



Vancouver Island Strata Owners Association

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VISOA Bulletin - FEBRUARY 2009

President's Report

As one of my first duties, I am saddened to have to tell you that our president and good friend, Felicia Oliver has died. There is a tribute to her in this bulletin. As your new president I intend to continue to carry out the good work initiated by Felicia and the VISOA Board.

I will also continue to be responsible for publications and the website. Feedback from seminars has revealed many questions and concerns around strata insurance, and I am happy to say that we will have a new publication on strata insurance available soon. The

website is also a very important public face for VISOA as well as a vehicle for providing information to our members, so look out for a new and improved web site!

Deryk Norton is continuing his work to marshal support for a government review of the Strata Property Act. In its recently released report on Budget 2009, the all-party Select Standing Committee on Finance and Government Services has recommended that the provincial government consider "Committing to an immediate review of the strata property legislation." As VISOA has been instrumental

in pushing for such a review and strongly supports this recommendation, we intend to contribute to the review process by representing your concerns. With an upcoming provincial election your Board will continue to pressure for this important review.

Our November seminar "Lessons Learned as a Strata Administrator" was presented by Gerry Fanaken of Vancouver Condominium Services, and was an outstanding success. The 128 participants were treated to an informative and often entertaining seminar. Participant feedback was very positive and we intend to bring Gerry back for another seminar. You will find a full account of the seminar elsewhere in this bulletin.

And finally, please don't forget to attend the VISOA Annual General Meeting on February 15, 2009. The AGM is an important opportunity for you to participate in the running of VISOA. The scheduled speaker is R.C. (Tino) DiBella, a respected Victoria lawyer and we have no doubt you will enjoy his presentation.

I look forward to serving as your new president.

- Tony Davis, President

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CRD recycling subsidy not keeping up with fee increases

by Harvey Williams

In 1989, the Capital Regional District inaugurated curb-side pickup of blue box recyclables for private residences. In 2000, apartment blocks including stratas were required to subscribe to recycling pickup by private companies. The CRD paid a recycling subsidy based on the number of units to partially off-set the cost.

Because of the world-wide recession, the price of recycled fibre (paper and cardboard) has plummeted causing recycling fees to shoot up. Between October and November, the monthly recycling fee for our 16-unit strata increased 5-fold from \$18 to \$84 where it is likely to stay for the foreseeable future.

I called John Crawford, the CRD's Manager of solid waste and inquired about an increase in the subsidy to

Continued on page 7

You asked:

What do I do when I disagree with Council decisions?

by Harvey Williams

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.

QUESTION:

Our strata corporation is in a dispute with the developer of our strata building over water seepage into a basement strata unit. The unit's owner moved out, refused to pay the strata fees and demanded that the strata corporation pay the mortgage until she can move back in. The strata corporation has paid the mortgage and did not collect strata fees for two years. This does not make sense to me. What can I do?

ANSWER:

The Strata Property Act does not allow owners to blackmail a strata council by refusing to pay strata fees. There is provision in certain instances, to have fees placed in trust pending resolution of a dispute. No where does the Act provide

for a strata corporation to make mortgage payments on behalf of an aggrieved owner.

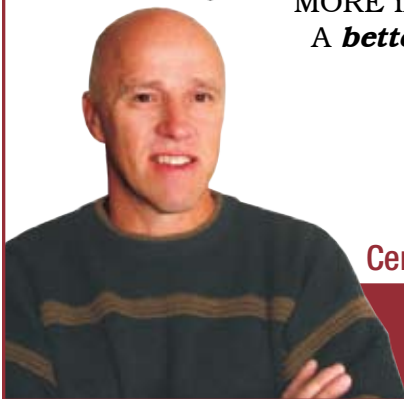
So who's at fault? First I would point the finger of blame at the strata council for its response to the owner's threat to sue. It was intimidated into acting improperly, if not illegally, by a letter from a lawyer. It has allowed the problem to fester far too long. Any solution will be expensive and will require the assistance of a lawyer with experience in strata law and is likely to be costly. Conscientious owners who have done nothing wrong are out of pocket significant sums of money and are now faced with additional costs.

Stratas exist in a minefield of laws including the Strata Property Act, the Real Estate Services Act, contract law and a host of other laws, regulations and rules. Remember that lawyers are like hired guns who serve the interests of the side that pays them. Whether a grievance is of an owner with a strata council or a strata council with an owner, if one side hires a lawyer, the other side should do likewise.



