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VISOA Bulletin - FEBRUARY 2013

Dirty Dryer Vents are the #1 cause of all household fires!

By Les Topolewski

One of the most common causes of dryer fires is lack of maintenance. When lint traps aren't cleaned as often as they should be, the resulting build-up in the screen or other areas can cause the dryer to perform poorly, operate at elevated temperatures and possibly overheat – with dangerous consequences.

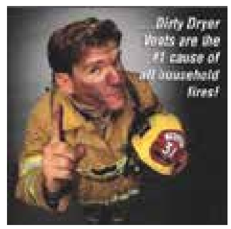
Vent systems must also be checked and cleaned to maintain proper airflow for the same reasons.

A full load of wet clothes placed in a dryer contains about one half gallon of water. As water is removed, lint is created from the clothes.

Clothes dryers are one of the most expensive appliances in your home to operate. The longer it runs, the more money it costs you.

Facts and figures

• In 2010, an estimated 16,800 reported U.S. home structure fires involving clothes dryers or washing machines resulted in 51 deaths, 380 injuries and $236 million in direct property damage.



• Clothes dryers accounted for 92% of the fires; washing machines 4%, and washer and dryer combinations accounted for 4%.

• The leading cause of home clothes dryer and washer fires was failure to clean (32%), followed by unclassified mechanical failure or malfunction (22%). Eight percent were caused by electrical failure or malfunction. (There are no comparable statistics available for Canada)

Installation of duct to the Building Code

• The Provincial Building Code typically requires that the dryer duct be no more than 25 feet in length. It should be 2.5 feet shorter than 25 feet for every 45-degree bend and 5 feet shorter for every 90-degree bend. If the duct is longer than 25 feet in length, the system requires a booster fan or high-output dryer.

• Ducts concealed in the walls should be smooth rigid metal (galvanized or aluminum) with a minimum diameter of 4 inches. Flexible ducts should not be used, since they collect more lint and can easily be crushed and potentially start lint fires. The ducts should not have screws or connectors, which can collect lint, blocking flow of combustion gases. Backdrafting can occur if the ducts are blocked, sending harmful carbon monoxide back into the home.

• The male ends of the duct should face the direction of the airflow. The duct exhaust must not mix with or pass through other systems, such as a chimney, exhaust vent or the return-air plenum in an HVAC system, in the latter case, because heat, moisture and combustion gases could mix with the conditioned air in the home.

• The dryer exhaust duct should vent

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to the outside, and the vent should be at least three feet from any other opening. The vent should also have a termination cap and a backdraft damper (which also keeps vermin out of the home). There should not be a screen over the opening, since it could trap lint and cause a fire.

• A "transition duct" is a flexible connector used as a transition between a dryer outlet and the connection point to the exhaust duct system. Transition

ducts should be metal foil fabric supported on a spiral wire frame. These duct connectors must be limited to 8 feet in length and they must remain entirely within the room in which the appliance is installed.

Article by: Les Topolewski
CleanDryerDucts.com

Editor's Note: VISOA strongly recommends annual cleaning of your strata's dryer vents. Even if all the dryers are inside individual strata units, lint-clogged vents have the potential to cause great damage. Therefore we take the position that the strata corporation should take responsibility for the annual cleaning, in order to ensure that it is, in fact, done (see Section 72 (3) of the SPA).

"Never doubt that a small group of people can change the world: Indeed, it is the only thing that ever has."
— Margaret Mead

Unit Entitlement in Strata Corporations

Andy Spurling

Unit entitlement is a key concept in the world of strata corporations that is not always easily understood by strata lot owners, particularly new owners in strata corporations. It is an important concept to understand as your unit entitlement determines the proportion of common expenses, including reserve fund contributions and special assessments, that you will be responsible for while you own your strata lot. This article will explain what unit entitlement is, how it is determined, where to verify the unit entitlement for your unit and how it can be changed. Please note that this article only addresses unit entitlement for residential strata lots.

What is Unit Entitlement?

The *Strata Property Act* [The *Act*] defines unit entitlement as the whole number for each strata lot that is set out on the Schedule of Unit Entitlement, which must be filed at the Land Titles Office for each Strata Plan. The unit entitlement for each strata lot determines the strata lot's share of the common property and common assets of the strata corporation as well as the strata lot's share of the common expenses and liabilities of the strata corporation.

The unit entitlement of a strata lot determines the strata fees and special assessments that must be paid by each strata lot. Strata fees and special assessments for a strata lot are determined by dividing the unit entitlement of the strata lot by the total unit entitlement of all strata lots and multiplying that amount by the total required contribution to the strata corporation. A strata corporation can choose to calculate strata fees based on a different formula, though it requires a unanimous resolution at a general meeting. As unanimous resolutions require approval of all registered owners and not merely those that attend the general meeting, they are nearly impossible to achieve.

Under the *Act*, the unit entitlement for a residential strata lot is either (i) the habitable area of the strata lot in square metres, (ii) a whole number that is the same for all strata lots, or (iii) a number that is approved by the Superintendent of Real Estate, which in the Superintendent's opinion allocates a fair portion of the common expenses to the owners of the strata lots.

The most common unit entitlement number for strata corporations incorporated under the *Act* is the habitable area of the strata lot. We are now seeing some developments use a whole number that is the same for all residential strata lots, particularly when the units are the same approximate size, though this method is still far less common. There are very few strata corporations who use the third method of unit entitlement. For bare land strata corporations, the unit entitlement is nearly always a whole number that is the same for all strata lots.

How is Unit Entitlement Determined?

