



Vancouver Island Strata Owners Association

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VISOA Bulletin - FEBRUARY 2010

# President's Report

I hope you all had an enjoyable and restful holiday with friends and relatives. 2009 was an eventful year for us with the cancellation of the Homeowner Program and the passage of the Strata Property Amendment Act. Your association has seen an increase in membership and increases in seminar attendance. 2010 also promises to be a year of changes and challenges. We will continue to keep you abreast of developments in the strata world and to provide the information to help you make strata living an enjoyable experience.

I would like you to welcome our new board member, John Webb. John is a busy strata owner, president of VIS 1738 and vice president of VIS 1650.

John brings a wealth of experience to the board and we are very pleased to have him on the VISOA team.

Please don't forget to attend the VISOA Annual General Meeting on February 21, 2010. The AGM is an important opportunity for you to participate in the running of VISOA. As part of our commitment to keeping you up to date we have invited R.C. (Tino) Di Bella, a respected Victoria lawyer, to speak on the implications of the Strata Property Amendment Act for strata owners. Tino is an interesting and engaging speaker. He has agreed to answer questions so mark this date, check the notice in this bulletin and see our website for more information.

Although we are an association with

strong roots on Vancouver Island we do get requests from other parts of BC for publications, help and interest in attending our seminars. Your board is therefore proposing that membership in the association be extended to all BC strata owners. This proposal will be put before the membership as an amendment to our constitution at the upcoming AGM.

Your Board will also be putting a full slate of ten directors before you for your approval.

For those of you who live in the Nanaimo area, pencil us in for April 18. This is the date Rudy Wouts will be speaking on reserve fund studies. Rudy gave this seminar in Victoria and it was very popular and well attended. Reserve fund studies (or depreciation reports as they are referred to in the new act) are going to need your attention. So come along and get a heads up on this important topic.

Changes to the *Strata Property Act* and Regulations means that some portions of the Instruction Guides will no longer be accurate or complete. The Ministry of Housing and Social Development has posted two bulletins, one a disclaimer and the other concerns rental disclosure statements. We strongly advise you to read these bulletins when consulting the Instruction Guides. You can find more information on our web site. We will keep you up to date on any further changes and bulletins.

- Tony Davis, President

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### BOARD OF DIRECTORS 2010

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 Harvey Williams, John Webb

# Editor's message

by Sandy Wagner, Bulletin Editor

Welcome to the February issue of the VISOA Bulletin. We seem to have a lot of acronyms this month....HST, HRTC, CRF, CRA, PIPA. All will be explained!

Our helpline has received numerous queries recently about both the HST (Harmonized Sales Tax) and the HRTC (Home Renovation Tax Credit). A common question is "Will I have to pay HST on my strata fees?" We can assure you that your strata fees will not be subject to the HST. We have reprinted a brief notice about the HST to enlighten you. As for the HRTC, you want to know if the credit applies to Contingency Reserve Fund expenditures, or just to Special Assessments. It applies to both the CRF and Special Assessments, provided the expenses meet the eligibility criteria outlined by the Canada Revenue Agency. We have reprinted an article on the subject by our Treasurer, Daryl Jackson. After you've read it, dig out your own receipts and ask your strata for receipts for your share of qualifying renovations.

Another topic in the minds of BC strata owners is PIPA (Personal Information Protection Act). Lawyer Shawn Smith has written an excellent article which clears up some misconceptions about PIPA as it applies to strata owners.

Last acronym: our name VISOA stands for Vancouver Island Strata Owners Association. We have had several inquiries for information and assistance from BC strata owners from outside our usual area. There are other associations who assist strata owners in our province so we do not seek members from outside Vancouver Island – but when any strata owners come to us with questions we want to help. We will be asking you, our members, this important question at our upcoming AGM: whether we should permit members from the entire province. Our mandate is education and we do not discriminate against those who do not reside on our beautiful island! We hope you will agree with the Board and invite members from the rest of BC.

# You asked:

## ***Can we assess all of the owners in our townhouse complex the same amount for shingling their roofs?***

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:

Some of the houses in our townhouse complex are two storey and others are one storey, but the roofs are all the same size. We are proposing a special levy to replace the roofs on the townhouses in our complex. Is it OK to assess the same amount for all the townhouses?