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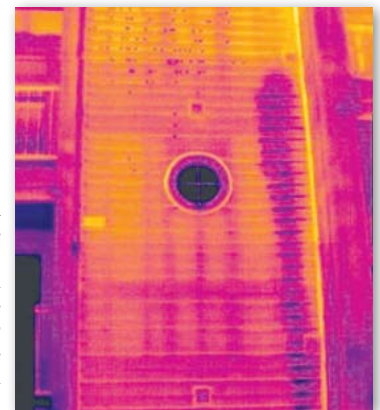
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Right is a photo taken at a condominium. The dark (cool) streak is water in the wall from a leaking washing machine on the third floor. Water was detected in the basement. The camera showed the source.



Some issues surrounding the rental of strata lots

by Shawn M. Smith, Attorney

One of the most divisive issues a strata can face is that of rentals. It can range from whether or not to allow rentals at all, to topics such as exemptions to a no-rental bylaw and how to deal with problem tenants. For the average person the legal landscape can often be quite confusing. With this article, I hope to make it a bit clearer.

The starting place for any discussion of rentals is Part 8 of the Strata Property Act (the "SPA") entitled "Rentals". Absent a bylaw prohibiting or restricting the number of strata lots which can be rented, any owner may rent their strata lot.

Section 141(2) of the SPA permits "the strata corporation to restrict the rental of strata lots by a bylaw that:

- (a) prohibits the rental of residential strata lots, or
- (b) limits one of more of the following:
 - (i) the number or percentage of residential strata lots that may be rented;
 - (ii) the period of time for which residential strata lots may be rented."

There are a few key things which can be drawn from this section. First, the ability to restrict rentals applies only to residential strata

lots. There can be no restrictions on the rental of commercial (or non-residential) strata lots. Second, there can now be an outright prohibition on the rental of strata lots (under the Condominium Act there had to be at least one strata lot that could be rented. A zero rental bylaw was invalid – see 453881 B.C. Ltd. v. Strata Plan LMS508 (1994) 41 R.P.R. (2d) 318). Third, limits can be placed on the period of time that a strata lot may be rented.

Section 141(1) of the SPA prohibits the strata corporation from becoming involved in the selection of tenants. The strata corporation may not:

- (a) screen prospective tenants;
- (b) establish criteria that tenants must meet;
- (c) require that it approve tenants;
- (d) require that certain terms appear in any tenancy agreement; or
- (e) place restrictions on the rental of strata lots other than with regard to the number of strata lots rented or the length of a tenancy.

The one exception to s.141(1) is the enactment of an age restriction bylaw. Arguably tenants should have to meet the age set out in such a bylaw. (No case law exists yet on this point). It should be noted, however,

that the Human Rights Code states that the only age which is acceptable to be used in relation to rental property is 55 years. Any other age (ie. 40) would arguably not apply to renters.

There are several instances in which a rental restriction bylaw will not apply to an owner. Those are as follows:

- (a) They are exempted by way of a Rental Disclosure Statement (s 143(2) SPA);
- (b) They are renting to a family member (s.142 SPA);
- (c) They were renting to a tenant at the time the rental restriction bylaw was passed (s.143(1) SPA); or
- (d) They have been granted an exemption from the rental restriction bylaw on the basis of hardship (s.144 SPA).

The Rental Disclosure Statement exemption applies to first purchasers (ie. those who bought directly from the owner-developer). In a Rental Disclosure Statement the owner-developer usually states an intention to rent the strata lots for a specified period of time. The first purchaser is entitled to rent their strata lot for the period set out in the Rental Disclosure Statement notwithstanding the passage of a rental restriction bylaw.

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FELICIA OLIVER

September 15, 1937 - November 25, 2008

Felicia Oliver joined VISOA's Board of Directors in February 2005 at a time when VISOA was reinventing itself and Board members were considering how best they could serve. Felicia was a quiet, thoughtful person who studied an issue carefully before speaking. She soon made known her interest in answering the Helpline. In April 2006 she assumed full responsibility for the Helpline, carefully researching each topic before responding to inquiries and was usually available to answer seven days a week. Felicia truly loved assisting VISOA members in solving their problems.

