,000 party-party costs to them, means I am giving you $0 for legal costs."

That is how it actually works.

Maybe this will help in deciding what a bylaw which might involve lawyers should look like.

From ***WordReference.com***

So now you know, or are you still confused?

The CRT Prefers Precise Procedures

In reviewing decisions made by the adjudicators of the Civil Resolution Tribunal (CRT), it is evident that they, like the judges in Supreme Court, will make some allowance for the fact that most strata councils are not professional legal experts when it comes to understanding and applying many sections of the Strata Property Act (SPA).

Nevertheless, it still behooves all councils to be precise in applying the requirements of the SPA when they are taking action on a bylaw infraction especially as it pertains to Section 135(1)(e):

Complaint, right to answer and notice of decision

135 (1) The strata corporation must not

(a) impose a fine against a person,

(b) require a person to pay the costs of remedying a contravention, or

(c) deny a person the use of a recreational facility

for a contravention of a bylaw or rule unless the strata corporation has

(d) received a complaint about the contravention,

(e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

(f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw

or rule without further compliance with this section.

One of the first issues the CRT addresses in such cases is, "Did the strata council give that person reasonable time to respond, including arranging for a hearing if requested?" Although, since circumstances vary from case to case, there must indeed be such a consideration by the adjudicator, we will not get into a discussion here about "reasonable time" (and lawyers love to debate the question).

Even so, allowing response time became part of the issue in *The Owners, Strata Plan VR 2266 v. 228 Chateau Boulevard Ltd,* 2018 BCCRT 198, but, more important, was the sequencing of dates in actually imposing the fine.

Although not usual, the CRT in this case permitted lawyers to represent both parties because the "strata" is a mixed residential/commercial complex in Whistler, BC, and Benjamin Killerby, the owner under investigation, is the principal of 228 Chateau Boulevard Ltd and resides in Australia,.

The application submitted to the CRT by the strata concerns a leak from a ruptured water tank (water leak) in the owners strata lot on May 15, 2016. Damage occurred in 3 locations: in the owner's strata lot, on the common property in the hall, and in a strata lot below in the commercial section. The strata made, and initially paid for, repairs to the water tank and all three areas in the interests of getting the situation back to normal quickly.

The strata had bylaws in place that clearly made the owners responsible, if the cause of the damage emanated from their strata lot. If the cost of repairs was more than the strata insurance deductible, the owner was responsible for paying only the deductible. However, if the repairs cost less than the deductible, the owner was responsible to pay for the entire amount.

Because the strata's deductible for water damage was $50,000 but the total cost of the repairs was only $31,397.26, the strata charged back the entire amount to the owner.

The strata sent the owner the invoices between mid-June and mid-July, 2016, and charged the entire amount to the owner. Between then and mid-September, the owner contended that he did not owe the bulk of those charges since they had been imposed unilaterally by the strata before any chance for the owner to rebut the charges by letter or through a hearing. He asked that all charges to his account be reversed. The council chose not to.

Correspondence between the owner, the strata, and their lawyers by mail, email and telephone from January 30, 2017 to May 11, 2017 did not result in anything concrete since the owner's lawyer once again pointed out that the strata had not followed the correct

Continued on page 6

charge-back procedure in accordance with the bylaws,

The council held another meeting and pronounced that the owner owed the entire $31,397.26 effective June 14, 2016 to July 21, 2016 (the dates of the discovery and repair). The owner did not pay, but after the strata had applied to the CRT, the owner received $6,719.66 in September from his own insurer as payment for the owner's own strata lot repairs. He passed it straight on to the strata as payment for his unit's repairs.

The strata acknowledged this in a letter in November, and deducted the amount from the $31,397.26, so the total they claimed was now $24,677.60.

THE TORTUOUS RESOLUTION!

It was evident that the owner had violated the strata's bylaws by refusing to pay all of the deductible as pointed out by the CRT who stated that those bylaws made him responsible for his own unit, the common property damage and the damage to the unit below.

However, the adjudicator also called upon recent legal history to show some cases where the strata had fined the individual before they obtained a written rebuttal or had (and held) a hearing to do so from the owner in each case. If these stratas had simply carried on, without honouring SPA s.135, then the responsible owners could not be fined.

However, in those cases, the stratas, realizing the situation, repealed the fines and then asked the owners to respond. Once the responses had been dealt with in accordance with SPA s.135, the councils held further meetings, found the owners at fault and then applied the punishments as of the date on or after the council meeting when the decision was made.

In this way, those stratas had "cured the violations" by withdrawing all potential punishments until after the measures in SPA s.135 had been satisfied.

In this particular case, however (VR 2266), despite the fact that the owner was responsible for the entire repair, such a "cure" was not in evidence because the strata had not changed the original dates (June 14, 2016 to July 21, 2016).

As the adjudicator wrote in part:

67. All the charges in this dispute were registered on the owner's account in June and July 2016, before the owner responded in August 2016. The strata told the owner of the bylaw contravention, cited the bylaw, and provided invoices for the repair work done. The strata did not, however, give the owner a chance to respond before charging the owner's account.

71. I find that the strata violated SPA section 135 by charging the owner's account before the owner had an opportunity to respond. I also find that the strata took steps to cure the violation of SPA section 135 by giving the owner a hearing then providing its decision in writing. I further find that the strata did not fully cure the violation of SPA s. 135, which would involve reversing the charges relating to the water leak that were registered in June and July 2016, and then re-registering them on or after the date of the council's written decision, May 26, 2017.

*83. I dismiss the strata's application. Although I find that the owner violated the bylaws and would have been liable for the repair costs, I also find that the strata registered its charges on the owner's account in a way that violates SPA section 135, a violation that has not been fully cured. **

Thus, a case which should have been easily dealt with such that the owner would have paid the entire amount for the repairs, turned into an expensive charge against the strata corporation simply because they failed to adhere more precisely to SPA s.135.