### Answer:

This question comes up frequently with regard to roof replacement on townhouses when some units are two storey and others one storey. Some of the newer townhouses are even three storeys in

height where land is very expensive.

The *Strata Property Act* is very specific on this issue. Monthly strata fees and special assessments must be based on the unit entitlement on file in the Land Title Office. Unit entitlement is usually based on the floor area of liveable space. As a result, two storey townhouses often have twice the liveable space, hence twice the entitlement of a one storey townhouse. Before the *Strata Property Act*, other numbers than liveable space may have been used.

The bottom line is: the entitlement that is recorded in the Land Title Office must be used in setting fees and special assessment whether the units are one storey or two storey unless there has been a court judgment setting a different entitlement. The only way that entitlements can be changed by owners is by a unanimous vote of all owners, not just those present at a general meeting.

Accordingly in most cases, even though a two storey townhouse unit and a one storey townhouse unit have the same roof area and footprint on the ground, the two storey unit will pay twice the assessment for a roof.

## HST and strata properties

What is harmonization? There are currently two taxes levied on the sale of goods and services in BC; a 7% Provincial Sales Tax (PST) and a 5% federal tax called the Goods and Services Tax (GST). The total sales tax is 12% on goods and service taxed by both levels of government. Effective July 1, 2010 the two taxes will be combined into one Harmonized Sales Tax (HST) of 12%.

How will this affect strata owners? The HST will not be collected on the strata fees, but strata fees will increase slightly because strata managers and contractors will have to collect the harmonized tax on their services. It will also impact the Contingency Reserve Fund because large maintenance items that are paid for from

the CRF such as painting and roofing will now pay the harmonized tax package. How much the sales tax will increase on any particular item or service depends on how it was taxed before harmonization. The sales tax will jump from 5% to 12% for items that were taxed only by GST but not the PST. Your strata can plan for the expected increase in costs by comparing previous years' invoices to see which taxes applied to various products and services. Add 7% to those items which had only the 5% GST applied and that will be your new cost. Remember that the HST will be in effect for only 6 months of this year, so your strata's budget for next year will have to account for the full 12 months of HST.

Reprinted from [www.visoa.bc.ca](http://www.visoa.bc.ca)

# So you're on strata council. Now what?

by Sandy Wagner, Bulletin Editor

First, congratulations! You will learn a great deal during your term in office. You probably have many questions – the answers are not “one size fits all” because there are so many variables, but here are some of the basic things you need to know:

At the first meeting, the elected council members will choose among themselves a President, a Vice-President, a Secretary, and a Treasurer. If your council is small you might have a combined Secretary/Treasurer, or some other combination. The only two offices that cannot be combined are President and Vice-President. The President conducts the meetings, the Secretary records the minutes and prepares letters of response to owners, the Treasurer records the financial matters including collecting fees and paying bills, and the Vice-President fills in for any of the others as needed. But all council members have equal responsibility to the owners.

All the council members should obtain a copy of the strata's bylaws and rules, and the *Strata Property Act* if they don't already have them. The Instruction Guides published by the Superintendent of Real Estate are also very useful. Section 26 spells out the duties of council members – you are to “...exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules” – in other words, conduct the business of the strata corporation. How much that entails depends on the size of your strata and whether you have hired a strata management agent to assist the council. Just remember this: the strata agent works for you, not the other way around. You work on behalf of the rest of the owners, and the strata agent is there to assist you.

Your council should decide when and how often to meet. Most strata councils

meet monthly but this is not mandated by the *Strata Property Act*. The reason for monthly meetings is that requests by owners must be answered within a month.

At your monthly meetings, you will review correspondence and requests and decide how to respond. The SPA will be your primary reference guide, along with your strata's bylaws and rules. Other references are the SPA Instruction Guides, the VISOA Helpline if your strata is a corporate member, and VISOA's many publications. Some of your council members have likely served before and they are, of course, a great resource for you as a new member. Correspondence should be circulated to all council members well in advance of the meetings, so that everyone is prepared at the meeting. Decisions must be made by the entire council as a group. All decisions should be noted in the minutes, along with the results of any votes, and the minutes must be made available to owners within two weeks.

