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Vancouver Island Strata Owners Association

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VISOA Bulletin - AUGUST 2019

Editor's Angle

David Grubb, Editor

A mixed bag of information as we approach a golden autumn (we hope!). However, our articles do point to the ever-increasing concerns that owners, and especially councils, are facing as strata living becomes more complex in managing the administration of what is actually a business – our stratas are called Strata "Corporations" for a very real reason.

Even so we have managed to include an amusingly serious article about who to elect to council in order to keep those pesky owners away from running the joint! It is interesting to note that this happens right across the U.S.A let alone Canada. We will undoubtedly use some other articles from the Independent American Communities which reflect, regardless of jurisdiction, that we often share similar challenges and benefits throughout the continent!

We are aware that the BC Law Institute is now forwarding their Committee's reports – which took over five years of work – on overhauling the *Strata Property Act* (SPA) to government, but the final decisions and promulgation of a new or revised Act are going to take some time.

Even so there are resources to assist strata owners and councils to navigate some of the complexities and some who can make decisions where there are disputes. There have been some individuals who felt that solving problems with their councils, or their neighbours would be too expensive, or take too long. Probably strata living was not for them, but in fact, especially with the Civil Resolution Tribunal, neither is true compared with having to apply to the Supreme Court.

As Gerry Fanaken – a retired Property Management Company owner and erstwhile Administrator appointed by the courts to straighten out dysfunctional stratas – has often said, "Follow the law and you won't go far wrong."

It may be a fond wish, but we do hope that all owners get involved in the activities of their strata, to the degree possible, and take the time to talk to prospective buyers about how your strata is run and what the obligations are under the SPA and your bylaws. This should help people to understand the

Continued on page 2

In this issue...

Editor's Angle
Continued from page 1

big differences between a rental apartment (under the *Residential Tenancy Act*) and owning a strata lot in your strata.

They can even join VISOA as an Associate Member, in order to receive our benefits including the assistance from the Strata Support Team and our seminars, etc.

Recently we had the pleasure of meeting with two ladies who are very engaged in helping the elderly to deal with health issues. This includes the problem of people who disturb others because of dementia. This can be very difficult in stratas because so many peoples' hands are often tied in trying to do something: police, medical resources, friends, family, etc. Because so many owners are in their senior years, there is going to be (if not already here) increasing pressure on society to deal with illnesses such as dementia. So in the future, we hope to have an article or two on what can be done to assist both the afflicted person and the strata. Anyone who has any solutions is welcome to write an article for the Bulletin. Please send it to the editor@visoa.bc.ca.

You Can Lead a Horse to Water, But Can You Make it Follow a Civil Resolution Tribunal Order?

By Paul G. Mendes and Alex J. Chang

Although the Civil Resolution Tribunal has been around for a while, many council members and strata owners still believe that the CRT process is voluntary and that CRT orders are not binding on the parties. In fact, nothing could be further from the truth.

CRT proceedings are voluntary, only in the sense that claimants have a choice as to whether to bring a CRT claim or not. However, they have limited choice over whether to bring a claim in the CRT or the Supreme Court. The CRT has broad jurisdiction over strata claims. The court may even force parties to adjudicate their claims in the CRT unless the claim clearly falls within a category of strata claims that fall outside the CRT's jurisdiction or it is not in the interests of justice and fairness for the CRT to decide the claim.

Respondents also have no choice but to respond to a CRT claim or risk that the CRT will make a default order against them.

But are CRT orders binding? Yes they are, and in *The Owners, Strata Plan VR812 v. Yu*, the BC Supreme Court provides a detailed review of the court's power when a person fails to obey a CRT order.

You may remember this case, which was heavily reported in the media. According to reports, Ms. Yu advertised her North Vancouver townhouse unit as the "Oasis Hostel" since 2016, and her unit could (and often did) accommodate up to 15 guests at a time. Eventually fed up, the strata corporation ordered Ms. Yu to shut down her operation and pay the strata thousands of dollars in fines. When that did not work, the strata applied to the CRT for judgment on the fines and an injunction to stop Ms. Yu from operating her business in violation of the bylaws. The CRT decided the case in the strata's favour, and Ms. Yu's eventual appeal of the CRT was dismissed.

Ms. Yu decided to ignore the CRT order and continued renting out her unit as a short term rental. The strata registered the CRT order as a judgment on her strata lot, effectively converting the CRT order into the equivalent of a court order. When that did not stop Ms. Yu from breaking the bylaws the strata corporation applied to the Court to have Ms. Yu held in contempt of court and for an order that she be compelled to sell her strata lot.

Ms. Yu was held in contempt for breaching the order but the court delayed the determination of the appropriate punishment to give Ms. Yu a final opportunity to cease breaching the order. In the intervening time, Ms. Yu paid all of her outstanding fines to the strata corporation and ceased renting her unit as a short term rental.

The court accepted at the sentencing hearing that general deterrence in relation to others like Ms. Yu that do not respect the CRT's process or orders, "required that the integrity of the CRT process be upheld by an appropriate denunciation order". However, the court considered it an important mitigating factor that when given a final opportunity to comply with the order, she did so. As a result, the court ordered that she pay a $5,000 fine

Continued on page 3

Continued from page 2

and adjourned the strata's conduct for the sale of the unit. The court stated if she had not come into compliance it would likely have imposed a jail sentence instead. Ms. Yu was also ordered to pay all of the strata's reasonable legal costs and implied that if she failed to do so then the strata could reapply for conduct of the sale of her unit.