In most strata corporations, the unit entitlement of a strata lot is determined by the habitable area of the strata lot. Habitable area is defined in the Regulations of the *Act* as the area of a residential strata lot that can be lived in. Specifically excluded from the definition are patios, balconies, garages, parking stalls or storage areas other than closet space. The habitable area of a strata lot in square metres is determined by a British Columbia land surveyor and is set out on both the Strata Plan and on the Schedule of Unit Entitlement.

For strata corporations that were incorporated prior to July 1, 2000 under previous legislation, the unit entitlement numbers can be different as concepts such as habitable area were left undefined or were not referred to and there was more latitude to impose different schemes. For example, in some older strata developments, unit entitlement might be different whole numbers that could vary for different strata lots based on size, floor level and views (i.e. whole number may have been more tied to market value than to size of the habitable area).

How do I Determine the Unit Entitlement of My Strata Lot?

As a strata lot owner you will likely see the unit entitlement for your strata lot in a few different places. For example, the schedule of strata fees that accompanies your Annual General Meeting notice and minutes packages will often have your strata lot number, your unit entitlement, the operating and contingency fund components of your monthly strata fee and your aggregate monthly strata fee. If you are purchasing a strata lot in a new development, you may also see the unit entitlement for your unit listed in a draft Schedule of Unit Entitlement in the Disclosure Statement you will be provided.

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Unit Entitlement in strata corporations
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To accurately verify the unit entitlement for your unit, you must consult the Schedule of Unit Entitlement that is filed at the Land Titles Office. This is the only truly reliable record of the unit entitlement for a strata corporation. For strata corporations that were incorporated prior to July 1, 2000 under previous legislation, the Schedule of Unit Entitlement is included in the strata plan itself.

I have seen a number of different occasions where a strata corporation was relying on the Schedule of Unit Entitlement from a Disclosure Statement, which is only a draft of the final schedule and is subject to change. The differences in the numbers are not always significant, but can have significant impacts over time, particularly when there are special assessments for major projects. I have also seen where input errors from one management company are continued by successors as they rely on the numbers provided to them. As part of any transition that my company is involved with, we obtain a Schedule of Unit Entitlement from the Land Titles Office and verify that the correct unit entitlement has been and is being used.

Can Unit Entitlement be Changed?

Owners often wonder whether unit entitlement can be changed. There are three different ways that unit entitlement can be changed, though none of the three methods are easily achieved. First, if there is an error made in measuring the strata lots and the registrar agrees the error should be corrected, the Land Title Office can be asked to correct the error. Second, the Supreme Court of British Columbia may change the unit entitlement to reflect the correct area if the habitable area does not match the habitable area in the Schedule of Unit Entitlement, the inaccuracy was not contained in the original Schedule of Unit Entitlement and the difference between the existing unit entitlement and the correct unit entitlement is at least 10% or 20 square metres. Third, owners that increase the habitable area of their unit by more than 10% or 20 square metres must also change the unit entitlement by obtaining a unanimous resolution of the owners, creating a new Schedule of Unit Entitlement and applying to the Land Title Office to amend the unit entitlement.

An owner can also decrease the habitable area of their unit without amending the Schedule of Unit Entitlement, with prior written approval of the strata council, where they are decreasing habitable area or increasing habitable area by less than 10% and 20 square metres.

Please note that nothing in the foregoing is meant to be construed as legal advice and is provided for information purposes only.

Andy Spurling, LL.B. , is Vice President of Operations and In-House Counsel of Proline Management Ltd.

INTRODUCING NEW BUSINESS MEMBERS

We welcome these five new Business Members:

Bank West is a chartered bank operating across Canada, with a specific focus on the western provinces. They do not operate bricks and mortar branches, choosing instead to offer their products through a team of direct sales people and a network of deposit and loan brokers. Ask about Condoflex – secure funds when you need them.

Cascadia Energy is staffed by locals with over fifty years of experience in the energy business with customers all over BC and will get you reliable natural gas supply that is right for you. They use their experience and knowledge to manage gas purchasing, pipeline operations, regulatory support, and anything else your strata may need.

Coast Appraisals does complete residential appraisals, as well as Reserve Studies. They serve Sooke, Duncan, Sidney, Gulf Islands and the Greater Victoria region and have been doing so since 1979.

West Coast Evergreen Gardening specializes in landscaping and grounds care, and is also available for snow removal. Rick McDougall has clients throughout southern Vancouver Island and would be glad to work with you on a maintenance plan for your strata's grounds and gardens.

TSS Cleaning Services has serviced its clients since 1998, starting as a residential cleaning company and now providing commercial cleaning. Their focus is cleaning and repair service of dryer ducts; mostly working with strata properties and strata management companies.

You Asked: Questions to VISOA

David Grubb

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. VISOA's Helpline Team will answer questions that they think will be of general interest to readers. We do not provide legal advice, and our answers should not be construed as such.

This issue's three questions are answered by David Grubb

QUESTION

Is a vote legally passed if not all council members are present?

Two members of our council of 5 had to vacate their seats on Council. As our AGM is coming up in a short time, the remaining councillors didn't see the point in appointing replacement councillors. The validity of our AGM Agenda and proposed bylaw amendments has been questioned. Some owners think the process may be deemed not legal because there were only 3 members on Council and not the mandated minimum of 5.

ANSWER

Provided you are using the Standard Bylaws (SB) or an equivalent, SB 16 sets a quorum for a 5 member council at 3. SB 18 indicates that the remaining three council members do not necessarily have to be unanimous in their decisions even if the other two members are absent: "***Voting at council meetings*** 18 (1) At council meetings, decisions must be made by a majority of council members present in person at the meeting." Thus a vote of 2 out of 3 is all that is needed for any motion to be passed legally since the three still constitute a quorum and SB 18(1) stipulates that a majority vote be considered a pass.

QUESTION

Should stratas ask for an annual audit of their accounts administered by a property manager?