The strata council is responsible for ensuring the strata corporation's assets are managed and maintained, and for enforcing bylaws. That doesn't mean you are “in charge”. You are simply the elected representatives of all the owners. You must follow the budget which was voted on at your Annual General Meeting – but if an emergency comes up you must deal with it. Saving life and property is most important – if a tree branch is cracking and is in danger of falling onto someone's head, you must get it fixed even if it is not in the budget. You must report this to the owners as soon as feasible.

Depending on the size of your strata corporation, you might have committees to assist the council with some of the daily functions – for example if you have a common laundry room you might have volunteers to clean the room, collect the

coins from the machines, and turn in to the Treasurer to be deposited into the strata's bank account. Or if you have exterior gardens you might have a committee to maintain them. Or if you don't have volunteers for these you might have budgeted to hire contractors to perform these functions. You might have a gardener, a bookkeeper, a cleaner, or other contractors.

Often, the most unpleasant parts of serving on strata council are dealing with complaints and bylaw infractions. It doesn't have to be that way – remember you are required by the *Strata Property Act* to enforce the Act, Bylaws, and Rules. The common culture of your strata will determine how many complaints or problems you have – if you are lucky your owners have a “we can deal with this” attitude instead of “you better get this solved”. Put yourselves into the other's shoes, as it were, and just remember to treat all owners fairly and equally while following the SPA and your own Bylaws and Rules.

It is essential that in dealing with individual owners, that the Personal Information and Privacy (PIPA) Guidelines be adhered to. The PIPA Guidelines are described in the article by Attorney Shawn Smith that appears elsewhere in this Bulletin.

Near the end of your fiscal year you must prepare a budget for the next year. All the council members should work on this together; it is not a job for the Treasurer alone. You will present it to the owners at your Annual General Meeting and it will become the financial guidepost for the next council. And if you have enjoyed your term on council, I hope you will serve again if asked. You are now the experienced council member who can guide and help the next newcomers.



# P.I.P.A. Guidelines and Strata Corporations

by Shawn M. Smith, B.A., LL.B.

For some time now (in fact since 2004) strata corporations have been subject to the requirements of the Personal Information Protection Act (“PIPA”). However, how the legislation was to be applied in a strata setting was often unclear. For example, there were divergent opinions within the strata community as to whether or not owners were to be permitted access to letters to and from owners because of the “personal information” contained in them. As well, there were questions raised regarding what can and cannot appear in the minutes. In order to assist strata corporations and strata councils in fulfilling their obligations under PIPA, the Office of the Information and Privacy Commissioner (“OIPC”) (who is responsible for the application of and ensuring compliance with PIPA) has prepared Privacy Guidelines for Strata Corporations and Strata Agents (the “Guidelines”). They were released on July 30, 2009 and can be found on OIPC’s website. As you will see, it is critical that strata council members familiarize themselves with those guidelines

as they are the standard that will be applied by OIPC when ruling on whether or not there has been a breach of PIPA.

Strata corporations will most often have to deal with PIPA in the context of:

- Collection, storage and use of owner data (i.e. bank account information, contact information, etc)
- What information to put in minutes
- Providing copies of documents to owners when they request them
- Security and access systems

However, this list is by no means exhaustive. There are any number of areas where PIPA issues could arise and council members must be alert to both the requirements and application of PIPA. Keep in mind that while PIPA applies primarily to owners and tenants, it extends to occupants and visitors as well.

While the focus of this article is on applying the Guidelines, a brief review of the scope of PIPA is warranted. PIPA regulates:

- the collection of personal information (sections 10 to 13)
- the use of personal information (sections 14 to 16)
- the disclosure of personal information (sections 17 to 22)
- access to information by the individual (sections 23 to 24)
- the storage and retention of information (sections 33 to 35)

It also requires the strata corporation to have a “privacy policy” (being a written document setting out how the strata corporation will deal with requests for personal information and how it will take steps to protect that information) and to appoint a “privacy officer” to oversee the administration of the Act and deal with problems related to the same. (The privacy officer can del-

egate his or her functions to someone such as a strata manager. However, the proper written authority should be in place.)