In February 2008 the Board of Directors elected Felicia president of VISOA and once again, she worked hard to meet the challenge and planned to let her name stand for a second term. But that was not to be.

In early October, Board members were dismayed when we received this email from her: "This is a hard letter for me to write. I have bad news.....very bad news. I have terminal cancer." She hoped to be able to continue with VISOA for a few more months but was unable to do so and died in peace at the Saanich Hospital on November 25th.

Felicia Oliver played a vital role in VISOA's transformation into the organization it has become. We are grateful to her for contribution to the renewal of VISOA. Her presence will be sadly missed.

Elsie Lockert



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Rental of strata lots

Continued from page 3

Be careful of the wording in Rental Disclosure Statements filed under the Condominium Act. In *Abbas v. The Owners, Strata Plan LMS1921 (2000)* (BCSC unreported) the court held that where the owner-developer “reserved” the right to rent, that invalidates the Rental Disclosure Statement.

An owner may rent to a “family member” notwithstanding the passage of a rental restriction bylaw. Regulation 8.1 of the SPA defines “family member” to include the spouse, parent or child of an owner or the parent or child of the spouse of an owner. “Spouse” includes married, common-law and same-sex partners.

If an owner were renting their strata lot at the time a rental restriction bylaw were passed, they can continue to rent until the tenant who was renting when the bylaw was passed leaves plus one year. After that the rental restriction bylaw applies unless another exemption applies to that owner (ie. Rental Disclosure Statement).

Owners who live in a no rental building and who do not qualify for the Rental Disclosure Statement exemption can request permission to rent on the basis of hardship, despite the existence of a rental restriction bylaw. However, the owner must meet certain criteria:

(a) the owner seeking the exemption must apply for it in writing;

(b) they must provide sufficient detail (ie. detailed financial data) to permit the council to properly consider their request;

(c) they must prove the existence of a hardship (generally financial ruin if unable to rent);

(d) they must prove that the hardship results from the rental restriction bylaw; and

(e) they must prove that the hardship cannot be afforded or avoided.

The case of *Als v. Strata Corp Nw1067 (2002) 97 B.C.L.R. (3d) 393* contains a good review of the case law surrounding hardship applications.

A strata corporation can enforce a valid rental restriction bylaw by fining the contravening owner (the fine can be \$500 per week if the bylaws are structured properly) and ultimately seek an injunction from the court prohibiting the rental of the strata lot.

A landlord has a number of things that he or she should be aware of or consider when renting a strata lot. They are:

(a) pursuant to s.148 of the SPA if the lease is for 3 or more years the tenant is automatically assigned the powers and duties of the landlord;

(b) s.146 of the SPA requires that the landlord give the tenant a copy of the bylaws and rules of the strata corporation and have the tenant sign a Form K acknowledging receipt of the same. The Form K must then be submitted to the strata corporation. Failure to do so can result in a fine to the owner.

(c) A landlord who rents to a tenant in contravention of a rental restriction bylaw can be liable to the tenant under s.145 of the SPA for an amount equal to one month’s rent and the tenant can cancel the rental agreement without penalty if the tenant was unaware of the rental restriction bylaw; and

(d) Under s.131 of the SPA, the landlord is responsible for all fines incurred by the tenant and the occupants of the strata lot.

Owners often oppose the rental of strata lots because they are concerned about the behaviour of the tenants. After all, they don’t have a vested interest in the strata corporation as do the owners (or so the argument goes). Often there is a belief that there is less control over

tenants than owners. This isn’t the case however. A tenant who repeatedly and continually contravenes “a reasonable and significant bylaw or rule...that seriously interferes with another person’s use and enjoyment of a strata lot or the common property” can be evicted by the strata corporation pursuant to the provisions of the Residential Tenancy Act (see s.138(1) of the SPA). An owner cannot be evicted, no matter how obnoxious they are. The strata council should also remember that it can fine tenants for violations of the bylaws and rules. If the tenants don’t pay the owner must. A landlord is not going to suffer steadily mounting fines (which they may be responsible to pay) for too long and will likely take steps to evict the tenant as they have agreed under the tenancy agreement to abide by the bylaws and rules.