The Yu case affirms that failure to comply with CRT orders filed with the court will at least be met with hefty cost and fine consequences. Where an owner seems incapable of complying with an order, then the court will meet out more severe punishments like incarceration or the sale of the strata lot.

Is Your Strata's Registered Address up to Date?

Your strata must register its official mailing address with the Land Title and Survey Authority (LTSA). Often the first registered address is that of the developer; and subsequent updates will be the address of the current strata management agency. However – many stratas forget to update this address.

Self-managed stratas in particular may not even be aware of what address is on file at LTSA. Or for professionally managed stratas, the incoming management company may have missed updating this important record.

Why is this important? If the strata corporation is a respondent in a CRT dispute, it's possible that default decision could be made against the strata, if the registered address is not kept current.

According to Quality Assurance at the Civil Resolution Tribunal (CRT), the CRT has seen an increased number of default decisions involving strata corporation respondents, which may be in part due to inaccurate mailing addresses.

Under the current CRT rules, amended April 1, 2019, the CRT now serves most respondents named in a Dispute Notice by regular mail under subsection 1 of its rule 2.2. The Dispute Notice is deemed received 10 days after mailing in most circumstances (subsection 2). For strata corporations, this means the Dispute Notice is mailed to its most recent registered address filed at the Land Title Office.

Rule 2.2 - How to Serve Respondents

1) The tribunal will serve the Dispute Notice and instructions for response on a respondent by regular mail if

a) the applicant has provided the name and address information required for service by ordinary mail,

b) the mailing address for the respondent is in Canada, and

c) the respondent is a person, corporation, strata corporation, partnership, society, co-operative association or municipality.

2) A Dispute Notice and instructions for response served by the tribunal are deemed received 10 days after the day they are mailed by the tribunal unless

a) the tribunal receives notification that the Dispute Notice and instructions for response are received earlier, or

b) the tribunal receives satisfactory information that the Dispute Notice and instructions for response were not received by the respondent.

In the event the strata corporation's registered address is incorrect and the CRT is not notified of such, it is likely that the dispute will proceed through the CRT's default process and result in a default decision. Although the strata corporation is able to file a cancellation request after it is notified of a default decision against it, the strata corporation could avoid that process, and the possibility its cancellation request is denied, by ensuring its registered address at the Land title Office is accurate.

How to update the address

It's simple to do – the Form D "STRATA CORPORATION CHANGE OF MAILING ADDRESS" is one of the simplest SPA forms to complete, and requires only the mailing address and date, along with the signature of the authorized strata manager or two council members (or one council member if council consists of one).

The Form D must be filed electronically to the LTSA's Electronic Filing System website (unless the strata consists of 7 of fewer units, in which case it can be filed in person). Strata corporations who utilize a management company can ask the company to file the Form D. However, self-managed strata corporations with more than seven strata lots have an added expense and time requirement to seek third-party assistance for their document filing. Fortunately, there are many lawyers and Notary Publics throughout B.C. who are well-versed in the process. As well, larger registry agent companies like Dye & Durham Corporation are able to facilitate this process efficiently and cost-effectively.

YOU ASKED By VISOA Strata Support Team

Can stratas ban or regulate short term type rentals such as Airb&b, HomeAway, and Vacation Rentals by Owner (VRBO), or even in person?

A short term rental for vacation purposes is not a "rental" as defined by the *Residential Tenancy Act*. It is a commercial "licence" between an owner and the person who uses the space for a limited period of time with no vested interest. Your strata can create and pass a bylaw that specifically addresses short-term licences, but as always VISOA recommends that you have the bylaw written by a lawyer well versed in the *Strata Property Act*. The strata can now also provide for a specific higher amount of fine for breach of such a bylaw by amending the strata's bylaws with respect to fines.

The BC Government has now enacted a subsection (c) to SPA Regulation 7.1 which allows a strata to levy a more stringent fine: *(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.* That means $1,000 for each day (rather than a week) the strata lot is used for that purpose. Moreover, some municipalities are starting to require that an owner or landlord also has a municipal licence to operate a short term rental type of establishment, and may not issue such a license if a strata is listed as having such a bylaw.

Depreciation Report: Then and Now

The following November 2012 statements are excerpted, with permission, from the blog of Edgar L. Wilson of Lawson Lundell Law Firm in Vancouver. In 2019, many stratas have had two or three depreciation reports completed with varying usage, depending on how involved the owners are in their stratas.

From the Strata Support Team's perspective, some stratas or some of their members are still asking the same old questions about what it is and what it does (or does not) do. So we have asked some questions after Edgar Wilson's November 2012 article for you to think about almost 7 years later!

November 2012

Excerpts of Edgar L. Wilson's blog

INTRODUCTION

In December of 2009 the *Strata Property Amendment Act* (Bill 8) was adopted. Section 15 of Bill 8 amended section 94 of the *Strata Property Act*, establishing the new requirement for depreciation reports. Regulations adopted on December 13, 2011 brought section 94 of the *Strata Property Act* into effect.

Therefore, as of December 13, 2011, unless exempted, all BC strata corporations must obtain a depreciation report. Strata corporations that are not exempt must obtain their depreciation reports by December 13, 2013 and updated depreciation reports must be obtained every 3 years.