The core requirement of PIPA is that an organization (which includes strata corporations) must have a person’s consent to collect, use and disclose personal information. Express consent is given where an individual, either in writing or orally, specifically agrees to the strata corporation collecting, using or disclosing certain information. Implied consent occurs where an individual voluntarily gives information to the strata corporation knowing the purpose it will be used for. (Under s.8(1) a person is deemed to have consented to the collection, use and disclosure of information if the purpose for the collection, use or disclosure is obvious to a reasonable person and they voluntarily provide the information). Implied consent can also occur by providing notification to the individual of the intention to collect information and the intended purpose, use and disclosure of the same (one should attempt to be as specific as possible) and then providing them with a reasonable opportunity to decline (s.8(3)).

In the context of a strata corporation express consent will usually occur where an owner completes a form provided to them by the strata corporation. (Where forms are provided they should include language setting out the purpose for which the information will be collected and used and to whom it may be disclosed and expressly authorizing the same).

Implied consent will arise in a variety of different circumstances. For example: putting your name and phone number on a contact list to be circulated amongst the residents is implied consent that others within the complex may call you. Attending a general meeting is implied consent that your attendance (and any comments you make) can be recorded in the minutes. Providing your vehicle license number and make/model of vehicle is implied consent that it may be used to enforce parking restrictions.

The collection, use and disclosure of personal information can be done without an individual’s consent if it falls within the scope of sections 12, 15 or 18 of PIPA.

- Some examples of those exceptions are:
- the collection, use or disclosure is authorized by law
  - the information is necessary to collect a debt

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# Realtor documents

by Elsie Lockert, VISOA Director

Unit for sale? Prospective buyer documents needed? How do you handle this task?

Before purchasing a unit in your strata a potential new owner will request various documents (minutes, bylaws, rules, forms B & F, etc.). These documents are generally requested through their realtor and/or legal representative. Some stratas have contracts with management companies and they delegate this task to them. Others have set up websites that have all the necessary documents available on it.

But some stratas will be like the one I live in. We are small and totally self managed. We have, in the past, used the “tried and tested” method of providing everything in paper form from paper files. We have developed a new method which we think will work very well. In the spirit of sharing, here it is.

## Coordinator/Liaison Officer:

Our strata secretary is our coordinator and liaises with

the realtors and/or legal representatives then coordinates with designated council members for the preparation of the documents.

Strata’s email account (e.g. StrataXXXX@Gmail.com):

We have a strata email account which we use to electronically store documents such as minutes, financial reports, etc. Designated council members have passwords to this account and are responsible for ensuring it is organized and up to date. Most of the documents and forms that are required for the sale of a unit are stored in the strata’s secure email account.

## The following documents are to be made available upon request:

### 1. Strata Minutes – Past Two Years:

Copies of council and general minutes, including any reports attached to the minutes, are stored in the email account. To do that, a designated person scans a complete set of the minutes and attachments into a single

PDF document. It is then named by date (year, month, day) and type (Council, AGM, SGM). For example, a council meeting held on November 8th would be labelled “20091108 Council Meeting”. This document is then sent to our email account then filed under the label “2009 Meetings”.

It is then very easy to retrieve the last two years worth of minutes when needed and copy them to a CD. Our charge for this CD is \$25. The realtor can now print off the documents and/or provide the potential owner with a CD. We store a blank invoice form in email which can quickly be printed off and completed .

### 2. Forms B & F:

Blank form B & form F are also located in email for easy retrieval. (Sometimes the realtor or legal representative will provide a partially completed form B for completion.) In our strata these forms are completed by the treasurer then co-signed by the president or other designated council member. Com-

pleted forms can be scanned in PDF and stored in email as well.

We use the standard charge as outlined in the *Strata Property Act* which is \$35 for Form B and \$15 for Form F. Once again, blank invoice forms are stored in our email account which makes it quick and easy to prepare.

### 3. Insurance Coverage Documents:

Form B requires information on the Strata Insurance Policy. Our current policy coverage (one sheet overview) is located in the email account and can be printed out and attached to the Form B document.

### 4. Bylaws, Rules, etc:

These documents can be scanned into a PDF document and kept in the email account as well. In our case, we have a “Residents’ Manual” and one section is dedicated to bylaws, rules, and practices. Every unit has a copy of it and it is always kept up to date. We also have a “library” copy. This copy is lent to the Realtor so

the prospective buyer can review it in order to obtain a better understanding of how we operate before they make their purchase.

If you have a practice that you find both efficient and effective please share it!

That is “the VISOA way”.