As a final note, landlords should pay careful attention to whom they rent their strata lot. There has been an increase in the number of marijuana grow operations in townhomes and methamphetamine and similar drug labs in apartment style strata corporations. In *Pham v. Strata Plan NW2003 2007 BCSC 519* the owner rented her strata lot to tenants who operated a marijuana grow operation. That operation resulted in significant damage to the strata lot, a neighbouring strata lot and the common property, none of which was covered by insurance. The owner was held liable for the repair costs which totalled \$106,730.39.

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

When must the strata pay to repair damage to a strata lot?

by Joyce Johnston, Attorney

The strata corporation has an obligation to repair and maintain the common property. (Section 72 SPA). The strata corporation is not an insurer, but they must be diligent in their inspection of, and repair and maintenance of, the common property. The obligation of the strata corporation to repair damage to a strata lot, if that damage results from the failure of the common property, arises from the strata corporation failing to meet a standard in the fulfillment of their duty to repair and maintain.

The best way to understand this obligation is to look at a couple of examples.

A Case Where the Strata Corporation Must Pay

In *Oldaker v. SP VR 1008* (2008 BCSC) the strata corporation neglected to obtain a building permit to repair the building envelope in a timely fashion. They also did not repair the building envelope within the time ordered by the City of Vancouver. Damage occurred to a suite. The ruling of the court is that, if the strata lot owner presents evidence that the damage is from the lack of repair of the building envelope, the strata corporation must pay for the damage to the strata lot.

A Case Where the Strata Corporation Need Not Pay

In *John Campbell Law Corp v. SP VIS 1350* (BCSC 2001), a commercial strata lot was damaged by back up of the sewer connection. The sewer pipe was common property. On September 28, the sewer pipe became blocked by a tree root at the point just before it entered the City of Victoria's sewer main. The tree roots were from a neighbouring property. The strata corporation had not experienced any prior difficulty

with their sewer line being blocked.

The owner of the strata lot argued that a strata corporation is strictly liable as a result of a statutory duty to repair and maintain their common property.

The Court reviewed the sections of both the Condominium Act and the Strata Property Act which state that a strata corporation has a duty to repair and maintain the common property, then indicated:

The central question here is whether a standard of reasonableness should be read into the duties imposed on a strata corporation by the legislation referred to or whether it imposes strict or absolute liability.

The strata corporation:

- presented evidence that strata corporations do not usually practice flushing sewer pipes unless a problem has first presented itself;
- maintained that sewer back ups are rare occurrences that can only be responded to in emergency manner.

The Court held that the invasion of the sewer pipe by roots of a tree from a neighbouring property could not have been reasonably anticipated.

The Court stated:

The defendants are not insurers. Their business, through the Strata Council, is to do all that can reasonably be done in the way of carrying out their statutory duty, and therein lies the test to be applied to their actions.

In this case the strata corporation met the test or standard, and did not have to pay for the damage to the suite. The actions required to meet the standard may well be higher in common problem areas such as the roof and the building envelope.

Hypothetical Case

One can imagine a situation where water damage occurs to a suite because of failure of the roof. If the strata corporation had a plan in place to inspect the roof at regular intervals, and did maintenance to the correct standard, which might involve professionals, a leak could still occur. A high wind could come up, rip off some shingles and allow water to enter a unit. The strata corporation, if they could show that they had done everything a reasonable party would do to repair and maintain, including regular inspection, might well avoid the obligation to pay.

Insurance

The above all being said, if the strata corporation's insurance policy covers the type of damage incurred, an owner may be able to access that policy to repair damage, even if the strata corporation is not neglectful with respect to repair and maintenance.

Section 149 of the Strata Property Act requires the strata corporation to insure buildings and fixtures, as well as the common property and common assets. Regulation 9.1(2) sets out the risks that must be insured against. Windstorm is one of these risks.

Therefore in the above hypothetical case, the unit owner may be able to access the strata corporation's insurance to pay for the repair.

Conclusion

Each case must be judged on its own facts. Strata corporations should contact the VISOA for their recommendations as to inspection and repair and maintenance schedules.

VOTING : WHEN DOES 26% = 75%?

By Sandy Wagner

How many owners does it take to change a bylaw: 75% or 26%? I'm sure you know the answer is 75% (typically called a $\frac{3}{4}$ vote) BUT the reality is that as few as 26% of the owners have the power to impose a bylaw or pass any other special resolution.

Suppose that your strata has 100 units.