PUBLIC POLICY

The public policy reasons behind the requirement for depreciation reports arise out of the view that planning is necessary for each strata corporation to protect the common property and common assets of the strata corporation. The theory is that maintenance is the best way for the strata corporation to reduce the costs related to its common property and assets. Long term planning and maintenance will prolong the life cycle of the building systems, allow strata corporations to plan renewals on a non-emergency basis and reduce premature failures of systems and the costly resultant damage.

The depreciation report is intended as a long term planning tool for maintenance and renewals of common property and common assets that a strata corporation is required to maintain and repair. With their adoption in BC, depreciation reports will now be required in six Canadian provinces.

WHAT IS A DEPRECIATION REPORT?

A depreciation report includes:
(a) a physical inventory of commonly owned assets;
(b) an evaluation based on an on-site visual inspection;
(c) All repair, renewal and maintenance costs anticipated for each asset for a 30 year planning horizon;
(d) factors used to calculate costs (i.e.

Continued on page 6

inflation, taxes, interest rates); and
(e) the current balance of the contingency reserve fund and a minimum of 3 cash flow funding models.

The advantages and disadvantages of having a depreciation report prepared include:

Advantages:
(a) to be in compliance with the *Strata Property Act*;
(b) to fulfill the fiduciary duty of the Strata Council;
(c) to provide the owners with a plan for the establishment and maintenance of adequate funding for current and future repairs and replacements;
(d) to equitably distribute the proportionate share of component costs to each owner, regardless of their period of ownership;
(e) if implemented appropriately, the plan should reduce the risk of requirements for future special assessments;
(f) prolong the life of building components through planned maintenance;
(g) result in improved condition and maintenance of the building components, which will help to sustain resale values and reduce overall long-term repair and replacement costs;
(h) facilitate sales and financing by strata lot owners;
(i) encourage better planning for major repairs to common property; and
(j) improve disclosure of the condition of common property and reduce the number of financial "surprises" for buyers of strata properties.

Disadvantages:
(a) it is nearly impossible for a strata council or a committee of owners to complete the required depreciation report on their own;
(b) hiring a "qualified person" to complete a depreciation report every 3 years is a major expenditure for a strata corporation; and
(c) backlogs and waiting lists should be anticipated as it will be a challenge for the limited number of qualified professionals in BC to complete up to 14,000 such reports by December 2013.

EXEMPTION AND WAIVERS

As of December 13, 2011, unless exempted, all BC strata corporations, including bare land strata corporations, must obtain a depreciation report. Strata corporations that are not exempt must obtain their depreciation reports by December 13, 2013 and updated depreciation reports must be obtained every 3 years. However, there are two exemptions provided in the *Strata Property Act* which will allow strata corporations to avoid the depreciation report requirement.

Strata corporations with fewer than 5 strata lots are not required to obtain depreciation reports, nor are they required to hold a ¾ vote to exempt themselves from the requirement. A strata corporation with more than 4 strata lots can release themselves from the obligation to obtain a depreciation report by a resolution adopted by a ¾ vote at an annual general meeting or a special general meeting.

If strata corporations opt to exempt themselves by way of a ¾ vote, they have 18 months from their last successful exemption vote to either hold another vote providing for a further exemption or obtain a depreciation report. This means a strata corporation not wanting a depreciation report will have to waive its requirement at each annual general meeting. In practice this means that, if votes to exempt are being held annually at annual general meetings, there would still be about 6 months left to get a depreciation report done if the ¾ vote did not pass in a given year.

By permitting strata corporations to opt out of obtaining a depreciation report with a ¾ vote the legislature has significantly decreased the effectiveness of it revisions to the *Strata Property Act*. The likely course for the many strata corporations that do not currently carry out any long term planning and maintenance, is that they will seek to continue to ignore long term planning by obtaining a ¾ vote. Thus the dividing line between well maintained and neglected strata corporations will continue.

The ¾ vote threshold may also present governance problems for a strata corporation. A strata corporation may consider a motion to waive the requirement for a depreciation report, and have a majority of the owners approve the motion, but not get the required ¾ vote, thus forcing them to proceed and commission a deprecation report.

The commission of the depreceation report will either require a positive ¾ vote if it is to be funded by way of a special levy, or a simple majority approval if it is to be funded through the annual budget. However, as a majority of owners have rejected the need for a deprecation report, the owners may refuse to approve the necessary funding. Therefore, it is feasible that the minority of the owners, who want a depreciation report, will block a successful waiver vote, while the majority of the owners who do not favour commissioning the report will be able to block the funding of the report, thus creating a stalemate that will not be easily resolved.

(Note: The threshold of a ¾ vote to fund the depreceation report from the Contingency Reserve Fund was

Continued on page 7

reduced to a majority vote – 50%+1 – under Section 96, whether at an AGM or SGM, in order to help prevent stratas repeatedly avoiding depreciation reports. Ed.)

DISCLOSURE OF DEPRECIATION REPORTS

Effective December 13, 2011, a strata corporation's most recent depreciation report must be attached to any Information Certificate (Form B) provided by that strata corporation. In addition to the depreciation report, as of March 1, 2012, the following items must be attached to an Information Certificate:

a) the rules of the strata corporation, (Note: Rules – not Bylaws which the buyer should get themselves from the Land Titles Office. Ed.)

b) the current budget of the strata corporation, and

c) the [developer's] rental disclosure statement filed pursuant to section 139 of the *Strata Property Act*.

By January 1, 2014 strata corporations will be required to provide additional information to prospective purchasers regarding how parking stalls and storage lockers are allocated to the strata lot.