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# Buying a condominium

by Joyce Johnston, Attorney

You are considering buying a strata property – be it a condominium or townhouse. You have looked at some of these properties, liked the physical property, and the price. What other information should you obtain and consider before making your decision to buy?

1. An information certificate, SPA Form B. This document is often provided by your realtor. The requirements for the information certificate are set out in *Strata Property Act* (SPA) section 59.

A. This document will show you the current strata fees, any special levies that have already been passed, whether the expenses will exceed the budget, notices of work orders on the strata common property or your strata lot, and any court disputes. The SPA requires that a copy of the current budget be appended to the Form B.

B. The Form B will also show the number of units that are currently rented. Additionally, the SPA requires that any owner-developer's Rental Disclosure Statement be appended to the Form B. This document can allow for a unit to be rented for a period, even when there is a Rental Restriction Bylaw.

C. The Form B will show any amendments to the Bylaws that have been passed, but not yet registered at the Land Title Office. Similarly, it will append any other resolutions passed by  $\frac{3}{4}$  vote, if they are required to be filed at the Land Title Office but have not yet been filed. The current Rules of the Strata Corporation should be appended to the Form B.

D. The Form B will also show any agreements the owner of the unit has en-

tered with the Strata Corporation, under which the owner will take responsibility alterations to the strata lot or common property.

It should be noted that once the Bill 8 Amendments to the *Strata Property Act* are proclaimed, the Form B will also include identification of which parking stalls and storage lockers, if any, have been allocated to a strata lot. Also a copy of the most recent depreciation report will have to be attached to the Form B.

2. A copy of the registered strata plan and a copy of all bylaws. These can be obtained from the Land Title Office. Make sure you have all amendments to the bylaws.

## STRATA PLAN

A. The strata plan will show the boundaries of your strata lot, the common property, and limited common property. Together with the bylaws, this will allow you to determine which areas you must maintain personally, and which areas the strata corporation maintains.

B. The strata plan will tell you if the parking is common property, limited common property or strata lot. If parking is limited common property for the exclusive use of your unit, or if you will have a lease of the parking spot, your spot is yours while you own the strata property. If the parking garage is common property, the strata can allocate parking spots and you have no guarantee for the ongoing use of a specific spot.

C. You can calculate your common costs. While the Form B shows what the

current strata fee is, it does not allow you to know what your share of a common cost is. If a special levy is passed for a repair, your unit's share of that common cost is determined by taking the unit entitlement of your unit and dividing it by the total unit entitlement in the strata. The unit entitlement is set out on the schedule of unit entitlement on the strata plan.

## BYLAWS

A. The bylaws will tell you if you can rent the property. You should look for a Rental Restriction or No Rental bylaw.

B. The bylaws will tell you if there is an age limit to residing in the property.

C. The bylaws will tell you if you are allowed to keep pets, and if so, how many and what type and size.

D. The bylaws will tell you what use you can make of the property in other ways, such as whether you are allowed to have such items as barbecues, items stored on decks, whether you are allowed a home business and any other information on how you can use your strata lot.

3. Minutes of Annual General Meetings, Special General Meetings and Strata Council Meetings.

Request at least the last two years of minutes, and actually set aside some time to read them. Look for the following information:

A. Look carefully at all information about structural problems, proposed repairs, recent repairs.

*Continued on page 7*

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- $\frac{1}{2}$  Page Size: \$300/yr (\$90/single issue)



Ads must be paid for in advance, and are subject to VISOA Board approval. Ads must be "camera ready", in BMP, PDF or TIFF format - additional fees for scanning or layout may otherwise apply.



## Buying a condominium

Continued from page 6

B. Look for instances of dissension in the strata over issues such as noise, and note types of bylaw enforcement. You may be able to learn the tenor of the relationship between your neighbours, and something about the relationship of the current strata council and the owners.

4. Reports. Order any existing reports such as engineering reports, roofing reports and other inspections. Up-coming repairs can sometimes mean that you may have to pay more money in the near future.

### SUMMARY OF ISSUES

I have set out above information to seek out. Another way of approaching the decision is to look at the above information under three main headings:

#### FINANCIAL

- Is the strata corporation in good financial condition?
- Are the strata fees reasonable considering the amenities provided?
- Are there legal claims or judgments against the strata corporation?
- Is the strata corporation suing, or contemplating suing?

- Does the price seem reasonable for what I am getting?