- a quorum is $\frac{1}{3}$, or 34 owners.
- the voting requirement to pass a bylaw is $\frac{3}{4}$.
- $\frac{3}{4}$ of 34 is 25.5 therefore 26 owners must vote "yes" to pass a bylaw (or any other three-quarters vote resolution).

Because the 26 who passed the bylaw are less than 50% of the owners, the strata council must wait one week before implementing it. If, within that week, 25% of the owners petition the council to revisit the issue, the council must call a Special General Meeting to do so.

If, during a general meeting, some owners leave and the meeting is left with less than a quorum, then any business conducted is not legally effective; but if owners remain in attendance and simply abstain from voting then a very small minority of owners could make decisions. Using the example above, of 34 owners out of 100 attending a General Meeting, notice what happens with abstentions:

- if five owners abstain from voting, the requirement to pass the bylaw is $\frac{3}{4}$ of 29, which is 21.75 or 22 owners.
- if ten owners abstain from voting, the requirement to pass the resolution is $\frac{3}{4}$ of 24, which is only 18 owners.

It is unlikely that so many owners could abstain from voting, but it could happen.

You do the math – are you willing to give so few owners so much power? Attend your Annual General Meetings. Familiarize yourself with the topics to be voted on. And exercise your vote.

Strata Legislation Review - Will it happen?

by Deryk Norton, VISOA Board Member, Government Relations

As mentioned in previous issues of the VISOA Bulletin, strata owners and their strata councils have become increasingly aware of deficiencies in the legislation that affects strata home ownership. One fourth of all properties in the province and one half of all properties in the lower mainland and Victoria are directly affected by strata legislation that is not working well. In 2003 there was some hope for improved legislation when a previous BC Minister of Finance committed to review the Strata Property Act. Without explanation, this review has not occurred.

However in its recent November 15, 2008 report, the Legislature's all-party Select Standing Committee on Finance and Government Services recommended that the government consider "Committing to an immediate review of the strata property legislation." VISOA made a similar proposal to the Committee and strongly supports the resulting Committee recommendation. VISOA has since told the Minister of Finance that it is preparing to actively participate in the review process.

To help ensure that this Committee recommendation is actually implemented (and does not go the way of the government's 2003 commitment) we are asking concerned strata owners and their strata councils across the province to do one or more of the following:

1. Write a letter to Premier Campbell supporting the Committee's recommendation and asking that it be implemented immediately (with a copy to your local MLA). The Premier's mailing address is: P.O. Box 9041 Stn Prov Govt, Victoria, BC V8W 9E1

2. Write a letter to the editor of a local newspaper in support of the Committee's recommendation. The mailing addresses of two editors are: The Editor, Times Colonist, 2621 Douglas Street, Victoria, BC V8T 4M2 and The Editor, Nanaimo Daily News, 2575 McCullough Rd, Nanaimo, BC V9S 5W5, and

3. Forward this article to other strata owners and strata councils. The complete Committee report can be found at <http://www.leg.bc.ca/budgetconsultations>. Information on strata legislation concerns brought to the attention of VISOA and presented to the government can be found at www.visoa.bc.ca under Legislation Issues. (For members who do not have internet access, a copy of VISOA's legislation report can be obtained by calling the VISOA help line.)

The recommended review has the potential to produce legislation that will significantly improve strata living for thousands of homeowners across the province. Your support for such a review is essential to ensure that it occurs.

Recycling subsidy

Continued from page 2

match the increase in recycling fees. He informed me that the CRD was unaware that recycling fees had increased so much until I called, but that it was unlikely the subsidy could be increased until the next fiscal year because the CRD had just approved its annual budget. It does not appear that there will be any charge for blue box pickup.

On a per unit basis, it is less expensive to pick up recyclables from apartment blocks than from individual residences. This raises the question: since strata property owners pay the same taxes as private residence owners, shouldn't they receive the same services?

Strata owners who are concerned about paying twice for a service should let the CRD know. The CRD telephone number for calling about recyclables is 250 360 3241.

Lessons learned as a strata administrator



Gerry Fanaken's talk at VISOA's November Seminar summarized by Bulletin co-editor Sandy Wagner,

Mr. Fanaken, the founder and owner of Vancouver Condominium Services since 1980, has owned and lived in a condominium since 1974. He started the Strata Plan Home Owners' Association (now known as C.H.O.A.), has been a consultant to the Provincial Government on many condominium issues and relevant strata corporation legislation over the years, has lectured on condominium issues, and is the author of several books on strata corporation administration. Mr. Fanaken has been appointed many times by the Supreme Court of British Columbia to be an Administrator for troubled strata corporations.