IMPACT OF REQUIREMENT FOR DEPRECIATION REPORTS

A. Strata Corporations

The requirement for depreciation reports may impact the market value of strata lots. A thorough depreciation report indicating that a strata corporation has a plan to address the long term maintenance requirements of their building, will likely improve the value and marketability of the strata lots in the building. A depreciation report that identifies significant deferred maintenance issues of looming major capital expenditures, will obviously negatively impact the value and marketability of the strata lots.

Strata corporations may be liable if they fail to attach a current depreciation report to an Information Certificate (Form B) provided to a purchaser or a mortgagee. Purchasers of strata lots are entitled to rely on the information in the Information Certificate (Form B) (see sec. 59(5) of the *Strata Property Act*). If a strata corporation fails to attach accurate information to the Form B Information Certificate, they may be bound by the inaccurate information provided to the purchaser. Similar liability may arise to a potential mortgagee who relies on an inaccurate information certificate.

B. Strata Agents

At a minimum, strata agents must advise their clients as to the requirement for a depreciation report under the *Strata Property Act*. It is anticipated that most strata agents will as a matter of course, recommend to their clients that they obtain depreciation reports. Strata agents may open themselves up to the risk of liability if they advise their strata corporation clients not to get a depreciation

Continued on page 8

report. It is better left to the strata council and the owners to make this important decision.

A strata agent may also be liable for situations in which they have recommended the wrong qualified person. Strata agents should provide a list of qualified persons and assist the strata corporation in choosing a qualified person, but the strata agent should not make the final decision.

The strata agent, even if otherwise qualified, should not be the one preparing a depreciation report for the strata corporation.

The strata agent should ensure that the qualified person is provided with all relevant information in the possession of the strata agent and the strata corporation or at least facilitate access to such records.

Strata agents may also be liable if they fail to attach a current depreciation report to an Information Certificate (Form B). Purchasers of strata lots are entitled to rely on the particulars in the Information Certificate (see sec. 59(5) of the *Strata Property Act*). If a strata agent fails to attach an accurate information certificate, the strata corporation may be liable to the purchaser, and the strata corporation may in turn, make a claim against the strata agent. Similar liability may arise to a mortgagee who relied on an inaccurate information certificate.

Strata agents should review the draft depreciation report to determine whether there are any obvious inaccuracies or errors in the depreciation report.

Strata agents may limit all such liability by good business practices and well-crafted language in the service agreement made between the strata corporation and the strata agent.

C. Mortgages

Based on experience in other jurisdictions, it is anticipated that mortgagees will begin to require a copy of a current depreciation report when considering mortgage applications. Without a current depreciation report, mortgagees may refuse to consider, let alone approve a mortgage application.

Lenders may still refuse to approve a mortgage where they are provided with a current depreciation report, but where no steps have been taken to implement the report's recommendations. Alternatively, they may factor into the amount they are prepared to loan, a sum sufficient to pay the strata lot's proportionate share of a potential future special levy.

This will make it more difficult for prospective owners to purchase strata lots. This in turn may reduce the fair market value of the strata lots, negatively impacting existing owners.

August 2019
The Strata Support Team

• How many stratas have adopted the idea of having a Depreciation Report and producing a copy only if

Continued on page 9

an owner or a buyer wants to look at it?

• How many stratas keep on waiving their report? Why?

• How many people are you aware of who were turned down by a mortgage company and/or the CMHC because there was no depreciation report, or one that no one had done much about?

• How many stratas have looked at the report and "sort of" made some priorities?

• B.C. has a 3 year separation between reports as does Ontario. Alberta has a 5 year term. What is adequate?

• Do you think the depreciation report should be mandatory (like Alberta and Ontario) not allowing an 'opt out' clause?

• Is your strata calculating how fast and by how much the price of goods and services affecting repairs and maintenance are growing?

• Is a Contingency Reserve Fund of 25% of the current operating budget adequate, considering most such amounts would hardly pay for many necessary repairs and maintenance stratas should be planning for?

• How many prefer special levies to the CRF because, even though the job might cost more, at least the collection of funds is over and done, and an owner keeps the rest of the money? How many people have the financial resources to provide the funds in short order?

• How many stratas have seriously analyzed the latest report and developed an annual plan which is flexible enough to handle emergencies annually as well as to increase the CRF to be able to meet the essential repairs and maintenance during the next five years at least – and preferably other risks beyond those five years? Just asking!

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Insure vs. Repair – Who is responsible?

With lively discussion from some of the Strata Support Team

One of the most chronic issues that both the Strata Support Team and the Civil Resolution Tribunal have to deal with is "Who Pays?" No one likes to pay for deductibles or damages, and often try to look to someone else to pick up the bill.

That is why insurance companies exist! Basically, they are betting that you will not have an "accident" at some point for which they will have to pay. That is how they make money. However, you are betting that at some point you will have an "accident" and therefore the insurance company will pay to restore the "accident" to its prior state

Even so, since both the strata and its occupants are covered by the strata's insurance if the damage costs more than the deductible portion of the policy, we will not discuss that major part of the policy here.

But the SPA and Standard Bylaws can create confusion about who pays the deductible or any amount below the deductible, and who pays for the resultant repairs. Since we are now seeing deductibles – especially for water damage - of $10,000 (and some even go to a $100,000 deductible), it becomes extremely important for all owners and their stratas to know who will be paying, and what they may be responsible for.