Are the financial records of all the properties managed by strata property managers by law audited every year? If so, can a Strata Corporation request the audited report of their particular Strata? If not, would it still be prudent for a Strata Corporation to have their books audited periodically (even though there are no "red flags")?

ANSWER

Property Management companies are required, under the *Real Estate Services Act*, to have an annual audit of the company's accounts which may include a "sampling" of each strata. But that audit does not necessarily delve into each strata corporation's account in order to verify each one's accuracy. Even so, most property management companies have a clause in their contracts with the strata that the strata will be billed a portion of the property manager's payment for the audit of the company's books. That might not be satisfactory to some stratas since the auditor's report may say nothing more than that the company's accounts are acceptable "in accordance with commonly accepted accounting practices". While the majority of companies will be just fine, a less scrupulous company might be playing fast and loose with the money without the strata council knowing it.

The Strata Property Amendment Act calls for annual audits of each strata corporation but this amendment has not been brought into effect yet because the Regulations have not been completed. There has been considerable controversy over this because the term "audit" generally means the inspection must be done by a Chartered Accountant or a Certified General Accountant, both of whom will be expensive. So, at present, "audits" are not required by the SPA.

However, in accordance with SPA s.36, any owner or person designated by the owner, may inspect the financial information required to be maintained by the strata (and therefore the property management company) under SPA s.35. This would not be an "audit": it would more likely be a "review", but a knowledgeable person should be able to detect if there were unacceptable practices going on.

If the strata has no bylaw in this regard, it would be up to council, or alternatively the owners directing the council under SPA s.27(1), to ensure that the strata's accounts were reviewed at least annually by a competent person.

QUESTION

When is a maintenance task "do it yourself" and when is it a strata responsibility?

Our Council has decided not to hire a contractor to clean our gutters or windows, but has advised residents to do it themselves. My neighbour does not like this – one of the reasons he purchased a strata home is because he expected his strata fees to cover such things. In addition, don't you think that requiring second floor residents to climb a ladder may subject us to some liability if they are injured, as it is the strata corporation's duty to undertake basic maintenance?

ANSWER

In the first place, the strata is responsible for the gutters: they

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Listen up, small stratas

I volunteered for Strata Council when I saw that almost everyone else was remaining silent and studiously examining their shoes. “That just isn’t fair!”, I thought, “We are all owners.” No, I didn’t have “experience”, nor was I totally familiar with the *Strata Property Act* and *Regulations*. But I can read, I can learn, and I can get help from those who do have that experience and knowledge (thanks, VISOA!)

It has been, and continues to be, a steep learning curve. I have still a great deal more to learn. After my first term on Council of a small, self-managed strata, here are some of my observations.

Many owners who do come onto Strata Council go to great lengths to be knowledgeable about the *Act* and *Regulations*, attend seminars on their own time, and do their best to operate in accordance with the requirements of the *Act* and the strata’s Bylaws in the best interests of ALL the owners.

However, it seems that most of the other owners are not well informed at all, although many of them fail to realize it.

In terms of upkeep, some owners want to hijack the general agenda to suit their own personal preferences. Stratas are effectively small communities: the people are neighbours. Yet some owners are too frequently confrontational and “demanding” in their demeanor. They must remember that council members have an equal obligation to ALL owners. This is particularly true when it comes to maintaining the property in the kind of attractive state, both physically and financially, that would allow an owner wishing to sell to do so with relative ease.

Owners in small stratas want to be self-managed, to save costs. However, some want all costs to be rock bottom but are the first to complain if the result of the service they receive is also rock bottom. Also, there seems to be a perception that it’s essential to keep strata fees low - very low - and that this attracts new buyers. This is doubtful and it would be naïve to buy (or to have bought) on that basis. Haven’t they heard of “inflation”? With little capital in the Reserve Fund, the thought of the alternative in the form of future special levies would be worse!

Although there is no obligation in law to follow any plan suggested by a depreciation report or any variation of it, if the owners do not accept any such plan, and vote to not increase contributions to the CRF, this information will be blatantly obvious when any owner is in the process of selling his unit. Minutes of Strata Council meetings as well as AGMs together with the depreciation report itself will tell the story. New buyers would likely be even more averse to buying if there is a clear indication, from lack of significant contribution to the contingency reserve fund, of the future need for special levies for upkeep or repairs, because that could be a big risk for them. I think some owners wishing to sell would then be put in an unfair situation with regards to potential sales as a result of such actions of other owners, and this could lead to legal issues. But I don’t think owners in general understand or even want to understand the significance of it all.

Self-management doesn’t mean a few dedicated ones do all the work all the time. Some owners are quick to criticize but disappear when it comes time to help. Many owners take for granted the commitment and the time involved on the part of those owners who do volunteer to be on council. And those many owners don’t seem to take their own responsibilities and their obligations as owners seriously enough. Just because some owners are retired, that doesn’t mean they have lots of free time to spend on Strata matters: retired people have lives and responsibilities too that other owners may not be aware of. If some owners need to go out of town frequently they must understand that council meetings can be arranged to suit their schedule, it’s not a valid reason for not volunteering. Perhaps they could start communicating with Strata Council on an ongoing basis throughout the year, at the very least to thank the council for improvements, and making suggestions where they see improvements could be made. And if they would take the time to go to: http://housing.gov.bc.ca/strata/guides.htm AND READ the relevant pages, it would make strata council’s job a great deal easier.

Thank you to VISOA for being there!

J. M., President of a Small Strata

are common property. I think the owner who claimed that that is why he pays assessments is correct. The task should be part of regular annual maintenance since it is in the strata corporation's interest to maintain the buildings in the best condition possible.