#### PHYSICAL

- Is the strata property, the strata unit and the common property in good condition?
- Does it appear from a physical examination and reading the reports and minutes that the building is well maintained?
- Does the building have fire protection?

#### PEOPLE

- Will you be able to rent the unit?
- Is there any restriction on boarders or long term visitors?
- Are the strata corporation's bylaws and rules reasonable?
- Given my lifestyle, can I live under these rules?
- Do the minutes reveal tensions between neighbours over such issues as noise or garbage?
- Do the minutes reveal unusual tensions between the strata council, who administer the bylaws and rules, and residents?

This does not cover every possible consideration in buying a condominium, and sometimes you must

compromise on one aspect because the investment is so attractive in other ways. However, you should certainly take the time to review the information, consider the financial and physical aspects of the strata, and try to determine the tone of the relations between the other people who live there.

Owning a strata property means you will have more convenience when you travel and less "hands on" maintenance than you would owning a single family residence – but you will also have less freedom to do what you want with your property, and will likely be living in closer quarters to others than you would in a single family home. These last two factors make it important to gather the information set out above and use it to help in your decision.

*Joyce Johnston practices law in Victoria. She may be reached at 250-382-0300. This article is intended for information purposes only. Nothing in it should be viewed as the provision of legal advice.*

## Instruction Guides in need of updating

In order to assist the public in understanding the *Strata Property Act*, the Superintendent of Real Estate's office prepared 29 Instruction Guides on that Act. Most of the Instruction Guides are several years old and they have not been materially updated since they were created. It is important to know that some portions of the Instruction Guides will no longer be accurate or complete because of the amendments to the *Strata Property Act* and court interpretations of that Act. The VISOA Helpline team will try to point out the

differences whenever we refer owners to the Guides.

VISOA has asked the Ministry of Housing and Social Development - which is now responsible for stratas - to re-issue updated versions of the Instruction Guides as soon as possible. A bit of encouragement from our members might hasten the update. Owners may email Mr. Peter Grimmertt (Peter.Grimmett@ficombc.ca) and impress upon him the importance of the Instruction Guides and urge him to place updated versions on the WEB.



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## P.I.P.A. Guidelines

Continued from page 4

- the information is needed for an investigation or proceeding (ie. court)
  - the information is available from a public source (ie. Land Title Records)
  - if use or disclosure of the information is in the person's best interest and consent cannot be obtained in a timely manner (ie. an emergency)
  - in compliance with a court order
- For example, the *Strata Property Act* ("SPA") authorizes the collection of certain information:
- a list of those persons who attended and participated in meetings
  - a list of the names of owners, mailing addresses, strata lot numbers, etc.
  - a list of tenants
  - books of account showing monies received and spent

In these cases, no consent (express or implied) is required to collect the information. However, the use and, much more likely, the disclosure of that information may require consent. In fact, it is in the area of disclosure that strata corporations are most likely to encounter problems. There are two reasons for this. First, owners are most likely to be upset about other owners finding out certain of their personal details. Second, strata corporations must disclose only the minimum amount of information as is necessary to achieve the purpose for which disclosure is required or consented to. This will require thought when information is being provided to another owner or

an outside party.

The most common instances of "disclosure" in a strata setting will be requests for documents and the content of minutes. However, strata council members must remember that telling other owners (including their spouses) information would constitute "disclosure" and they cannot do so without consent.

### Document Requests

When an owner requests copies of documents under section 36 of the SPA, the strata corporation and/or strata manager must consider the requirements of PIPA before complying with that request. While an owner is entitled to their own personal information, they are not entitled to the information of others. The Guidelines state that documents (particularly letters) must be vetted and the personal information of others (such as their name) must be redacted (blacked out) before they are handed over. This applies even when an owner requests a copy of a "complaint" received by the strata corporation that the owner breached a bylaw. In the context of a complaint letter, personal information includes anything that would help identify the author. It must be kept in mind that an owner is only entitled to information about himself or herself. If a letter or document refers to their spouse, tenant, or another occupant of their strata lot, personal information pertaining to that third party must be removed (unless the strata corporation has express consent to provide it to the requestor). Keep in mind that these principles apply to all documents,

not solely correspondence.