This is another attempt at trying to sort it out.

1. Responsibility to insure and responsibility to repair are not the same.

The SPA makes the strata corporation specifically responsible for insuring the common assets, the common property, some original fixtures and any parts of a strata lot which it has agreed to insure (e.g. sump pumps in any affected strata lots).

Property insurance required for strata corporation

149 *(1) The strata corporation must obtain and maintain property insurance on*

(a) common property,

(b) common assets,

(c) buildings shown on the strata plan, and

(d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

(2) For the purposes of subsection (1) (d) and section 152 (b), "fixtures" has the meaning set out in the regulations. [Reg. 9.1 states in part: "fixtures" means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.]

(3) Subsection (1) (d) does not apply to a bare land strata plan.

(4) The property insurance must

(a) be on the basis of full replacement value, and

(b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

Liability insurance required for strata corporation

150 (1) The strata corporation must obtain and maintain liability insurance to insure the strata corporation against liability for property damage and bodily injury.

(2) The insurance must be of at least the amount required in the regulations.

However, the strata corporation's insurance will not cover any part of a strata lot which has been "improved" by an owner (e.g. floor covering, cupboards, some plumbing or electrical items, etc.).

This has little to do with "repairing" such fixtures either, and strata corporations are well advised to have a record (i.e. an indemnity agreement) of such alterations and attach them to the strata lot's file so that any claim in the future, especially with a new owner, is documented – including on Form B.

In the case of any damage to property no longer covered by the strata's policy, it would be the responsibility of the owner, the council and their insurers to determine what is and is not insured and how they are going to deal with it. And owners and tenants should

Continued on page 14

have their own insurance. (How many times have you heard on the news: "The residents had no insurance"?)

So much for major insurance. Once worked out, it is possible to go on with repairs. But what if the repairs cost less than the deductible? Who pays?

2. The responsibility to repair depends on the bylaws

When it comes to who is entitled to the funds if the repairs cost any amount under the deductible, SPA s.158 allows the corporation to sue a person in order to recuperate a deductible:

158 *(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.*

Presumably, this could include an amount which is less than the established deductible, if the strata has an appropriate bylaw.

If there is no claim, the strata corporation will be responsible to make repairs to any common property. So if a pipe which supplies water to more than one unit leaks and causes damage, no matter where it is (probably in a wall or ceiling), the strata must repair it.

Moreover, the strata is responsible to repair and replace any extra damage it causes to a strata lot, such as ripping out cupboards, gyprock or flooring to get at the pipe to repair it. It must also put back the cupboards and the gyprock and repaint the wall.

Nevertheless, Sorry Folks! The corporation has no responsibility to repair any damage to a strata lot such as the original water damage to the flooring or the wall with only water stains, if they were not touched by the restoration company. That would still be the responsibility of the owner.

Many stratas do not understand this, and just pay for everything instead of assigning the appropriate expenses to the owner and the strata. So the strata must study the Standard Bylaws (if they haven't changed their own) carefully and pay attention to the three sections concerning responsibility to repair:

Repair and maintenance of property by owner

2 *(1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.*

(2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

Use of property

3 (2) *An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under section 149 of the Act.*

Next, there is Standard Bylaw 8 which requires that the strata corporation must repair only a few elements within the strata lot. Bylaw 8(d) states, in part:

Repair and maintenance of property by strata corporation

8 *The strata corporation must repair and maintain all of the following:*

[….]

(d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to

(i) the structure of a building,

(ii) the exterior of a building,

(iii) chimneys, stairs, balconies and other things attached to the exterior of a building,

(iv) doors, windows and skylights on the exterior of a building or that front on the common property, and

(v) fences, railings and similar structures that enclose patios, balconies and yards.

You will note that these features, for the most part, affect primarily the exterior structure of buildings which the strata is responsible to repair anyway as common property.

3. Amend Your Bylaws

So, it appears that unless there is an insurance claim, who pays for damage to units is determined almost exclusively by the bylaws, and owners

Continued on page 15

need to ensure the bylaws are as fair as possible to both to the strata and the owner.

Instead of having to get into the legalities of "suing" an individual in court to obtain the payment under SPA s.158(2), it is better for stratas to add a bylaw which makes an owner automatically responsible for paying any deductible or lesser amount if they are found to be responsible for the damage. Moreover, if an owner refuses to pay and is found to have broken the bylaw, the strata corporation may apply any fines for not paying the original deductible in accordance with the bylaws.

More significantly, however, is that there seems to be nothing in either the SPA or the Standard Bylaws which allows an owner to claim back the deductible or lesser expenditure from the strata corporation for the repair if the strata has been proven responsible for the damage.

To level the playing field, it is equally important to have another bylaw which reverses this obligation by making the strata corporation responsible for paying the owner, should the repair be the responsibility of the strata.

Moreover, if the strata corporation is going to accept certain conditions in a strata lot, these must be in a bylaw as well. If the strata wants to ensure safety, it could have a bylaw which states that the annual operating budget will include having professionals inspect all fire prevention equipment, chimneys, gas fittings, and individual water tanks annually, but if anything needs replacing or some maintenance and repair, the owner will be responsible to have the work done by a professional and must pay for that replacement or repair.

4. Be exact in using "at fault" or "negligent" instead of "responsible"

You will notice that the SPA and the Standard Bylaws are careful not to use the words "at fault" and "negligent" unless it is really meant.