**That said, the adjudicator also allowed: 72. Nothing in this decision prevents the strata from reversing the charges registered in June and July 2016 relating to the water leak and re-registering them on or after May 26, 2017.*

Video Surveillance by Owners Within Strata Corporations

By Shawn M. Smith, Cleveland Doan LLP

Many strata corporations choose to install or operate video surveillance systems in order to enhance security (or at least the perception of it) around the building/complex. Individual owners often want to do the same with respect to their own strata lot and the area around it. But can they?

The Privacy Guidelines for Strata Corporations and Strata Agents published by the Office of the Information and Privacy Commissioner restrict strata corporations from operating such systems unless:

- They can establish the need for the system (i.e. other methods of enhancing security have been tried and found not to be effective);
- The operation of the system has been authorized by way of a bylaw passed by the owners; and
- The strata corporation has enacted a privacy policy to govern how the information captured by the system is stored, viewed and used.

Individual owners, acting in their personal capacity as an owner, are not governed by the *Personal Information Protection Act* (PIPA). As such, they are not subject to the requirements of PIPA, including the condition to justify the need for the system.

Many strata corporations assume that the operation of video surveillance systems which capture activity on the common property are prohibited by Standard Bylaw 3(1)(c) which provides:

"An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that… unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot."

However, when the case law related to a breach of privacy under the *Privacy Act* (which is different legislation from PIPA) is reviewed it becomes clear that might not be the case.

Section 1 of the *Privacy Act* provides as follows:

Violation of privacy actionable

1 (1) It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

The law establishes different expectations of privacy depending on one's location (i.e. inside their home or outside of it). In *Milner v. Manufacturers Life Insurance Co.* 2005 BCSC 1661 the court succinctly summarized the law regarding expectations of privacy. The basic principles are:

(a) The location of the subject of the surveillance is the key to determining whether a person's expectation of privacy is reasonable;

(b) A person's entitlement to privacy is highest where the expectation of privacy would be greatest (i.e. in their home);

(c) There is no reasonable expectation of privacy for actions taking place in public.

It then went on to say the following regarding expectations of privacy on private property:

"[78] Even if actions take place on private property, the circumstances may suggest that there is not a reasonable expectation of privacy. The authors

Continued on page 8

of *Privacy Law in Canada* observe that it is generally permitted to videotape a plaintiff in a public place or a place visible to the public such as a parking lot or the front yard of one's house (Colin H.H. McNairn & Alexander K. Scott, *Privacy Law in Canada,* (Markham and Vancouver: Butterworths, 2001) at 78). This is what happened in **Silber v. British Columbia Television Broadcasting System Ltd.** (1985) 1985 CanLII 316 (BC SC), 69 B.C.L.R. 34, 25 D.L.R. (4th) 345 (S.C.). In that case, a news crew taped an altercation between the plaintiff and the reporter on the private parking lot of the plaintiff. Although the plaintiff was on private property, it was in full view of any passersby and therefore there was no reasonable expectation of privacy".

In *Wasserman v. Hall* 2009 BCSC 1318 the court had to deal with a number of issues that had arisen out of a dispute between two neighbours, including one filming the activities of the other. The court concluded that:

"…the Halls had no reasonable expectation of privacy when working on or in the immediate area of the fence line but did, at all times, have a reasonable expectation of privacy" when inside their own home. Unlike, the investigator in the Milner case, the dispute with Mr. Wasserman did not entitle him to any information that might be obtained as a result of surveillance of activities inside the Hall residence. Accordingly, the Halls' expectation of privacy inside their home was very high throughout the entirety of the dispute."

With respect to being under the constant view of a camera, the court determined that "… any owner of rural property would find it intolerable to have a tree-mounted video camera constantly aimed in the direction of his or her residence." It did not comment on the expectations of an urban dweller, but presumably they are much less.

In *Aschenbrenner v. Yahemech* 2010 BCSC 905 the court held that one's expectation of privacy in their back yard was low, such that having photographs taken by a neighbor was not a breach of their privacy.

Even if a person's actions would amount to a breach of privacy, s.2(2)(b) of the *Privacy Act* provides for a defence where "the act or conduct was incidental to the exercise of a lawful right of defence of person or property"; being the reason most owners would say they want a system. However, there are limits to that defence. It must be necessary to have a particular area under surveillance in order to protect one's property. In *Wasserman* the court held that it was not necessary to keep a neighbour's home under surveillance in order to protect your own.

Applying these principles to a strata corporation it is clear that:

(a) a video surveillance system which captures the activities of the residents of another strata lot would be an invasion of privacy.

(b) a video surveillance system which captures only activity on the common property or limited common property (even if that area were a deck or yard), where one's expectation of privacy is at its lowest, would not be an invasion of privacy.

(c) the mere fact that a person's activities are captured by surveillance is not automatically an unreasonable interference with their enjoyment of the common property.

The *Civil Resolution Tribunal* has also had the opportunity to consider the issue of video surveillance. In *Parnell v. The Owners, Strata Plan VR 2451, 2018 BCCRT 7* it held that the installation of cameras on the outside of a strata lot constituted an alteration because they were mounted to the wall. It also held that the strata corporation was justified in refusing permission because of its view that it needed to comply with PIPA given the placement of the cameras on common property. The CRT determined that the owner had no inherent right to install the cameras unless and until the by-

Continued on page 9

laws provided that right (i.e. they did not require council approval for the alteration aspect).

In *Parnell* the CRT expressed its view that PIPA provides a means for the strata corporation to deny an owner the ability to operate a video surveillance system. It was of the view that the fact that the "owner is not bound by PIPA is irrelevant, because the camera system is in a common property hallway managed by the strata, which is subject to PIPA."

With respect, the writer disagrees. Even though the camera was located on common property, the strata corporation is not collecting the personal information of those captured by the camera; the owner is. So long as the strata corporation does not have access to what the system records, it would not be doing any of the things (collection, use and disclosure of personal information) which would invoke PIPA's application. At any rate, if the cameras were located inside the strata lot, the reasoning expressed in Parnell would not apply and they could not be prevented based on PIPA compliance.