### Minutes

The Guidelines provide that a person attending an Annual General or Special General Meeting has impliedly consented to have their name, strata lot number and comments recorded in the minutes. When it comes to council meetings, the Guidelines suggest that only the result of the vote need be recorded. In other words, there should not be a record of the discussion leading up to the vote. This is particularly important where the issue is one of a bylaw violation or a hardship rental application. Only the minimum amount of personal information necessary to reflect the decision should be recorded. The Guidelines state that names should never be used in minutes, only the strata lot or unit number (except in the case of a hardship application when no reference to the unit number or the strata lot number should be made). A recent decision [Order P22009-003] by the Alberta Office of the Information and Privacy Commissioner considered the issue of what can appear in a condominium corporation's minutes. Relying on the definition of "personal information" contained in the legislation (which is virtually identical to B.C.'s) the commissioner held that:

"...so long as a condominium corporation is carrying out its duties and powers under the [Condominium Property Act] and does not include personal information in the minutes that is extraneous or irrelevant to

Continued on page 9



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carrying out those duties and powers, then it will generally not be disclosing personal information in its minutes, but recording the action it has taken or decided to take under the SPA or its bylaws.”

While this decision is not binding in B.C., it does provide some guidance and, in the author’s view, is a very common sense approach to reconciling the two pieces of legislation.

Two common cases where the decisions will need to be recorded in the minutes are the decision whether or not to impose fines for breach of a bylaw and decisions regarding the steps to be taken to collect strata fee arrears. With regard to a breach of the bylaws, the results of the hearing must be recorded in the minutes (otherwise there is no record of the council having made a decision) but none of the details of what occurred during hearing should appear. Nor should there be any reference to names in the minutes. A generic description of the offence would be alright so long as there is nothing that would identify an individual. As far as arrears are concerned, the Guidelines suggest that it is permissible to record which strata lots are in arrears and what is to be done about that. However, it may

be preferable not to record amounts owed as that is perhaps more than the minimum amount of information required to accurately reflect the decision to lien, etc.

Not only must strata corporations be concerned with having permission to collect, use and disclose personal information, that information must be kept secure and protected from unauthorized use and disclosure as well as copying and access by unauthorized persons. This means that strata corporations that are self-managed must keep their records under lock and key. The number of persons who have access to those records should also be limited (ie. the president and the secretary only). Strata corporations who hire strata managers should make inquiries as to what steps are taken to protect records and ensure that there is a contractual obligation to do so. Even if a strata manager is hired to maintain records, council members will still keep some information themselves. They too are responsible to see that it is kept safe (ie. that other occupants of their strata lot cannot simply open a folder, access an email account or stumble across loose papers). Minutes and other information posted on websites should only be posted if access is limited to those with a password and that password is changed regularly. Anything less would not meet the duty imposed by PIPA to apply those steps and take those actions that “a reasonable person would

consider appropriate in the circumstances” (S.4(1)). Lastly, strata corporations should remember that they also collect personal information through video surveillance systems and through electronic access systems (ie. key fobs). These types of systems record personal information (ie. the movements of owners, tenants and occupants), thus the impact of PIPA must be considered. While PIPA does not prohibit video surveillance systems, OIPC is of the view that they must be used only when other less intrusive security measures have failed. The Guidelines suggest that a bylaw authorizing the use of such a system be passed and a policy regarding the use and operation of the system be in place. Signs indicating that video surveillance is taking place must be posted. Measures must also be taken to limit who has access to the system and the tapes. (It should only be one or two council members). Tapes must be erased or destroyed when no longer needed.

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



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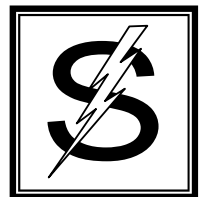
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# Preventative maintenance – who is responsible?

Harvey Williams, Helpline Volunteer

Standard Bylaw #8 requires the strata corporation to repair and maintain the exterior of a building and doors, windows, skylights chimneys, stairs, balconies and other things attached to the exterior of a building, all of which are either attached to or comprise the skin of the building. But strata corporations often repeal or amend this bylaw so as to make owners responsible for those items. Requests to the VISOA Helpline for information indicate that this can be a serious mistake. The following case illustrates what can go wrong when owners are made responsible for maintaining elements of the building skin.