There are several ways to resolve problems and disputes in BC strata corporations:

- 1) The Courts – specifically the Supreme Court of British Columbia. The SPA sections 163 through 169 deal with lawsuits against the corporation, while sections 170-173 deal with lawsuits against an owner.
- 2) Arbitration. Sections 175 through 189 of the SPA outline the process for

arbitration. The process is cumbersome and complicated and can get bogged down with forms and paperwork. Often, the arbitrator has no direct knowledge of the SPA. In addition, arbitration can be very expensive. An infamous case brought by a strata corporation against an owner for feeding seagulls off his balcony took over two years to resolve. The strata corporation did eventually win, but it cost them \$50,000 for their victory – a cost shared by all owners.

3) Voluntary Dispute Resolution. This is outlined in standard bylaw 29. The process, which is seldom used, is similar to arbitration but much simpler and without lawyers.

Gerry Fanaken's topic, the fourth problem-solving method is:

4) Appointment of a Strata Administrator.

When is a strata administrator appointed? When a strata corporation has no owners willing to serve on strata council, or when the council is so dysfunctional or the corporation in such financial trouble that it cannot continue. The application for an administrator is not like a trial with evidence and witnesses. The court makes its decision the same day – there is no time to review boxes of evidence.

Who can ask the court to appoint a strata administrator? This is outlined in SPA section 174. Most often, it is an owner in the strata. A tenant or mortgagee may also request an administrator although this is less common. More rare is the strata council itself calling for an administrator. The SPA specifies that an "other person having an interest in a strata lot" may ask for an administrator. This is very rare but could be a municipality or utility company with an easement, or Revenue Canada if they have placed a lien on a strata lot.

What is a Strata Administrator?

An administrator's duty is to "exercise the powers and perform the duties of

the strata corporation". The administrator does not replace the owners – the administrator replaces the strata council. The court may appoint an administrator if it is in the best interest of the corporation, and the appointment may be for an indefinite or set period of time. The set period is most often one year - an "indefinite" appointment is very rare. The court approves and sets the remuneration for the administrator and sets limitations on his powers and duties, some of which he may delegate, and may remove an administrator or vary the order.

An administrator is called an officer of the court and reports to the judge. At the end of the term, the administrator reports factually and unemotionally back to the owners and to the court.

The court may approve a further period for the administrator if the strata corporation is still dysfunctional. The strata corporation pays all the expenses of the administrator.

Ten interesting cases for a Strata Administrator:

- 1) N50 vs Cook. This case was 15 years ago at Radium Hot Springs. The strata corporation had a \$400,000 deficit. The developer owned several units, was the property manager, didn't pay his strata fees, and controlled the council. (More on N50 vs Cook later)
- 2) A Vancouver high-rise condo building of about 250 units. Allegations were made that the council consisted of gang members who siphoned off building monies to fund illegal activities. The allegations turned out to be false.
- 3) A strata-titled duplex in need of roof repairs. Each owner got a roofing quote – the quotes were only \$1200 apart but the two owners could not come to an agreement. The situation deteriorated so much that an administrator was appointed for two years. Each owner paid

Continued on page 9

Lessons learned

Continued from page 8

their own legal fees, in addition to their share of the \$50,000 payment for the administrator and \$50,000 for the administrator's legal fees. And of course, the cost of the roof repair.

4) A mixed retail, residential, hotel strata known as AviaWest. Hotel suite owners were the majority. There was a budget line item of \$10,000 for "Goodies and Muffins" for the hotel guests. The minority owners objected to paying for "goodies and muffins" that they could not enjoy, but the majority owners controlled the votes at the General Meetings. An administrator was called in to resolve the issues, beginning with the muffins.

5) A 300 unit strata with multiple issues. After two years of legal expenses, an administrator was brought in and it took a further two years to resolve all the issues. Over the four year period,

each side spent \$1 million in legal fees. 6) A 21-unit strata. The developer held the majority of the votes, with 11 units. He was the property manager, never paid strata fees and treated everyone like tenants. One little old lady thought things didn't seem quite right and got an administrator appointed. Who knows how long the developer would have continued his evil ways if not for the little old lady?