Given the variety of options for the placement of cameras, what they might capture, the methods of their attachment and whether PIPA applies, strata corporations should consider specifically regulating video surveillance system operated by owners. Such systems should either be prohibited outright or, if permitted, a comprehensive set of regulations for their installation and use set out in the bylaws. The Standard Bylaws might not be sufficient to prohibit such systems in every circumstance.

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 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. He can be followed on Twitter@stratashawn.

BUSINESS MEMBERS

BUILDING SUPPLIES

COMMERCIAL LIGHTING PRODUCTS
Lighting Wholesale
250-385-8816 • Fax 250-385-8817
mitch.anderson@comlight.com
www.comlight.com

INDUSTRIAL PLASTICS AND PAINT
Building/Maintenance Products
250-727-3545 ext. 105
ron.sherring@goindustrial.ca
www.goindustrial.ca

RETRO TECK WINDOWS
Window and Door Manufacturing
250-381-0599
wilfred.retro@telus.net
www.retrowindow@telus.net

DEPRECIATION REPORTS

BELL APPRAISALS
Replacement Cost New Insurance Reports & Depreciation Reports
bell.appraisals.consulting@gmail.com
250-514-3486 • www.bell-appraisals.ca

D R COELL & ASSOCIATES INC
Depreciation Reports & Insurance Appraisals
250-388-6242
shumphreys@drcoell.com
www.drcoell.com

MORRISON HERSHFIELD LTD
Consulting Engineers
250-361-1215
victoria@morrisonhershfield.com
nanaimo@morrisonhershfield.com
www.morrisonhershfield.com

NORMAC
Insurance Appraisals, Depreciation Reports & Building Science
1-888-887-0002 • Fax 604-224-1445
info@normac.ca • www.normac.ca

PACIFIC RIM APPRAISALS LTD
Depreciation Reports & Insurance Appraisals
250-477-7090 • 250-754-3710
info@pacificrimappraisals.com
www.pacificrimappraisals.com

READ JONES CHRISTOFFERSEN LTD
Consulting Engineers - Reserve Fund Studies
250-386-7794 • Fax 250-381-7900
tbergen@rjc.ca • www.rjc.ca

RDH BUILDING SCIENCE INC
Building Envelope Engineering Consultants
Victoria 250-479-1110
pfitch@rdh.com
Courtenay 250-703-4753
hgoodman@rdh.com • www.rdh.com

UNITY SERVICES CORPORATION
Consulting Services for Depreciation Reports and Maintenance Planning
250-893-3445 • john@unityservices.ca
www.unityservices.ca

Wm S. JACKSON AND ASSOCIATES LTD
Insurance Appraisals, Depreciation Reports
250-338-7323 • 1-877-888-4316
dan-wsj@shaw.ca
www.comoxvalleyappraisers.com

FINANCIAL

COAST CAPITAL SAVINGS CREDIT UNION
Strata Account Pricing Program
250-483-8710 • Fax 250-483-8716
Nicole.gervais@coastcapitalsavings.com
www.coastcapitalsavings.com

CWB MAXIUM FINANCIAL
Financial Services for Stratas
604-562-5403
kelly.mcfadyen@cwbmaxium.com
www.cwbmaxium.com

ISLAND SAVINGS A DIVISION OF FIRST WEST CREDIT UNION
Special Accounts for Strata Corporations & Owners
250-414-4193 • Fax 250-360-1461
skasnik@islandsavings.ca • www.islandsavings.ca

INSURANCE & RELATED SERVICES

BFL CANADA INSURANCE SERVICES INC.
International Insurance Brokers and Consultants
1-866-669-9602 • Fax 604-683-9316
www.BFLCanada.ca

PALMER APPRAISALS LTD
Insurance and Residential Appraisals
250-388-9102 • Fax 250-384-0150
admin@palmerappraisals.com
palmerappraisals.com

SEAFIRST INSURANCE BROKERS
Shawn Fehr & Doug Guedes
250-478-9110 or 778-678-5821
sfehr@seafirstinsurance.com
www.seafirstinsurance.com

WAYPOINT INSURANCE
Previously Vancouver Island Insurance Centre
Commercial Insurance Specialist
250-751-2966 • Fax 250-751-2965
bchecko@waypointinsurance.ca
www.waypointinsurance.ca

MAINTENANCE & PROJECT CONTRACTORS

CBS MASONRY
Masonry, Concrete, Stone, Brick, Pavers, Flagstones
250-589-9942 • charlie@cbsmasonry.com
www.cbsmasonry.com

CENTRA WINDOWS LTD.
Windows, Doors, Siding, Renovations, Multi-Family
250-412-2525 • Fax 250-412-9605
wlscott@centra.ca • www.centrawindows.com

COBRA POWER CLEANING AN ABNEY VENTURES LTD COMPANY
Pressure Washing 250-585-0828
cobrajosh@gmail.com
brooke@cobrapc.ca

COSTA VERDE CONTRACTING INC
Landscaping and Maintenance
250-514-7391 • info@costa-verde.ca
www.costa-verde.ca

CREATIVE BRUSHWORKS
Painting Contractor 250-896-4266
creativebrushworks@shaw.ca

DRAINSCOPE NEW
Inspections, Cleaning, Repairs & Replacements
Office 250-590-1535 • Fax 250-590-9183
#100-4475 Viewmont Avenue, Victoria
www.drainscope.net

ENERHEAT RENOVATIONS
Replacement Windows and Renovations
250-382-1224 • Fax 250-592-1377
enerheat@gmail.com • www.enerheatrenos.com

HOMEWISE PLUMBING & DRAINAGE LTD
Plumbing & Drainage
250-883-7270 • office@homewise.ca
www.homewiseplumbing.ca

ISLAND BASEMENT SYSTEMS INC.
Air Leakage, Moisture Control Services & Consulting
250-385-2768 • 1-877-379-2768
chris@ibsg.ca • www.ibsg.ca

BUSINESS MEMBERS

MODERN PURAIR
Furnace / Duct Cleaning & Dryer Vent Cleaning
250-208-2550
kyle.rooney@modernpurair.com
victoria.modernpurair.com