Windows are always a contentious issue, but generally speaking the strata should assume responsibility for them as part of the structure. Cleaning the panes, however, is a different situation. I think that a bylaw in accordance with SPA s.72(3) could be put in place which makes the strata responsible for annual cleaning of all "inaccessible" windows (with specific identification if necessary) and that the costs for such cleaning will be included in the annual operating budget. That way, all owners get the benefit of having the work done by a professional at a reduced cost because of the "bulk order".

Moreover, by contracting out to reputable companies (not a handyman who has no insurance) you avoid the liability problem by insisting that the contractor show evidence of being covered by WorkSafe and a proper liability insurance policy (of at least $2 Million) for personal injury as well as any damage the contractor may cause to the buildings or common property.

Even so, it is prudent for stratas to include a "volunteer" clause in their insurance policies to cover situations where residents who are authorized in writing (council minutes should be adequate) to conduct work as volunteers on behalf of the strata are covered in case of accidents.

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Should strata corporations plan to borrow?

By Cleveland S. Patterson, MBA, PhD

The recent revisions to SPA Regulation 6.2, regarding Depreciation Reports, specify that the report must contain at least three cash-flow funding models for the contingency reserve fund (CRF) over the next 30 years. These may include any one or more of the following:

(a) balances of, contributions to and withdrawals from the CRF;

(b) special levies;

(c) borrowings.

Under what circumstances, if any, are "borrowings" a prudent planning strategy for a strata corporation? What are the restrictions on borrowing? What are the sources of borrowings and what are the procedures for accessing funds from these sources?

Special Levies

All strata corporations should attempt if possible to meet the future expenditures identified in their depreciation reports through option (a), i.e. "full funding" by means of a planned series of annual contributions to the CRF which does not include special levies or borrowings. However, in some instances, this may not be feasible. Exceptionally large expenditures required in the near term may make required annual contributions simply too onerous to be acceptable to owners. At other times, a large expenditure may be required which was not anticipated in the depreciation report.

Special levies, whether they are unpleasant surprises, or are anticipated, are always problematic. The typical strata has owners characterized by a wide spectrum of financial means and attitudes and this may make the approval of the levy by a ¾ vote at a SGM or an AGM difficult. If the levy is not approved, the likely consequences are unacceptable deterioration of the common property and even greater expense when the problem is finally addressed. Escape by sale may be difficult when the value of strata lots is impacted by obvious poor management. A ¾ vote on a special levy can be avoided by including an extraordinarily large general purpose contribution to the CRF in the budget, subject only to a 50% vote, but expenditures from the CRF still require a ¾ vote approval.

If a special levy, or an extraordinary annual contribution, is passed, there may be many owners who simply do not have the financial resources to meet it. Again there is no easy escape by selling because potential buyers will be liable for the levy and this will be reflected in the value of the lot. Owners in this position have two options. If they have sufficient equity in their strata lot, they can take out a personal mortgage or equity line of credit. The second option is to persuade their fellow owners to approve a loan to the strata corporation by means of a ¾ vote. Either way, they are converting a one-

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time major personal expense into a series of smaller future expenses over time which may be more manageable.

The Borrowing Alternative

The key provision in the SPA affecting borrowing powers is Section 81, which states that "the strata corporation must not mortgage common property". Subject to this provision, Section 111 permits a strata corporation to borrow money if approved by a ¾ vote. However, the only means available to secure the repayment of principal and interest on the loan are:

(a) a mortgage of property, other than common property, such as a strata lot which is owned by the corporation;

(b) an assignment of unpaid strata fees or special levies;

(c) a negotiable instrument, such as a liquid security held in the CRF.

The most common security required by financial institutions is an assignment of special levy fees. Under this arrangement, the owners first pass a resolution by a ¾ vote which authorizes the corporation to borrow a specified amount on specified terms, and then passes a matching resolution which approves a special levy to be used to repay the loan. Unlike a one-time special levy, this levy is spread over time to match the specified amortization terms of the loan. By approving and arranging for the loan before the project resolution is approved, owners without ready resources are provided with a solution to their situation and are more likely to vote in favour of the project. Both the loan and the levy are restricted to a specified set of renewal or replacement projects and cannot be used for other purposes

Details of the security arrangements required vary depending on the amount borrowed, the financial strength of the strata corporation, how well the common property has been maintained in the past, and the financial institution. In addition to a specific assignment of receivable fees, lenders may require a general security agreement, but do not normally require personal credit checks or mortgages registered against individual strata lots. Most lenders also require continuing monitoring of construction progress and will advance draws against invoices for work completed.

Loan terms also vary widely, depending on both the lender and the characteristics of the strata and the project being financed. In most cases, the interest is fixed for five years, but the amortization period may range from five years to as much as twenty-five. Some lenders allow strata corporations to finance only the amount of a special levy which is in arrears. This enables owners who choose to pay the levy on schedule to avoid the cost of the loan. Those in arrears are charged interest by the corporation, subject to SPA 108(4.1), and these interest payments are used to service the loan.

In sum, arranging for a loan to a strata corporation is a complex procedure which differs markedly from the relatively straightforward procedures for obtaining a personal mortgage. It is essential that legal advice from a lawyer with appropriate experience be obtained before contemplating any borrowing plan. The paperwork in

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arranging for a loan can be daunting, and Councils will also need their lawyer to explain the obligations that they are assuming, to draw up required resolutions, and to work with the lender to ensure that documentation is complete and accurate.

Sources of Borrowing

Because security for loans is in the form of assigned future fees, rather than hard assets which can be mortgaged, most lenders to strata corporations for maintenance purposes are specialists. Historically, the major banks have not been proactive in this market, and the vacuum has been filled by smaller regional banks and by strata financing brokers who act as intermediaries between strata corporations and lenders. An example of the former is the CondoFlex package offered by Bank West. Examples of brokers are Strata Capital Corporation, Strata Financial Solutions, and 1 City Financial. The websites of these institutions are a useful source for further information on borrowing options. A lawyer who is experienced with strata maintenance financing may be able to suggest additional sources.