7) A leaky condo in Victoria. The strata corporation was five buildings, but only one was a "leaky". The administrator was appointed for only the one building with the leaky issues. This is a good example of how the court can set limitations on the powers and duties of an administrator.

8) An example of a frivolous and unnecessary appointment of an administrator: A strata corporation changed management companies. The former management company was delinquent in turning over the records. The strata corporation did not know how to proceed and asked for an administrator. Upon appointment, the administrator

telephoned the former management company and asked that the strata's records be promptly turned over. The problem was resolved within one week.

9) Another frivolous appointment: A 30-unit strata had eight absentee owners who only came to the yearly AGM and knew little about the daily operation but thought some things seemed "off". These eight owners brought an application for administrator. After only a few months, the administrator reported back to the court: there are no issues here.

10) Another 2-owner strata property. These duplex owners didn't think the SPA applied to them – they never had annual budgets or an AGM. They couldn't agree on simple matters, though. Such as one of the owners getting repair work done over ten years ago without consulting the other owner, and presenting him with a bill for \$168,000 for his "share".

Three interesting precedent-setting court cases:

1) **N50 vs Cook:** Remember our first

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Lessons learned

Continued from page 9

interesting case from page 2? The strata corporation had a deficit of \$400,000. In this case, the administrator assessed a Special Levy without calling a Special General Meeting. The developer took the administrator to court, and the court ruled that the administrator cannot take away the powers of an owner. This is now one of the guiding principles of an administrator's work.

2) Aviawest: A court ruling gave the administrator the right to pass bylaws, because the majority group (remember the goodies and muffins?) were not acting in the best interests of all the owners. But the court of appeal overturned the decision.

3) Lum Decision: In 2001, a strata council fired their caretaker. Some of the owners objected and wanted to overturn the council's decision. They applied for an administrator. The court's ruling listed factors to be considered in the decision of whether to appoint an administrator, and these factors have been guidelines for the courts in the succeeding years:

(a) whether there has been established a demonstrated inability to manage the strata corporation,

(b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,

(c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,

(d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,

(e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

What are the consequences to owners for the appointment of a strata administrator?

1) the cost can be significant

2) the cost can be beyond comprehension

3) the cost can be astronomical !

In other words, it's expensive!

Weaknesses in the legislation: The SPA needs to be amended to give the administrator more powers. Part of the reason for the high cost is the court time and administrator time because the administrator still has to go through the owners for mundane matters. If the administrator had more powers, the costs would be lower as the job would simply get done more quickly.

Are there any happy endings? Yes and no. The administrator fixes the problems of the strata and gets the corporation back on track but there are two downsides. One is the cost which must be shared by all owners. The second is that without a change in attitude of the owners, the same old people and situations which caused the problems may cause them again.

A common cause of problems in strata corporations is owner apathy, particular among younger owners who see strata properties as a rung up the property ladder and not a way of life.

How to avoid the appointment of a strata administrator:

Follow the Strata Property Act. Enforce bylaws consistently. Work in the best interests of the corporation, not your personal interests. Learn to compromise. Common sense and good behaviour cannot be legislated but go a long way to avoiding problems.

A Fresh Approach to Strata



In cohousing...

- extensive shared amenities form the heart of the community. In our case, a glass-covered pedestrian street and an 8,000 sq. ft. Common House.
- the thoughtful layout of private strata homes in relation to the centre and to each other fosters social contact while protecting privacy.
- consensus decision-making generates solutions that everyone can live with



Pacific Gardens Cohousing Community

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Strata strategies – annual maintenance plans

by John Grubb, SMA, RPA, RRO

The title is self-explanatory but many Strata owners ask why such plans are necessary. As former single family home owners, they did what was required to maintain their property (or not) but there was no need for a formal plan.

Formal plan or not, the single family home owner is consistently involved in his home's ongoing maintenance and has an understanding of the property's maintenance history.

The nature of Strata Plan governance, where new "volunteers" are elected annually to manage the Corporation's affairs, often means that this understanding and sense of history of the Strata Plan is lost as these volunteers replace previous owners on the Council or the Maintenance Committee.