OLIVER'S POWER VACUUM & CHIMNEY SWEEP
Heating Systems Cleaning, Chimney Service
Toll Free 1-866-734-6056
oliverspowervac@shaw.ca
www.oliverspowervac.ca

PRO DECK LTD
Exterior Renovations
250-883-2261 • Fax 250-592-1622
info@prodeck.org www.prodeck.org

STERLING FIRE & ASSOCIATES INC.
Fire Alarm Upgrades - All Aspects
250-661-9931
sterlingfire@ymail.com
www.sterlingfire.vicbc.com

TOP COAT PAINTING
Commercial & Residential Painting
250-385-0478
info@topcoatpainting.ca
www.topcoatpainting.ca

TSS CLEANING SERVICES
Dryer Duct Cleaning Services for Vancouver Island Stratas • 1-866-447-0099
info@cleandryerducts.com
www.cleandryerducts.com

VICTORIA DRAIN SERVICES LTD.
Drainage & Plumbing
250-818-1609 • Fax: 250-388-6484
info@victoriadrains.com • www.victoriadrains.com

WE PAINT
Paint Contractor • 250-888-5385
wepaintinc@yahoo.ca • www.wepaintinc.com

PROPERTY MANAGEMENT

BAYVIEW STRATA SERVICES
Strata & Property Management
250-586-1100 • Fax 250-586-1102
terry@thekerrgroup.ca • www.thekerrgroup.ca

GATEWAY PROPERTY MANAGEMENT CORP.
Property Management
250-412-0713 • Fax 250-412-0729
nenns@gatewaypm.com • www.gatewaypm.com

GRACE POINT STRATA MANAGEMENT INC.
Strata Management Services • 250-802-5124
tom@GPstrata.com • www.GPstrata.com

OAKWOOD PROPERTY MANAGEMENT LTD.
Manager for Stratas, Co-ops & Rentals
250-704-4391 • Fax 250-704-4440
carol@oakwoodproperties.ca
www.oakwoodproperties.ca

RICHMOND PROPERTY GROUP LTD.
Strata Management
250-388-9920 • 250-388-9945
jmckay@richmondproperty.ca
www.richmondproperty.ca

STRATA COUNCIL RESOURCES

CONDO CLEAR SERVICES INC. NEW
1403-647 Michigan St. Victoria
250-853-7446
ryan@condoclear.ca
www.condoclear.ca

GETMYKIT.CA
Emergency Preparedness
250-821-1222 • admin@getmykit.ca
getmykit.ca

HYTEC WATER MANAGEMENT LTD.
Water Management and Water Treatment
604-628-2421 • Fax 866-690-5854
info@hytecwater.com • www.hytecwater.com

NEW PROSPECTS DISPUTE RESOLUTION
Mediation & Conflict Resolution
250-884-3747 maria@
newprospectsdisputeresolution.com
www.newprospectsdisputeresolution.com

PROSHOP MUSIC CENTRE SOUND & LIGHTING
Sound Systems for General Meeting's
250-361-1711
jpproshopmusic@yahoo.ca
www.proshopmusic.com

STRATACOMMONS
Strata Software Development
Courtney, BC • 250-871-4537
jlhooton@stratacommons.ca

STRATAPRESS
Online Communication Tools & Document Archiving for Strata Corporations
250-588-2469
info@stratapress.com • www.stratapress.com

WINMAR VICTORIA
Property Restoration Specialists
250-386-6000 • Fax 250-386-6002
victoria@winmar.ca • www. winmar.ca

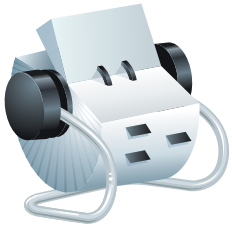
LEGAL SERVICES

ACCESS LAW GROUP
Law Group
604-689-8000 • Fax 604-689-8835
stodesco@accesslaw.ca
www.accesslaw.ca

SHAWN M. SMITH, STRATA LAWYER
Partner at Cleveland Doan LLP
604-536-5002 • Fax 604-536-7002
shawn@clevelanddoan.com
www.clevelanddoan.com

REAL ESTATE

BC APPRAISAL INSTITUTE OF CANADA
Leading Real Property Valuation Association
604-284-5515 • Fax 604-284-5514
info@appraisal.bc.ca
www.appraisal.bc.ca/britishcolumbia



For more information regarding Business Memberships please contact us at 1-877-338-4762 or businessmembers@visoa.bc.ca

(Please note that VISOA does not guarantee or warranty the goods, services, or products of our business members).

Strata Change to Help Availability of Long-Term Rentals

For those who have not seen or heard about this, on November 30, 2018, stratas may adopt a bylaw which will prohibit or limit the use of a strata lot for short term or temporary usage (sometimes loosely called "air b&b"). If the bylaw exists, then the strata will be entitled to fine a strata lot owner up to $1,000 (yes, One Thousand dollars) per day for as long as the strata lot is so used. The following is the Order in Council of 18 July, 2018.

Section 7.1 of the Strata Property Regulation, B.C. Reg. 43/2000, is repealed and the following substituted:

Maximum fines

7.1 (1) For the purposes of section 132 of the Act, the maximum amount that a strata corporation may set out in its bylaws as a fine for the contravention of a bylaw or rule is,

(a) if not otherwise specified in this subsection,

(i) $200 for each contravention of bylaw, and

(ii) $50 for each contravention of a rule,

(b) in the case of a bylaw that rohibits or limits rental of a residential strata lot, $500 for each contravention of the bylaw, and

(c) in the case of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel or temporary accommodation, $1,000 for each contravention of the bylaw.

(2) For the purposes of section 132 of the Act, the maximum frequency that a strata corporation may set out in its bylaws for the imposition of a fine for a continuing contravention of a bylaw or rule is

(a) every 7 days, and

(b) in the case of a bylaw described in subsection (1) (c), daily.