In law, these words have specific import, and they require a much higher level of proof than "responsible". All too often, a person will argue that the strata has been "negligent" in (e.g.) failing to ensure that a particular system was looked after to an appropriate standard. The plaintiff will have to demonstrate that the council paid little or no attention, for example, to the gutters and downspouts, so they got clogged, backed up and the water flowed through the building envelope and ruined part of the carpet. Thus, the strata was "at fault" in monitoring the common property.

But if the council had regular inspections and cleanouts of the gutters and downspouts every six months, and was always responsive to any detection of problems, then the owner would find it extremely difficult to prove "negligence" or that the council was "at fault". A court or the Civil Resolution Tribunal could find that the strata had taken reasonable precautions to ensure that the gutters and downspouts were maintained satisfactorily. The courts have established that the council must show a "reasonable" degree of care and maintenance: not perfection. Under those circumstances, the council was therefore not "negligent", and could require that the owner pay for the repairs to the carpet in the strata lot.

If the bylaw had stated only "responsible", then, yes, the strata might be held accountable for the leak (regardless of the semi-annual clean-out) and might be required to pay for the resultant damage and repairs, including the repairs to the carpet, because, even though they were "reasonably diligent", the SPA makes the strata responsible to maintain the gutters and downspouts as common property.

5. See a strata lawyer.

As ever, we advise all stratas to consult a lawyer specializing in strata law to write the bylaws applicably. That way, there is protection which is reasonable for both individuals and the strata corporation, and which makes it easier on all parties to ensure fairness in insurance and repairs.

How to Select Ideal HOA, Condo, Co-op Board Candidates

By Deborah Goonan, Independent American Communities

Note: The U.S.A. does not have Strata Corporations: rather they have "Home Owner Associations" which are subject to individual state laws and their own bylaws. However, by substituting "strata" when you see "HOA", and "council" where you see "board" you will get the import of this humorous satire! Ed.

CHOOSING THE RIGHT CANDIDATES

Because most owners and residents with voting interests are apathetic and stupid, it is critical for the incumbent board to choose candidates that are strong leaders who will take full control of the association.

If your association does not have an official nominating committee, meet confidentially with your chosen candidates, and ask them to volunteer when the official election notice is mailed to all members.

It's a thankless job, so you want candidates who are motivated by power and control rather than the appreciation of malcontents and disgruntled homeowners.

The more aggressive, the better. Choose at least one candidate with a booming loud voice and a penchant for cussing – one who is not afraid to threaten the common membership and follow through on those threats.

Lifelong bullies and convicted felons have the perfect personality types for this role, and make excellent Association Presidents.

No wimps allowed. Wimps are losers.

You also want board members who will keep the common membership uninformed and complacent. So avoid blabbermouths and anyone who uses the word "transparency" in his or her candidate information summary.

Likewise, avoid candidates concerned about ethics, unless you want to listen to them preach at every meeting.

Opportunists are motivated HOA board members, especially if they can steer the association into inflated contracts with service providers. Some common examples: landscape or interior design services, insurance policies for the association, trash collection, exterior painting or roofing companies, accounting and audit services. These candidates understand the power and value of kickbacks, so that everyone on the board can share in the fringe benefits of taking on this unpaid, volunteer service.

If possible, round up at least one candidate with financial expertise, such as an accountant who is able and willing to concoct convincing annual budgets and financial reports that lead members and buyers to believe the association is in excellent financial health.

Alternatively, choose a mild-mannered, well-trusted stooge that you can educate in basic bookkeeping, to serve as board Treasurer. Mathematical aptitude and accounting knowledge not required.

No board would be complete without several placeholders. Look for candidates who will defer to the board President or Executive Officers, voting to second and approve every single motion at board meetings. After all, the issues can be discussed by email long before the meeting, and the decisions will have already been made before the formal vote is taken.

If possible, avoid contrary board candidates that might challenge the status quo. They are not team players. It is best to present a united front to the few members who regularly attend meetings and serve as association watchdogs.

If member discontent is substantial, you might have to allow a token watchdog candidate or two. It gives the impression that the election process is fair and impartial, even if it's not. Never fear. The majority of veteran bulldog board members will outvote the watchdogs every time. Besides, a minority board member will probably resign out of sheer frustration. Then you can appoint a more suitable board ally.

You can groom a few well-chosen members for future board service, by appointing them to standing committees such as the Covenant Enforcement committee or the Architectural Control committee. Then when a long-term board member "retires" from service, a new control freak will be ready to step in and fill the void.

This should ensure long-term adequate governance without the need for all those apathetic, stupid voters who are content to do nothing but grumble, obey you without question and not bother to find other candidates.

BC Business: It's a Tough Climate for Condo Owners, But Not In The Way You Think.

By Richard Littlemore

Facing an insurance hike that could be north of 25 percent, Vancouver strata members are learning that they can't escape the threat of catastrophic weather in a warming world. Likewise, Vancouver Island and surroundings, are being seriously affected, as indicated by Shawn Fehr of Seafirst Insurance in Victoria. Moreover stratas, especially on the Islands, have caught the attention of insurers as having relatively inexpensive rates, so they have seen a serious rise in prices already. Shawn concurs with the picture painted below. Check your budgets!

The climate has changed.

In some corners, those may still be fighting words, but even if you're not among the British Columbians who have endured extraordinary floods or fires lately, when you get your next quote on home insurance, you're likely to find that years of stormy weather have combined into what is becoming an extremely costly trend.