Here we must acknowledge all those long-term "handyman" owners who have taken on the general maintenance duties around their Strata properties, formally or not. To the other owners where this is the case, we encourage you all to avoid taking these people and their efforts for granted.

It must be remembered that it is the Strata Corporation's responsibility to manage and maintain the common property in the interests of all the owners and, with no disrespect intended, we must caution any Council against relying solely on the services and goodwill of these "handymen".

An Annual Maintenance Plan en-

ures that new Council and Committee members fully appreciate the property's maintenance needs, by clearly laying out programs and schedules for the various Common Property systems that require regular attention. The Plan should also identify other areas which, although not requiring regular maintenance, should be inspected and their condition regularly monitored.

An Annual Plan should also include Reporting requirements such that, during the scheduled maintenance or inspection of any common system, a short written report on its condition is generated by the technician or owner/volunteer, as an ongoing historical record of the Corporation's operations.

When an Annual Maintenance Plan is formally adopted by a Strata Corporation, it ensures that the Owners' desired standards to which the property will be maintained, whether by the "handyman" owner, a Strata Management company or any other contractor, are clearly stated.

(For suggestions on the development of your own Strata's Annual Plan, please refer to our previous VISOA bulletin articles – Annual Maintenance Schedules Parts 1 – 4)

John Grubb is a Facilities Maintenance Consultant serving Strata Corporations and building owners on Vancouver Island. 616-9298 or www.unityservices.ca

Condominium living, community, cooperation and consensus

By Kathryn Hazel - Pacific Gardens Cohousing Community

So you've retired and you want to downsize so you'll have more time for hobbies, visits with friends and family, and travel.

Condominium living sounds like just the ticket. You can lock your door and go away for a few months and not have to worry about maintenance and repairs. You may have to go to the Annual General Meeting, and there are these bylaws and rules you remember reading about when you bought the place. But that's no big deal.

Then you decide to replace your old wooden door with one that's fireproof and better-insulated, and you paint it a different colour.

Oops! Now you're in trouble, because you didn't ask the strata council first. An owner in the complex says there should be a special meeting to discuss it. Some people are so annoyed with you they won't speak to you. Others write irate letters that they circulate to all the owners. Yikes – what happened?

This kind of conflict is all too common in condominiums. It's not because people are nit-picky or difficult. It's because they don't know how to live in community.

Most of us, before we move into a strata, have lived in our own homes where we didn't have to consult with anyone other than family members about what to do. We have no experience of or preparation for living cooperatively with others outside our immediate circle. We don't know how to share and defer to other views. Without some process that can help us to work with our neighbours in a cooperative and respectful manner, it's hard to avoid these types of conflicts.

Cohousing is a form of condominium living that provides this process, through a variety of techniques.

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VISOA's upcoming seminar

Sunday, February 15, 2009 • 1:00 - 4:00 PM • Register 12:30 pm

ANNUAL GENERAL MEETING

Speaker: Lawyer, Tino Di Bella

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Condominium living

Continued from page 11

First, members of cohousing get to know each other before they move into their units as they make common decisions on the design of their condominium project. Second, they get training in conflict resolution and in particular, consensus decision-making, which requires that each person's view is considered.

So, you're wondering, how would it work in cohousing with the example of the brouhaha over the new and wrongly-painted door?

To begin with, someone would have sat down with you and gone over the bylaws and rules and regs to make sure you understood them. You would know that changing common property would be something for the strata council to discuss, and as a cohousing member, you would get to participate.

When the question of replacing your door came up, everyone would have a say. Maybe some members would be against it, at first.

Others might be in favour because they think everyone should upgrade their doors to make them more energy-efficient and fire-safe. Someone else might say they'd go along with it, as long as the colour remained the same. Another person could question the cost of replacing the doors.

As people talk and express their views, a consensus opinion on what should be done is formed. Everyone contributes, and all members gain from those contributions. In the end, you have a better decision, more buy-in from people in the strata because they have had a say, and a constructive way of resolving conflict.

It may seem like a more complicated way of doing things, but it works – and it's a lot better than getting into fights with your neighbours!

For more information about cohousing, go to the Canadian Cohousing Network website at www.cohousing.ca.

For information about cohousing in Nanaimo, go to the Pacific Gardens Cohousing Community website at www.pacificgardens.ca, or e-mail us at joinus@pacificgardens.ca



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Legal advice or other expert assistance should be sought as appropriate.