The following is the release sent out by the Ministry of Municipal Affairs and Housing:

BC Government News

Municipal Affairs and Housing

Wednesday, July 18, 2018 12:45 PM

A change to the Strata Property Regulation will support strata corporations in enforcing short-term rental bylaws, helping strata corporations address issues that can arise from short-term rentals, while keeping long-term rentals in the market.

"We've all heard the stories of renters losing their homes when units are pulled out of the rental market to be used as short-term rentals. With this change, we can ensure there is long-term rental stock for people and families who need them," said Selina Robinson, Minister of Municipal Affairs and Housing. "As part of our 30-point plan to improve housing affordability in B.C., we are supporting strata corporations to both deal with the noise and security issues that can sometimes come with short-term rentals, and also preserve rentals for the long term."

Currently, strata corporations can pass bylaws that restrict or ban short-term rentals, and fine owners or residents who are not complying. Maximum fines of $200 per week will be raised to up to $1,000 a day, to discourage unwanted short-term rental activity.

Short-term rentals have put significant pressure on vacancy rates, rents and home prices for people around British Columbia. Short-term rentals can also sometimes mean unacceptable levels of noise, damage to common property, and security issues in strata communities.

"The new regulations will help define short-term commercial use as a different function than rentals, and provides some very real consequences for the violators," said Tony Gioventu, executive director, Condominium Home Owners Association of B.C. "For those strata corporations who prohibit short-term use, this is a valuable amendment. It will require strata corporations to amend their bylaws at a general meeting to permit the higher penalties, which in turn will provide the strata with a great opportunity to make sure the strata's bylaw complies with provincial legislation."

The regulation was developed in consultation with representatives from the two major strata stakeholder associations, the Condominium Home Owners Association of B.C. and the Vancouver Island Strata Owners Association (VISOA).

"Short-term rentals are a huge concern to strata corporations," said Sandy Wagner, president of the board of directors, VISOA. "The wear and tear on the common property, as well as the security concerns caused by a steady stream of unknown occupants are just a few of the reasons why VISOA, on behalf of our members, are pleased to support the proposed amendments to the Strata Property Regulation, which will permit strata corporations to assess fines at a real deterrent level."

The change will take effect on Nov. 30, 2018, in order to allow short-term rental hosts time to adjust bookings and comply with a strata's short-term rental bylaws.

Quick Facts:

- Strata living is a popular choice in B.C., as more than 1.5 million people live in stratas throughout the province.
- Strata housing includes not only apartment-style condominiums, but can also include duplexes, townhouses, fractional vacation properties, or single-family homes in bare-land strata corporations ("strata subdivisions").

In My Opinion...Developer's Rental Disclosure, Rentals and the Cost of Housing

By David Grubb

The Act governs the rental of strata lots built after 31 December, 2009.

Rental restriction bylaw does not apply to some strata lots

143

(2) Subject to subsection (1), if a strata lot has been designated as a rental strata lot on a Rental Disclosure Statement in the prescribed form, and if all the requirements of section 139 have been met, a bylaw that prohibits or limits rentals does not apply to that strata lot until,

(a) [....]

(b) in the case of a Rental Disclosure Statement ***filed after December 31, 2009, the date the rental period expires****, as disclosed in the Rental Disclosure Statement.*

Form J

One portion of the owner developer's Rental Disclosure Statement (Form J) permits the owner developer to designate the strata lots and the dates until which those strata lots may be rented out. There is no restriction on the end date as long as it is a specific date. So section 3 of that document might look like this actual sample from March, 2010:

3. In addition to the number of residential strata lots rented out by the owner developer as of the date of this statement, the owner developer reserves the right to rent out a further thirty-three (33) residential strata lots, as described below, until the date set out opposite each strata lots description.

Description of Strata Lot *[strata lot number as shown on the Strata Plan]*	Date Rental Period Expires *[specify a date - ' indefinitely' or timing related to an event is not acceptable]**
Strata lots 1 through 33	15/04/2109

* Section 143 (2) of the Strata Property Act provides that, if this Rental Disclosure Statement is filed after December 31, 2009, a bylaw that prohibits or limits rentals will not apply to a strata lot described in this table until the date set out in the table opposite the description of the strata lot, whether or not the strata lot is conveyed before that date.

Yes, the above expiry date is not a mistake – it is *2109* – NOT *2019*. Every unit remains rentable for 100 years. Even if the owners, as a Strata Corporation, decide at some point to restrict the number of rentals, they can't.

The Form J, as with all forms, has a basis in the SPA itself, and in this case it is SPA s.139 and s.143.

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 a residential strata lot which is currently rented;

(c) the owner developer.

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

Changing the Date

Section 139(2)(b) is the only way in the SPA for the owners to change the situation. But please note that the owner developer, and only the owner developer, **may** (not must) change the number of units or the dates.

So what happens if the strata passes a 3/4 vote to amend the Form J to permit rental restrictions (s.139(2)(b)), but the owner developer refuses (a) because he doesn't care, (b) he has signed a covenant with a higher civic authority, (c) dies?

Moreover, what does the strata corporation do if the owner developer has disappeared into the wild blue yonder (either personally or by the dissolution of the company) and is therefore not available at all?

The only solution that might be possible, at present, is to make a case to the Supreme Court under SPA s.171(1)(a) to have SPA s.139 revised (the CRT would probably not be able to deal with this).

Strata corporation may sue as representative of all owners

171 *(1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:*

(a) the interpretation or application of this Act, the regulations, the bylaws or the rules;

Continued on page 14

Continued from page 13

Who Can Afford It?

How does this all affect the supply of "affordable housing"? I have no research to back me, but logic suggests forcing stratas to have rental units built after 2009 is not going to help.

The stratas which have been built on or after 2010 are very likely worth much more than those people in economic categories such as "supportive/low cost" or "affordable" housing (including those with a "middle class" income, as people in Vancouver and Victoria know) can afford to buy or rent.

Those who can purchase them to use as rental units will still have mortgage, tax, maintenance and strata fee expenses. And they will be looking for a satisfactory return on their investment, and keep rental fees at the going rates to do so. So they will be asking for amounts far more than the lower, or even "middle", income people can afford.