Even in a time like the present, when home equity lines of credit and bank mortgages can be obtained at historically low rates of close to 4%, councils should expect rates of at least 6% and as high as 10% on most strata loans. To quote one lender: "What we're currently seeing is interest rates around 8%, with some higher and some lower. The overall strength of the application and supporting documents will have an effect on the risk that the institution perceives, with management (professional or self) and good decision making being strong indicators." In addition to interest, there may be substantial up-front fees and annual service fees payable, as well as legal costs. Interest rates for borrowing under future economic conditions are very uncertain and, in some possible scenarios, loans to strata corporations may not be available at any reasonable price.

Summary

Borrowing by a strata corporation is legally permitted by the *Strata Property Act*. However, because of the uncertainty of future interest costs and credit availability, strata councils should not plan to borrow funds. Borrowing is not an alternative to prudent full funding of the anticipated expenditures identified in their depreciation report. Whether or not borrowing by the corporation will be an attractive alternative to a planned or unplanned future special levy will depend on contemporary credit market conditions. Owners at that time will need to decide whether the benefits of spreading the levy over a number of years to ease the burden is worth the cost. Owners who have sufficient equity should also consider whether the same effect can be achieved by means of cheaper personal mortgages on their strata lots. Whatever borrowing solutions are contemplated, it is essential to seek out qualified legal advice.

This article is intended to stimulate discussion and should not be construed as offering legal or financial advice. Cleve Patterson is an Emeritus Professor of Finance, a member of the VISOA Board, and President of his strata council.

VISOA's First Workshop Program

VISOA initiated its first workshop program in October with three workshops on Contingency Reserve Management, held in Victoria and in Parksville, and one workshop on Best Practices for Strata Council Secretaries in Victoria. Over 80 corporate members attended these sessions.

Workshops are intended to supplement VISOA's seminar series by providing a full-day venue where 20-25 participants can exchange experiences and explore questions of concern under the guidance of a facilitator with expertise in the topic.

The workshop on CRF Management was facilitated by Dr. Cleveland Patterson, a retired Professor of Finance and VISOA Board member. It explored the related questions: (1) How big does your CRF have to be, now and in the future, to meet planned future expenditures set out in the depreciation report? and (2) What are the best ways to invest the funds in a prudent and effective manner? The workshop on Secretarial practices was facilitated by Sandy Wagner, VISOA President, and Denise Brooks, of Firm Property Management, and covered a wide variety of topics such as minutes of meetings, record retention, by-law changes, etc.

What's planned for next year? Based on the very positive feedback we received from participants in this year's workshops, we plan to put on a repeat of each one in April or May. In the Fall, we are currently planning at least two new workshops. One will explore the establishment of long-term maintenance programs for stratas; it will be led by John Grubb, who heads Unity Services Corporation, a consulting firm which has provided consulting services for depreciation studies and maintenance for over 30 years. A second will be a general discussion of the unique problems faced by our numerous "small" strata corporations. It will be facilitated by a panel of VISOA's most experienced Board members. We are also exploring a workshop on working relationships with strata management companies.

For further information, or to suggest topics for future workshops, contact Cleve Patterson at patterson@visoa.bc.ca.

Creating a Viable Funding Plan

By Jan Craig

This is the third part in a series on one strata's experience in implementing the recommendations of a Depreciation Report. Jan Craig is President of The Rockland, a 25-year old, 7-story concrete and steel building with 40 suites. In 2008, The Rockland commissioned its first depreciation report. Therefore they have had a few years head-start in learning how to manage the report and how to extract value from it.

While the *Strata Property Act* requires that the Depreciation Report must offer three funding scenarios, it is silent on the need to endorse one. Nor does it offer guidance on how a commitment should formally be made. However, the real importance and value of the entire exercise rests on coming to agreement on how your strata will jointly prepare for and fund your future liabilities.

This is where the work really starts. The issues you are dealing with in selecting or building a funding plan relate to basic philosophical principles and you can expect a wide divergence of views and some vigorous opposition, no matter what course you recommend. Establishing your funding strategies will no doubt be the most contentious part of implementing your plan.

The funding scenarios within the Depreciation Report will represent three alternate approaches to raising funds, but since all three must ultimately cover the same expenses over the same thirty-year period, the difference will tend to lie in the degree of pain they impose – in other words, the speed and rate of increases. There are only two tools at our disposal to pay into our Contingency Reserve Fund: fee increases or special levies. While the permutations can be endless, the variations ultimately center around the answers to a few simple questions:

- Do you wish to create a fully-funded plan? This means avoiding special assessments in the future. This may be possible depending on your current fund balance and the amount of time you have to prepare for major replacements. However, most older buildings will find that they simply cannot raise fees high enough to meet their pending requirements and will need to use a mix of special assessments and fee increases.
- Do you wish to establish a minimum balance for your Contingency Reserve Fund?
- Do you wish to "fill the coffers" to make up for any historic underfunding of the plan by levying an initial large special assessment? Doing so has the advantage of putting your building on an equal footing with newly-constructed buildings. This will make the sale of suites in your building more competitive within your local market.
- Do you wish to ramp up your reserve fees slowly over time or do you wish to establish a higher rate immediately and attempt to keep that constant, thus minimizing future increases?

Annual Depreciation Rate

The basic theory behind depreciation funding is this: If on an annual basis you save an amount equal to your annual depreciation rate, then you will have a fully-funded plan. Barring emergencies (e.g. storm damage) or premature failures, you should never need to issue a special levy. What is the depreciation rate? This is one of the most important calculations that your Depreciation Report will furnish you with.