The immediate evidence comes in a note that Canada's largest real estate insurance broker, Chicago-based HUB International, circulated recently to its Metro Vancouver strata corporation clients, warning that "you should budget for a 25%+ increase in insurance costs for 2019, possibly higher if your property has suffered losses."

Part of that increase can be blamed on the same problem attached to every pricy real estate story: mostly, it's Vancouver. And even if the government has been successful in taxing real estate prices into retreat, construction costs in the big, expensive city have still risen between 7 and 15 percent in the past year. So, HUB says, rates will go up 10 percent to cover that risk.

But the HUB memo blames the bigger increase on "catastrophic losses from weather related incidents." As reported by the world's largest reinsurance company, Munich Re, 2018 was the fourth-costliest year since 1980 for insured losses. And 2017, with hurricanes Harvey, Irma and Maria, was the costliest.

As a result, says Sarah Thompson, HUB's B.C. vice-president, marketing and real estate practice, "Many insurers have been paying out more than they were taking in." Of course, insurers expect that to happen once in a while; they're in the business of spreading out risk, and they recognize there will be bad years.

But Thompson says, "When weather-related payouts are high three, four, five years in a row, it's not just a shock loss, it's a trend." So, she adds, "Companies are incorporating that risk into pricing because this is now the new norm."

Vancouver condo dwellers also have no protection from increased climate risk just because the storms, floods and fires have so far occurred somewhere else. Insurance companies bundle their policies together and sell them in blocks to reinsurers. (Munich Re and Swiss Re are No. 1 and 2 in the world; Lloyd's of London is No. 6.)

This, too, is a way of spreading out risk, which is a good thing. It means that a disaster like the Camp fire of 2018, which destroyed Paradise, California, and inflicted US$16.5 billion in damages didn't bankrupt the local carriers, even though US$12.5 billion of that loss was insured.

The good news, then, is that global reinsurers back up local companies in the event of concentrated disasters. The bad news is that a disaster anywhere in the world can therefore affect your insurance rates in already expensive Vancouver.

Staring further down the good news/bad news barrel, University of Calgary biologist Laura Coristine says, "You're fortunate that you even get to carry insurance—some regions don't even qualify now." For example, the neighbourhoods in Ontario and Quebec that have endured so-called 100-year floods multiple times in the past few years won't be able to purchase insurance coverage at any cost.

Even in Vancouver, some would-be clients are finding themselves priced out of the market—or buying insurance that actually doesn't cover very much, says Tony Gioventu, executive director of the Condominium Home Owners Association of BC.

As the region's plentiful stacked, woodframe condo buildings grow older, Gioventu reports that many strata associations are having to file repeated insurance claims to repair flood damage from burst pipes; after which, those same stratas wind up facing deductibles of up to $100,000. Gioventu and Thompson also recommend that in this changed climate, every insurance purchaser should look particularly closely at the list of exemptions. "The carriers are really tightening up the terms," Thompson says.

Continued on page 18

BC Business
Continued from page 17

This being the current circumstance, Coristine says we all would be better off economically if we spent more money trying to mitigate climate risk, rather than waiting to manage increasingly catastrophic expenses. Her argument has some appeal when you consider what a 25-percent increase adds up to, even in a single market like Vancouver.

Gioventu says there are between 20,000 and 22,000 strata corporations in Metro Vancouver, ranging from duplexes to 800-unit complexes. That means there are roughly 600,000 units, for which insurance costs range from $550 to $950 each. Take an average premium price, $750, multiply it by 600,000, and you come up with $450 million. Tack on 25 percent and it's a cool $112.5 million, or $187.50 for every strata unit in town. That's the average likely increased premium—this year alone.

And even without dipping into the very scary prospect of an earthquake, Gioventu says, "The last time there was a hurricane in Vancouver was 1964. With climate change, we might be due."

Community Safety – What is CPTED?

By Steve Woolrich

Year after year many homeowners throughout British Columbia are faced with various losses resulting from crime, generally property crime. Although the crime rate rose in 2018 our country is still safer than a decade ago, according to Statistics Canada. The agency indicates that "crime ticked up in 2018, for a fourth year in a row and the severity of crime also rose by 2%." This is never good news and often these crimes are related directly to property. The good news is that there are solutions and most of these are quite practical and relatively simple to implement when you know how.

During the last few years we have witnessed a tremendous boom in construction and development throughout the province. This has not come without challenges, particularly as it relates to various types of housing, including strata developments.

Crime prevention through environmental design (CPTED), according to Wikipedia, is a recipe for improving the built environment and creating safer neighbourhoods.

Wide-ranging recommendations include the planting of trees and shrubs, the elimination of escape routes, the correct use of lighting, and the encouragement of pedestrian and bicycle traffic on streets. Research demonstrates that the application of CPTED measures can over-

Continued on page 19

Continued from page 18

whelmingly reduce criminal activity.

Municipalities that have adopted CPTED concepts into their Official Community Plans, development guidelines and application processes are leaps and bounds ahead of those that have not embraced it. For those that have, many are still not using CPTED to its fullest potential. Dr. C. Ray Jeffery coined the concept, he was a criminologist that suggested the proper design and effective use of the built environment can lead to a reduction in the fear of crime and incidence of crime, and to an improvement in the quality of life.