Thus the imposition of rental units on stratas, and the almost impossible terms of removing those units from the owner developer's Rental Disclosure Statement, will not necessarily have a positive effect on those who can't afford them anyway.

Perhaps the hope was that people living in lower rental units might be able to move up to the newer accommodation, leaving the cheaper ones to others for purchase or rent? I wouldn't know, but for the most part, perhaps many will stay where they are so that they can put any spare funds to other purposes.

Nor will forcing new stratas to have suites available to be rented at lower than market prices likely be effective. Who is going to buy such a strata lot knowing they cannot achieve a full income? If a community Supportive Housing Society purchases such suites, how will they react as "owners" to whatever the strata corporation enacts in their bylaws which might appear to be contrary to the purpose of low-rental suites?

If this analysis is reasonably correct, then the low income, supportive housing, and even "middle class" people are no further ahead, unless and until governments – or the market – can make supplements or other arrangements available for them to be able to rent or buy those new units.

Meanwhile, the owners in stratas constrained by the Rental Disclosure Statement as of 1 January 2010, are unable to exercise their right to decide what kind of society they wish to have with respect to rentals. Some may be agreeable to allowing all units to be rented, in which case the owner developer need only check the Form J "Part 4" box at the outset which indicates that there are no restrictions at all, leaving any rental issues to the owners.

There are many stratas which want to foster a sense of community through having owners living in the complex who will contribute to the welfare of that community and who have a vested interest in maintaining their asset in the best shape possible. Absentee landlords may often be accused of not caring what happens to the strata, and their tenants may be assumed as not having any direct concerns since they don't have that vested interest. (This is a generality, obviously, and there are many stratas where tenants – and indeed their landlords – are very active in their community.)

The owners as a society (condominium comes from the Latin meaning "governing together") should be able to decide how they wish to govern themselves without being told by any government that they "must" allow rentals of any sort.

No single family house is required to have to be rentable, although the government, with the proposed extra "vacancy" tax on empty accommodation seems to be trying to coerce them do so. And of course, that will affect empty strata lots (condos, townhouses, vacation and seasonal condos, etc.) also.

Nevertheless, I realize, despite my line of argument, that these days there needs to be a balance and that developers and Realtors should be able to take advantage of what they perceive as a good selling point.

For that reason, I suggest that the owner developer be permitted to designate rentals of strata lots under Section 143(2) and Form J, Part 3, only for a limited period. I am not sure what is reasonable, but I would consider 5 years as appropriate. During that time, if it is a new strata, the owners (many of whom do not know very much about the SPA and can be prone to being uninformed) will have enough time to consider whether they wish to retain, limit or prohibit rentals depending on the nature of the society they wish the strata to be. Moreover, the owner developer should presumably have sold off the strata lots within five years and no longer have an interest in the strata, in which case the owners would not have to try to find him/her to petition to amend the Rental Disclosure Statement.

Strata Alert: Canada is the Second Nation in the World to Legalize Marijuana

By Paul Mendes, Partner, Lesperance Mendes

The Canadian Senate has passed Bill C-45, the federal government's Cannabis Act, which legalizes the recreational use of marijuana across Canada. The only other country to legalize marijuana production, sale and consumption on a national level is Uruguay. With this latest development, Canada becomes the first G-7 country to join this so far exclusive club of nations.

The bill is now awaiting Royal Assent, at which time the Federal Government will likely announce the date that the new legislation comes into effect. Although the government campaigned on a July 1 rollout, media reports state that full legalization will take another to 2 to 3 months, as provinces and municipalities come to grips with how they will regulate the use of recreational marijuana.

Once the bill receives royal assent, adults will be able to possess up to 30 grams of legal marijuana in public and that they will also be allowed to cultivate up to four plants in their households, and prepare marijuana products such as "edibles" for personal use.

Consumers who do not grow their marijuana are expected to purchase the product from retailers regulated by the provinces. In British Columbia, marijuana will be regulated under the Cannabis Control and Licensing Act and the Cannabis Distribution Act. The BC Liquor Distribution Branch also plans to start selling marijuana later this summer under the creatively named brand "BC Cannabis Stores." Private businesses will also be eligible to become licensed distributors if they meet the provincially set criteria.

The anxiety in the strata community over this legislation is palpable. Most of the inquiries we receive are for bylaws banning the use and cultivation of marijuana in strata units. The provincial *Cannabis Control Act* will allow adults to grow up to four plants per household. However, the plants must not be visible from public view and cultivation will be banned in homes used as daycares.

The main concern from the strata perspective appears to be the nuisance caused by the skunky smell of second-hand marijuana smoke and the impact of marijuana cultivation on the strata's insurance premiums. The previous medical marijuana regime, which resulted

Continued on page 16

Continued from page 15

in a spread of large-scale marijuana production facilities in non-residential stratas may be to blame for this. Those outfits, which often operated under a cloak of secrecy, raised fears about the increased risk of fire and mold contamination from hydroponic production. Insurers, for their part, helped stoke those fears higher by threatening to cancel insurance policies unless the strata's agreed to pay a higher premium.

The federal Cannabis Act is the single most important piece of federal legislation to effect stratas and strata owners in BC since the introduction of the National Building Code. For our part, we will continue to monitor the legal developments in this area so that our clients can make informed decisions about bylaw amendments and bylaw enforcement governing cannabis use in stratas.

WHAT WE DO: *Lesperance Mendes has been advising and representing strata corporations and strata owners on all aspects of bylaw amendment and enforcement. If you or your strata needs legal advice on bylaws regulating the use and production of marijuana in strata units, contact Paul G Mendes, Partner at 604-685-4894 or email Paul at pgm@lmlaw.ca.*

THIS ARTICLE IS NOT LEGAL ADVICE: *This article provides general information and should not be relied on without independent legal advice.*

VISOA Regular Office Hours:

#306 - 620 View Street,
Victoria, BC
Mondays 9:00 am to 1:00 pm
Tuesday, Wednesday, Thursday
9:00 am to 4:30 pm
(closed for lunch 12:30-1:30)
Fridays 9:00 am to 1:00 pm

Urban Legends

By Sandy Wagner

Sandy wrote this in 2008, and the statements and answers, with very minor changes, are still the same, even though people keep on asking them 10 years later!