Your annual depreciation rate represents the total "debt" that is accumulated by all the components within your inventory on an annual basis. For example: A $100,000 roof with a life-expectancy of 25 years has an annual depreciation rate of $4,000. ($100,000 divided by 25 = $4,000.) If a new building were to save that amount every year, by the time the 25-year mark rolls around, there should be sufficient money in the fund to pay for the replacement of the roof. Of course, the figure needs to be updated from time to time to reflect inflation.

Each of the items in your inventory will carry its own depreciation cost. A 20-year fire pump with a replacement cost of $25,000 has an annual depreciation rate of $1,250, and so on for other items. By adding all of the costs for all of the items in your inventory, a total annual depreciation rate for your building is created. This sum must be adjusted over time, but it should become the minimum annual contribution to the reserve fund. By contributing a sum equal to the annual rate of depreciation, your strata will be keeping pace and thus not adding to the debt.

The *Strata Property Act* offers no guidance on the level at which a depreciation study must be funded. It continues to state that the CRF must have a minimum balance of 25% of the operating fund for the fiscal year. However, Guide 12 on the SPA (issued by the Office of Housing and Construction Standards) states: "This statutory minimum level for the CRF has no relationship to repair and maintenance costs over the longer term. These costs are reflected in a depreciation report; not the operating budget." Setting a funding level relative to your operating budget is thus not a helpful benchmark. A far

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better tool is the annual depreciation rate. This is specific to the assets in your inventory and to your future costs.

Alas, this concept was foreign to us and did not form part of our operating philosophy from Day One. When we had our first study performed, we discovered to our dismay that our accumulated depreciation was close to $2 million. We had a fraction of that in our reserve. And worse, our annual reserve fees were well below our depreciation rate. Establishing the annual depreciation rate as our new minimum, while critical to cover current costs, did nothing to address the problem of historic underfunding. I suspect most stratas will find themselves in the same boat.

Our Experience

After receiving our first depreciation report in 2008, we were faced with a number of immediate projects that required special levies. Since there was no requirement at that time to adopt a long-range plan, we simply kept our heads down and focused on the near-term. Once we had dealt with the most pressing needs and had a chance to begin serious long-range planning, we surveyed the owners to understand their funding philosophies and to see which approach they preferred. Some were prepared to leave the CRF balance low, have low monthly fees and use special levies to handle all future obligations. This is essentially the "status quo" funding model that the legislation was designed to end. It transfers all the liabilities to future owners and increases the risk that repairs will be delayed since funding will not be on hand. It is clearly the least attractive option for future sales since prospective buyers will see a woefully-underfunded plan and a group of owners who are simply willing to "kick the can down the road."

The majority of our owners opted for a compromise scenario: an increase in annual fees coupled with occasional modest special assessments to meet our larger obligations. Some owners wished to avoid special assessments entirely, but to do so would have required that we set our annual fees at a rate that was deemed to be too high when compared with the local market. In the five years since our Depreciation Report was completed, we have:

- Established a minimum balance for the CRF. While the balance ebbs and flows over the 30-year plan, we are committed to not allowing it to fall below the emergency minimum. Our engineers assisted us in establishing that number.
- Increased our fees significantly over the last five years so that our annual input now equals our annual rate of depreciation. This means that we aren't falling further behind but are keeping pace with the rate at which our inventory is aging.
- Planned a series of small future special assessments to help make up the short-fall that resulted from the historic underfunding of our plan.

We have been lucky so far in that our renewal schedule has allowed us to play catch-up in this fashion without having to face the onerous special levies that some stratas have been burdened with.

Trial and Error

If you must modify the funding scenarios from your Depreciation Report or develop your own, you will wish to create three distinct options so that your owners are given a wide choice. There are really only a few variations to choose from: one will probably involve a large special assessment to rectify an underfunded reserve; another may require a steep increase in monthly reserve fund contributions; and the third may contain a mix of fee increases and smaller special levies. While the basic structures may be limited, the permutations are endless and you can quickly go crazy developing variations on these few themes. We experimented with dozens and dozens of options until we forced ourselves to stop fussing. The plan is a dynamic document and will continue to change; trying to develop the perfect funding scheme for a thirty-year period is therefore pointless. Too many choices will just lead to confusion and frustration. So discipline yourselves and limit your options!

One thing you will wish to do is to discourage owners from developing their own schemes. The job should be left in council's hands. The last thing you want is a war of proliferating and competing funding plans.

Fee Increases versus Special Levies

There is a tactical advantage to using fee increases over special assessments to augment your CRF. The new regulations now allow owners to make contributions to the CRF by simple majority vote as part of the budget process whereas previously a ¾ vote was required to make contributions. A ¾ vote is still required to approve contributions by special levy. If you are facing opposition, then using fee increases will make the passage of your plan easier to accomplish.

Getting Buy-In

As a council member engrossed in the details of the depreciation report, you can easily lose sight of the fact that you may be leaving your neighbours behind in the dark. Some owners will be too busy, or not interested, or simply confused and intimidated

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by the information in the report. It is your job to help educate them so that they are in a position to make informed decisions. The provider of your depreciation report will probably agree to make a presentation of the findings, but an overview of the thirty-year picture is just the starting point of the education campaign. It will be up to council to lay out the short-term plans in sufficient detail to garner the support that you will need to gain approval at your next AGM. Just because you may now have the backing of an engineering study behind your plans, doesn't necessarily mean that your "sales job" has gotten any easier. Three-quarter votes will be necessary to approve the special assessments in your plans. Owners will need to understand the "Why?" and "Why now?" before they bless any expenditures or agree to any fee increases.