A strata owner returning from a long holiday noticed that the interior wall around his living room window had become soggy and was sprouting clumps of grey mold. The owner's first thought was that the water had penetrated around the window. But when a contractor was called in to re-

pair the leak, he found that the water had not seeped in around the window but had run down inside the walls from somewhere above.

Further investigation revealed that a floor membrane on the balcony above had pulled away from the wall leaving a crack through which water had seeped into the wall. When the owner of the damaged unit requested that the strata corporation repair his wall, the strata council replied that the bylaws made owners responsible for balcony decks and that he should seek redress from the owner of the unit above. The case is now headed for the courts.

Doors, windows, skylights, chimneys, outside stairs, and balconies are all exposed to the weather and must be kept sealed tightly to the building skin, otherwise moisture is likely to penetrate into the walls of the building and may be undetected until serious damage has occurred.

In the case described above, the

owner of the leaky balcony did not notice the loose membrane and had no idea that there was a problem. Many owners are not able to identify such problems and if they do, may be reluctant to repair them because of the cost. By the time a problem is noticed, dampness, rot and mold may have occurred inside the walls requiring expensive remediation.

It would be less costly for everyone if strata corporations were to assume total responsibility for preventive maintenance of the skin of the building and keeping the building waterproof. To that end, there should be an annual inspection and repair of any defects that might allow water penetration by a person qualified by experience and/or training to do so. Strata Corporations who have repealed or amended Standard Bylaw #8 are urged to seek legal advice, and we recommend that they rescind the changes and return to the Standard Bylaw.



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# Home renovation tax credit for common property

By Daryl Jackson, VISOA Treasurer

This article is for general information only. For advice on claiming your Home Renovation Tax Credit, you should ask a qualified tax consultant.

If your strata unit is your principal place of residence, you are eligible for the new Home Renovation Tax Credit for renovations of the common property. Your strata unit is defined as your principal residence if you, your spouse or your common-law partner reside there at any time between the dates of 27 January 2009 and 1 February 2010.

If you meet those criteria, you can claim a non-refundable tax credit for renovations up to a maximum of \$1,350. The credit is for 15% of expenditures between \$1000 and \$10,000. The cost of common property renovations is apportioned to owners on the basis of unit entitlement because the funds are collected

on that basis.

The strata corporation's contract for the work must be dated no earlier than January 28, 2009. This means that a contract for repaving a driveway signed before that date could not be used as a basis for a tax credit claim.

Here's how it works: In April of 2009, a strata corporation lets a contract for \$20,000 to paint the exterior of the building. A unit with an entitlement of 0.1500 would contribute \$3,000 to the project. Accordingly, the unit owner would be credited with having spent \$3,000 on the renovation resulting in a tax credit of \$300.  $[(\$3,000 - \$1,000) \times 0.15]$

To be eligible, expenditures must be in relation to a renovation or alteration of an enduring nature and integral to the dwelling, and may include the cost of labour and professional services, building materials, fixtures,

rentals, and permits. Most expenditures from the Contingency Reserve Fund should meet these criteria.

No advance approval is required. Documentation of expenses does not have to be supplied with a claim but should be kept on file to respond to future inquiries. A list of acceptable documentation and other information relating to the Home Renovation Tax Credit may be obtained on VISOA's website.

Contractors must be registered for GST/HST. To verify registration, consult the GST/HST registry on the WEB.

A line on the 2009 tax form will be provided to claim the credit.

The CRA Information Bulletin on the Home Renovation Tax Credit may be accessed at: [www.cra-arc.gc.ca/gncy/bdgt/2009/fqhmrnvtng.html](http://www.cra-arc.gc.ca/gncy/bdgt/2009/fqhmrnvtng.html)



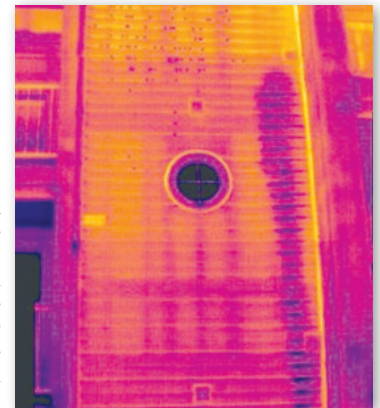
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Right is a photo taken at a condominium. The dark (cool) streak is water in the wall from a leaking washing machine on the third floor. Water was detected in the basement. The camera showed the source.



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