Do you have the *Strata Property Act* memorized? Of course not, no one does. If you are on your Strata Council you've probably referred to the SPA and bylaws many times in the course of your duties; or if you are an enthusiastic new strata property owner you may have read through the rather dry documents to see what you have gotten yourself into. There are some portions that stick in your mind better than others, perhaps because they've applied to a specific situation in your strata. Other parts of the SPA and some bylaws are so open to interpretation that even the most experienced of us need to refer to them frequently.

In question periods at VISOA seminars and requests to the VISOA Strata Support Team, common questions come up. We have dubbed these "Urban Legends". Like the alligators in the sewers of New York, (anyone checked www.snopes.com recently?) these stories have been repeated so often that many people believe them.

Check your knowledge of the SPA: How many of these statements are TRUE?

1) We have only 3 units in our Strata, therefore the Strata Property Act doesn't apply to us. The SPA is for bigger complexes.
2) The bylaws cannot be changed from the ones in the Act. All we can do is make new ones that don't conflict.
3) The Strata Council President doesn't pay strata fees; that's fair exchange for all the work she does.
4) The property manager has to attend all council meetings. We cannot have a meeting without him.
5) Special assessments are shared equally by all owners.
6) If the cost of running our Strata for next year's budget goes up by 5%, then everyone's strata fees go up by 5% to pay the expenses.
7) The tree that is in my front yard is mine and I can prune it if I want to.
8) The tree that is in the back parking lot can be cut down if the council decides.
9) My window is drafty and leaks when it rains. I have to improvise repairs with weather stripping and caulking because I can't afford to have it replaced.
10) I may not attend council meetings; they are private meetings for council members and manager only.
11) We don't need to call a meeting if we canvass the owners to get a written petition with a 3/4 vote approval.
12) I have to give a key to my unit to the council, to use in case of emergency.
13) If the President or other executive council member resigns their position, they must also step down from council.
14) We must have an AGM each year.
15) We are not allowed to use all of our Contingency Fund.

All these statements are FALSE !

1) The Strata Property Act applies to all Strata Properties in BC. There are no exemptions. If your strata is a small one, you may be used to handling things in a less formal manner than some other, larger stratas. But for legal reasons you must follow the SPA.
2) The Standard Bylaws of the SPA became the bylaws of your Strata on January 1, 2001. Any bylaw already registered in the Land Title Office prior to that date remains in effect, even if it conflicts with a bylaw contained in the Standard Bylaws, provided it does not conflict with the SPA. Your strata can add, change or rescind any bylaw, again, so long as it does not conflict with the SPA. To do this, you need a ¾ vote at an Annual or Special General Meeting, and then the change must be registered at the Land Titles Office in order for it to become effective. There is a charge for the registration and you must submit it electronically through a lawyer or a notary public who has an account with the Land Titles Office, and they, too have a charge.
3) All owners are required to pay their monthly assessments (otherwise known as strata fees). The owners may, by a majority vote at an AGM, decide to pay council members for their services, but that is a completely separate issue. Strata fees must be paid in accordance with the Act.
4) Your property manager might fulfill an important and useful role at council meetings, but there is no requirement for him or her to attend. Meetings should be held at regular intervals, with or without your property manager's attendance. The council decides how frequently to meet, agrees on what action to take for all matters that arise, writes the minutes and directs the property manager accordingly. Remember the property manager works for you, not the other way around.
5) Special assessments are levied on the basis of "unit entitlement" which is a formula registered with the strata plan. Usually, bare-land stratas have equal unit entitlement, but for apartment-style or townhouse stratas, it is unlikely that each strata lot has the exact same unit entitlement. Your strata can vote to change the unit entitlement, but it requires a unanimous positive vote of all owners on title to each strata lot: a very difficult task.
6) This is not the way to go about it! If you simply raise everyone's monthly assessments by 5%, then over time the amount for each unit will be out of proportion to their unit entitlement. It might only be out by a few cents this year, but if you compound the error in

Continued on page 18

subsequent years, some owners may be paying several dollars more or less than their correct share. The correct way is to calculate the total amount needed to fund the Operating Budget for the year, and then work backwards using the Schedule of Unit Entitlement to find each unit's contribution.

7) Usually, trees are common property, (or the subject of bylaw conditions if on a bare-land strata) and must be maintained by the Strata Corporation. Owners may not make alterations to common property without written permission of the council.

8) Trees on common property must be maintained by the Strata Corporation. The council usually may not make a decision to remove Common Property without a positive vote of a ¾ resolution of all owners at an AGM or SGM.

9) Usually, windows are common property, and must be maintained by the Strata Corporation. If your windows are leaking, the strata must repair or replace them. If your strata has a bylaw stating that owners are responsible for window repairs, they are in error. This violates the SPA section 72. According to Mangan's *Condominium Manual* "If a window or door is common property, the strata corporation must carry out the repair work on it".

10) Provided the Standard Bylaw (or an equivalent) is in place, all owners are permitted to attend council meetings. They may not, however, attend during hearings for bylaw violations or rental hardship cases, and a few other situations where it is necessary to protect the privacy of the individuals involved. All other council meetings are open to all owners to attend. For this reason, many strata councils hold meetings in common property rooms instead of in a council member's suite. Meeting date, time, and location should be shared with all owners. Non-Council members might not be permitted to participate or speak at council meetings, but there is nothing in the SPA to say they must not, if the council agrees. A fully functional council has nothing to hide, and shares information freely with all owners.

11) Whenever the SPA talks about a ¾ vote, it is in the context of ¾ of those attending an Annual or Special General Meeting. A ¾ written petition cannot be submitted to replace a physical vote of owners and proxies at an AGM or SGM.