The difficulty of your sales job may in part be dependent on the number of owners in your strata; I suspect that the smaller the group, the easier it is to hold formal or informal meetings to begin the education process. You will need to prepare an information package for the owners, outlining the proposed programs, the necessity or rationale for the expenditures, the benefits, the costs, and how the money to fund the plan will be collected. Since the material can be complex, we found it best to hold a series of information meetings on the various topics. This permitted us time to explain the subjects in some detail and to allow owners the opportunity to ask questions and to make suggestions. If there are options to be explored, particularly on funding methodologies, you may wish to conduct surveys of your owners to determine the wishes of the majority. If you can base your plans on a majority opinion, then you will have an easier time in securing the necessary three-quarter vote. Providing opportunities for input tends to create more buy-in as owners will feel that they have a voice in shaping their future.

The Bottom Line

As a result of the recent legislation, strata living in British Columbia is now more expensive. For years we have been able to ignore the real costs of strata living and push those costs to some future date that we hoped would never arrive. The new legislation will make this kind of ostrich-thinking increasingly hard to do. Your depreciation report has just quantified how expensive living in your condo will be and one of the most important things you need to do is to share that number with your owners.

For some, the increases in strata fees will be an annoyance; for others, those increases may spell catastrophe. They may simply not have the financial means to continue to live in your building. In light of an overabundance of condos in some markets, selling may prove to be a further difficulty for them. You must recognize that some of the opposition to tackling your list of capital renewals will stem from the real financial hardship that those projects will impose.

Few people can relate to the total costs required to meet your strata's obligations over thirty years, but the five- and ten-year estimates will be vital for owners. Calculate those two numbers according to each of the three funding scenarios, or the new proposal that you have devised, and then publish them. This is your new bottom line, the new reality to which everyone will have to adjust.

The Real Benefits

Alerting owners to their financial obligations so that they are in a position to manage their own budgets is one of the most important benefits of conducting a depreciation study. But in addition to assisting you in planning for and managing your maintenance and renewals in a thoughtful and efficient manner, your depreciation report will offer you opportunities to save money. It does so in two ways: by helping you to prolong the life-expectancy of building components and through the scheduling and managing of projects in as cost-effective a manner as possible.

If you can extend the life of a 25-year roof into a 30-year roof, or 35-year window assemblies into 40-years, then you are saving considerable dollars. In your first few years of working with your report, you will probably have enough on your plate without worrying about developing life-extension programs. But when you begin planning for your first three-year update, you should be in a position to look ahead and to challenge the engineers who are performing your study to look for opportunities for preserving components. Doing so will usually entail an upfront expenditure that will allow you to extend the normal life expectancy and thus defer major replacement costs. The cost benefits of such investments can readily be calculated to ensure that the program makes financial sense.

Cost-effective scheduling is the other major benefit that you can derive by working with your report. We estimate that we easily saved $100,000 (in engineering fees, building access and mobilization costs) by amalgamating a number of building envelope tasks into one major project. Further, we shortened the elapsed time and thus we limited the period of mess and disruption.

Your depreciation report is thus an invaluable management tool that will provide your council with the raw data for better decision-making. The challenge is for your council to use the report wisely to build smarter plans to preserve your joint investment in your building.

Water, water everywhere and who's to blame?

Shawn M. Smith

The recent decision of the Provincial Court in Fudge v. Owners, Strata Plan NW2636 2012 BCPC 409 is a cautionary tale that all strata corporations should take to heart. It gives some insight into the risks strata corporations run by ignoring known problems with the building and choosing not to fix them. It may even cast the contents of depreciation reports in a whole new light.

Ms. Fudge resided in a unit in a tower located in a strata corporation in New Westminster. Like many people, she turned on her washing machine and left for the afternoon. When she returned home later that evening she discovered that wastewater had pooled on the floor of her laundry room, spreading out and damaging the carpet in other parts of her strata lot. She concluded that the water must have come from the washing machine. A friend, who had been called for help, concluded that the water came, not from Ms. Fudge's washing machine itself, but from the wastewater pipe into which the machine discharged.

This was subsequently confirmed by another neighbour who determined that there was a blockage further down the pipe. Although there is nothing to suggest that the problem originated in Ms. Fudge's unit, the nature of the blockage was never determined. However, based on the evidence presented later in court, it was apparent that the backup must have been located in the main discharge pipe that serviced multiple units (a pipe which was clearly common property).

Unlike most cases involving the backup of washing machines, there was no damage to neighbouring units. The only damage was to Ms. Fudge's unit and apparently no claim was made against the strata corporation's insurance policy. Ms. Fudge was left to pay the costs of replacing her carpet herself (roughly $6000), which she decided to try and recover from the strata corporation. To that she added approximately $5000 in mould remediation costs.

Ms. Fudge based her claim on the fact that the strata corporation had known for some time that the wastewater discharge pipes were improperly sized and unable to handle the volume of wastewater generated by the residents of the strata corporation. This could result in the wastewater backing up and causing floods (which it had in the past in other units). The strata corporation's minutes contained several references to these incidents and clearly acknowledged there was a problem with the system. The strata corporation had even gone so far as to consider a levy to create a "re-piping fund" but never did so. In the year following Ms. Fudge's flood the strata corporation finally upgraded the pipes.