Literature reviews have clearly indicated that many cities and even organizations that use CPTED have reduced it to a simple checklist – that's a problem! Think about it from the perspective that we have an opportunity to design out crime at the earliest stages of development and that every project in every neighbourhood is unique. How can you use a checklist for that? Simple answer – you can't. Cities such as Saskatoon, Saskatchewan and Grande Prairie, Alberta are demonstrating incredible leadership in this field. These cities have the potential to design out crime prior to construction. How you ask? Simple, these principles have been embedded into their development processes. Developers are then required to complete a CPTED review as part of a municipal development process.

CPTED has continued to evolve over many years. In 1997, an article by Greg Saville and Gerry Cleveland, 2nd Generation CPTED, exhorted CPTED practitioners to consider the original social ecology origins of CPTED, including social and psychological issues beyond the built environment. The concepts of social cohesion, threshold capacity, community culture and connectivity were successfully introduced and adopted by many practitioners, including myself. In my professional opinion, 2nd Gen principles were the missing pieces to the puzzle. It provided a more holistic understanding of the physical environment and the people who use it by emphasizing the strength of the community fabric.

Traditional CPTED strategies are bound by the belief that crime will subside once there is territorial control and modification to the built environment where crime occurs. The intended result is the minimization of criminal opportunity – an important element of crime prevention, but a largely reactive one. Just as territoriality is at the root of traditional CPTED, social cohesion is at the root of 2nd Generation CPTED in order to deal with a wide-range of community issues in specific areas.

As with any methodology or good book, the next chapter is well underway. A paradigm shift! Full Spectrum Community Safety and Development is about establishing a new standard of excellence, one that embraces collaboration and encourages establishing Communities of Practice. We call it Full Spectrum because it fuses a number of methodologies together including CPTED, placemaking, health impact and several other best practices that support an upstream approach to crime reduction, health and well-being. If you had the choice between being reactive or proactive which would you choose? If you could play a role in reducing the high costs of policing and calls for service, would you? Whether or not a strata development is going to the design stage or already exists – we can all make a difference by adopting best practices such as CPTED.

Steve Woolrich is the Principal of Rethink Urban, a Victoria-based company dedicated to improving safety, wellbeing and quality of life in communities. He is a leading expert in CPTED and can be reached at steve@rethinkurban.com

President's Report

Communication and Consultation in Your Strata

Some of the common traits among complaints in stratas are: "The council wants to do 'X' and the owners don't want it"; "Nobody ever tells the owners what's going on"; and "The council doesn't pay attention to owners' concerns and suggestions".

The strata council is responsible for running the corporation, and they've been elected to do so. This means that the owners have given the council – usually made up of 3 to 7 volunteers with little or no experience running a corporation – carte blanch to run it as they see fit, within the confines of the *Strata Property Act* (SPA), the strata's bylaws, and the strata's budget.

The SPA is clear on the responsibilities of the strata council. It states that the strata council's role is to: "exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules."

But – official wording of the SPA notwithstanding, in my opinion, best practices would be to keep the owners informed about strata decisions and the council's rationale.

For example – an owner writes to ask that the trees blocking their summer sunny balcony be trimmed. The council has no obligation to act on the concern, nor even reply to the letter. However, wouldn't it be better to reply with "Thanks for your suggestion. Unfortunately this year's budget won't allow for it, but we will ensure next year's budget has enough allocated to accomplish this task." And then wouldn't it be great to summarize the correspondence and its reply in the minutes, so that other owners who might have the same concern would know "what's happening".

Another example – an owner has a complaint about other owners' dogs using the strata's lawn as an outdoor toilet and writes to council. What's the better approach: Institute a new rule about where dogs can "go" – or invite owners to a "town hall" discussion to see how best to make dog-lovers and lawn-lovers coexist?

Or a third case in point – council decides to buy new shrubbery and plants for the front garden. Two council members make the choices and do the purchasing, then several owners write to take exception with the new plants.

As part of VISOA's Board for 12 years, part of the Strata Support Team for several of those years, and facilitator for many VISOA Workshops for council members, I can tell you that communication and consultation work wonders. I doubt any owner would say "My strata communicates far too much" or "Why is council always asking my opinion?" or even "I wish the council minutes were shorter".

Some best practices in this area are:

- If a letter of concern might be of interest to others besides the writer, include a brief synopsis of the letter and its reply in the minutes
- Before instituting a new rule as a reaction to a perceived problem, ask the owners who elected you for their thoughts on the matter
- Before spending strata money on anything out of the ordinary, ensure the topic is discussed in one council meeting and included it the minutes, with decision deferred to the next meeting where possible
- Asking owners for their "thoughts on a matter" can vary from a simple note at the end of the minutes inviting feedback, or holding an information meeting
- Don't make between-meeting decisions unless an emergency

Or my personal favourites:

- Ensure owners are aware of where and when the council meetings are held
- Ensure owners know they are welcome to observe council meetings
- Get the minutes out promptly, ensuring all owners know how to locate a copy (Bulletin board? Email? Strata website? Hand-delivered?)
- Before making a big change, whether proposed bylaw amendments or updating the landscaping, hold information sessions – multiple sessions if necessary – until you are sure you have buy-in from the majority of the owners.

We at VISOA hear about problems in your stratas due to the nature of our mandate - education and assistance - so we don't always get to hear about stratas that run smoothly without the sort of problems I've mentioned above. I'd love to hear your positive stories about communication and consultation.

As always – at least until next February – you can write me at president@visoa.bc.ca

— Sandy Wagner