12) Your strata lot is your home: You do not have to give a key to your strata lot to anyone. There are times, however, when someone authorized by your strata council will need access to your unit for maintenance or repairs to common property – examples would be an annual inspection of hard-wired smoke detectors, or a project to replace all hot water tanks. In this case, the council is required to give you 48 hours' notice and you must permit entry. If you won't be home to grant access, perhaps a trusted neighbor could hold your spare key for the day, or you could give a key to the council and it will be promptly returned. In a true emergency, 48 hours' notice is not needed. If the council already has your key they may be able to deal with the emergency immediately. But without a key, if your unit has to be forcibly entered for emergency reasons, then replacement of your broken door or window is a matter for your insurance company. Some stratas have a bylaw which allows a council to hold keys with the owner's permission to be used only under specified conditions.

13) The owners of your strata elected the council members and then the council elected their officers. If an officer steps down from their position, they are still a council member unless they choose to resign completely.

14) Although there is the almost correct presumption that an AGM is necessary to be held at the end of each fiscal year there is one condition where you do need to have an Annual General Meeting. The exception is that all owners on title to every strata lot agree, in writing, not to do so. The owners must also pass resolutions in writing to elect a council by acclamation and approve the next year's budget. A signed document where 100% of the owners is in favour is almost impossible to collect.

15) You can spend all of the money in your CRF, provided that ¾ of owners at an Annual or Special General Meeting agree to do so – but it isn't a good idea to spend it all. For this reason, the SPA mandates the amount that must be added to the CRF yearly, if ever it falls below 25% of the Operating Fund. In other words, if you spend all your CRF this year, then next year you must begin building it back up, by contributing at least 10% of the value of your Operating Fund into the CRF and do so to get back to the minimum over a few years. Even so, your CRF should be maintained at a high level in order to be prepared for the on-going major repairs and expenses you inevitably meet, without having to resort so often to special levies.

The best way to become informed is to have your own copy of the Strata Property Act and the BC Government's online publications which cover many aspects of strata living in "plain English" as https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing or https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/find-it-fast

VISOA's Strata Support Team is also available to our members for your questions. Don't rely on word-of-mouth for your information about your Strata! If you do you risk hearing an Urban Legend!

INTRODUCING NEW BUSINESS MEMBERS

VISOA is pleased to welcome these new Business Members.

See our website for more details on all our Business Members

DRAINSCOPE specializes in correcting drainage problems. We are familiar with the various types of soil and improper drainage found in residential or commercial properties and have the ability to correct any issues at an affordable price. Our trained staff and specialized equipment can install any drainage system required to solve the problem. Drainscope constructs drainage systems with the least amount of impact on your property. We are proud members of the Better Business Bureau, and proud to have an A+ status.

We take pride in the presentation of our company; therefore Drainscope goes to great lengths to match our professional skills with an equally professional appearance and attitude. We look forward to the opportunity to provide our customers with a quality drainage solutions at an affordable price.

CONDO CLEAR SERVICES provides a unique and dynamic service that was previously unavailable in the British Columbia Market. We work closely with buyers, sellers, Realtors, and strata corporations to provide strata related support in a wide variety of situations.

In considering the sale of a strata lot – whether buyer, seller or realtor – we offer three (3) levels of service to suit your individual needs: Basic Review, Depreciation Report Review, and General Review.

On the other hand, being a strata council member can be an exhausting, thankless job especially if you are self-managed and have few practical options for support.

With the increasing number and size of strata corporations being built it can be difficult for smaller strata corporations to find a manager that suits their needs at a price that is affordable. This is further complicated by a shortage of licensed and experienced managers in the industry. Combined with the growing complexities of strata governance, and the potential for disputes to arise, self-managed strata corporations can quickly find themselves in less than ideal circumstances. Condo Clear Services can help condominiums with a variety of tasks which may make such tasks less burdensome.

These businesses have chosen to support our member strata corporations and owners by joining VISOA's growing group of Business Members. We encourage all our members to return the support we receive from the business group by including these businesses in their consideration for provision of services for their corporation.

President's Report

Hasn't this been a superb summer? Yes, much warmer than usual, but most of us can be glad we have those ocean breezes to help keep us cool. For our Okanagan members, we hope the rains come soon to aid in putting an end to your fire season.

As I write this in Victoria, it's a bit of a muggy day with rain in our forecast, for the first time in a month.

As you read in David's Editor message, he and I were both hospitalized recently (mine planned, his unexpected) and are both now getting back up to our former speed. We have a full slate of seminars and workshops coming up this fall, as you can see on page 2.

At our June seminar on Earthquake Preparedness, one of our presenters, Terry Bergen of RDH Building Engineers, talked a bit about the Rapid Damage Assessment that is done after a seismic or other emergency, and mentioned training available. Several of you contacted us afterward to find out about the RDA training, and so we arranged for trainers from BC Housing's Security and Emergency Services Department to provide this training as a workshop for VIOSA members. As of this date it is nearly full and so by the time this bulletin reaches you it will likely be sold right out – but if you are interested in a "repeat", email me and we'll see if we have enough interest to schedule this again.

In addition, we have scheduled our three most popular workshops again: one each for new strata councillors, strata treasurers, and strata secretaries. Even if you are not currently on your strata council, these full-day workshops are chock-full of useful information. If you are a current council member, or thinking of stepping up for council at your AGM, or even if you are just an interested owner, we guarantee you'll learn a ton to help you understand your role and responsibilities.

Our seminars this fall (September 16 in Nanaimo, and November 18 in Victoria) will be the same topic, but as you know they are never an exact repeat because the question period can veer the presenters off into many areas. The topic is Strata Insurance, focusing on the strata corporation's responsibility for coverage but also touching on the unit owners' coverage. Our presenters will be sure to give you informative details to help clarify your general strata insurance questions.

And lastly, we have a new board member to introduce: Karen Melnyk is a fairly new strata owner who has survived a year-long renovation and is eager to learn more about strata life, and work with us to help you all learn more as well. Karen is a recent retiree from the mid-island. I hope you get to meet her at one of our seminars this fall.

As always, if you have any comments, thoughts, beefs or bouquets, please email me at president@visoa.bc.ca

Sandy Wagner

~ 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.