The court sided with Ms. Fudge and ordered the strata corporation to pay her damages (although the amounts were discounted for reasons not relevant here). The court determined that the strata corporation owed Ms. Fudge a duty of care. That duty was based in s.72 of the Strata Property Act which required the strata corporation to repair and maintain the common property; which the pipes in question were. In reaching the conclusion that the strata corporation breached its duty under s.72 the judge said the following:

"[54] I have no doubt that a failure to upgrade the WPI piping to a size capable of handling the ordinary wastewater drainage requirements of Ms. Fudge and the other owners within the QT Complex constituted a breach of the QT Owners' statutory duty to "repair' and" maintain" the WPI as common property within the QT Complex. Both terms contemplate intervention to correct a deficiency. By reason of its having been under-designed, the WPI had a manifest deficiency that was well known to the QT Owners for years before Ms. Fudge suffered her flood incident."

and

"[57] I find that by failing to upgrade the WPI to include piping capable of handling the QT Complex's wastewater load, the QT Owners failed to "make good" the WPI or improve it to the point of making it properly functional. It follows that the QT Owners failed to "repair" the under-design deficiency in the WPI as s. 72 required them to do."

and

"[60] Ms. Fudge was the QT Owners' neighbour in law and in fact. They knew that the WPI was under-designed and prone to causing backups of foul-smelling wastewater into the units of strata lot owners like Ms. Fudge when their washing machines cycles entered the discharge phase. The QT Owners knew that because it had happened to a number of owners who suffered carpet damage as a result of the process. Some of those strata lot holders had their carpets replaced at the QT Owners' expense. The QT Owners even knew what had to be done to prevent the continuation of these problems. But instead of acting they dithered. While they dithered, Ms. Fudge experienced her flood event and consequential losses."

Two important lessons can be taken from this case. The first is that there may, in the right set of circumstances, be a duty to *improve* a physical component of the building; even if the general view amongst the owners is that the particular problem can be lived with. The second is that when a problem is known it must be addressed. Ignoring it (even if the remedy is costly) is not an option available to the strata corporation.

This case also puts in question the strict liability principle found under s.158(2) of the Strata Property Act and the associated decisions in *Mari* and *Kieran* that if the source of the damage was from within the four corners of a strata lot, the owner is responsible for payment of the deductible. In this case even though the water backup manifested itself in Ms. Fudge's unit she could not be "responsible" for the damage since the true cause of it lay with the deficiencies in the piping system.

Strata corporations must also pay careful attention to inspections and reports (including depreciation reports) that identify inadequacies in the performance of certain building systems and components. Left unaddressed those could be "ticking time bombs".

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for 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.

President's Report

Sandy Wagner

As another year has just ended, this is a very appropriate time to thank and acknowledge the Directors who volunteer their time on your Board.

I'd like to thank Tony Davis, our Vice President and interim Treasurer for his calm demeanor and well thought out ideas. Board Secretary David Grubb has a very full plate, handling Helpline emails as well as co-editing this bulletin, yet is always up for more. Harvey Williams, Past President, handles all the Helpline phone calls, and I declare he must have the entire SPA memorized as he rarely uses reference materials when answering callers' questions.

I must also thank Deryk Norton for his knowledge and dedication to the issues surrounding strata legislation, and acting as a spearhead for change. John Webb brings his business skills to our Publications portfolio as well as his unfailing support to the Board table.

Our three newest Directors were kept very busy this year, and I'd like to thank them for their commitment. Cleve Patterson led the Workshops committee to a very successful first year, as well as initiated dialogue with government on the matter of investments permitted by the SPA. Bev Grubb took on the Membership Chair and with a team of volunteers she has shown her dedication to all our members. Paulette Marsollier has made huge contributions in "the year of the Depreciation Report" by participating in expert panels on the topic, for our member seminars as well as for Realtor groups.

We appointed a new board member in November - Esther Harvey will take on the role of Treasurer for our new fiscal year. She brings a wealth of expertise as well as previous experience as Treasurer for other non-profit organizations.

I would like to also thank and acknowledge five other former Directors, who spent varying amounts of time with your Board in 2012. Malcolm Read brought insightful ideas for workshops, and was a great believer in team efforts. Al Prentice brought new ideas for organizing seminar registrations and helped to rework our accounting systems during his time as Treasurer. Laurie McKay was always an optimist with a "can do" attitude, and worked tirelessly to increase our Business Members. Cathy Turner was a terrific help with seminars and her organizational skills will be missed. Glenna Ireland always carefully weighed our decisions and helped to add logic to our proceedings. These five Directors, who stepped down in 2012, will be missed.

In other news, I must report that we did not hire the Administrative Assistant that we had intended (and had budgeted for) so we have ended the fiscal year with a budget surplus. We have recently rented office space and our Admin person should be on the job in the next few months. You will soon be able to visit our office, have basic questions answered, and purchase your publications there. We shall be changing the address and phone number on our stationery and website in due course. Our website is currently being redesigned and will be re-launched shortly – perhaps by the time you read this Bulletin. Thanks to Tony Davis and "retired" former board member Elsie Lockert for volunteering their time to learn how to design and setup the website in a new "language".

Thanks also to you – our members – for your support this year. When we increased membership fees one year ago, in order to improve the services we give, we were prepared for a modest decrease in membership numbers. However, I am pleased to report that our total membership has grown by two percent in 2012. We increased the number of seminars; added one new publication and revised two others; and added four workshops to your suite of services. I hope you appreciate our efforts.

We are looking for two more members to join your Board of Directors. I must stress, this is a working board, not a governance board. Each of the directors participates in at least two working groups, so be prepared to keep busy if you volunteer! One of the two functions we currently want to fill is a director of social media – to give us a presence with the "new-fangled stuff" such as Facebook and Twitter. And we also need another director to learn the Helpline.

We currently have an excellent Helpline team in Harvey Williams and David Grubb, as outlined above, and two volunteers to give them the occasional day "off" but really do need more trained members of this important team. If you would like to consider joining your Board, please email me at president@visoa.bc.ca and our nominations committee will be in touch. We'd like to elect two new members at our AGM on February 24th.

As always, if you have any comments – be they beefs or bouquets – I would like to hear from you. Thanks for allowing me to serve as your President in 2012.

Sandy Wagner
Board President and
Bulletin Editor

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