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VISOA Bulletin - FEBRUARY 2018

President's Report

Happy New Year to all our members. As VISOA's fiscal year has just ended, I wanted to share some highlights with you, and give you some information about our upcoming Annual General Meeting.

It has been a busy year – as always – for your Board. Here are some of our statistics for the year:

• We answered over 2100 of your requests for assistance via our Strata Support Team. The most frequently-asked questions were about bylaws, AGM procedures, accounting and strata fees, council responsibilities, Civil Resolution Tribunal, and repairs/maintenance. Now you know why we have seminars and workshops on these topics more often than some other topics: they are the matters generating the most questions among our members.

• We held six seminars, attended by just over 600 members; and eleven full-day workshops with attendance totaling 220. The workshops are purposely limited to small groups, in order to have plenty of time for topics to be discussed in depth and all questions to be answered.

• Your board and Strata Support Team members attended 20 strata meetings for assistance – sometimes to chair a meeting, but more often as an information resource. This is a free service to our corporate member stratas.

• We added something new to our publications: now you can purchase a USB stick with all of our publications together, as well as the *Strata Property Act* and Regulations. See page 21 for details.

The AGM package should be posted on our website by the time you read this issue of the Bulletin. As you will see in the package, your association ended the year with a small deficit, as planned. The deficit was smaller

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than budgeted as not all planned expenditures occurred. The forthcoming year will also plan a deficit budget. We have a healthy savings account and intend to spend some of it again, so that we can continue to expand our services each year. At our AGM we plan to have a short discussion about membership fees, asking for members' guidance for next year's decisions.

Also at the AGM, the Board is presenting a bylaw amendment for your consideration: the creation of a new class of members "Associate Members" for BC residents who are not currently strata owners. We are proposing that Associate Members have no voting rights nor rights to join the board, but receive all the same member benefits as Individual Members. The rationale for this proposed amendment is that we receive many requests for assistance from non-members who are thinking of a strata purchase, and we thought it logical to offer them a chance to become members.

One of our members, Chris Chapman, has written an article for you on the value of Depreciation Reports; and we found a blog by a former strata manager, Barry Burko, and include one of his humorous blog posts.

At this year's AGM we say goodbye to our current Vice-President John Webb, who is leaving the board when his term ends. The rest of your board plans to continue to serve, subject to your votes of course.

This Bulletin features four "You Asked" articles by David Grubb of our Strata Support Team, highlighting some of the more frequently-asked questions. I hope you enjoy reading them and all the articles we have in this issue.

As always, if you have any questions or comments, email me at president@visoa.bc.ca

2017 Board President
Sandy Wagner

YOU ASKED By VISOA Strata Support Team

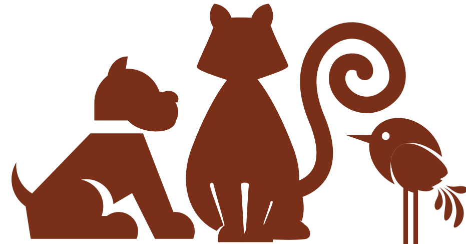
Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. Questions may be rephrased to conceal the identity of the questioner and to improve clarity when necessary. We do not provide legal advice, and our answers should not be construed as such. However, we may, and often will, advise you to seek legal advice.

PET BYLAW ENFORCEMENT...AGAIN!

By David Grubb

Q. We have a bylaw that states that all pets that are on common property must be on a leash. We have four owners (out of 63) who let their cats run free. Several other owners have complained about this. The four cat owners came to the AGM with a proposal to amend the bylaw to allow cats to on common property without leashes. The bylaw did not receive a 75% affirmative vote and so failed. The owners are now asking the Council to allow their four cats to be exempted from the bylaw. Their rationale is that because previous councils did not enforce this bylaw, the bylaw is unenforceable. Is this true? One solution the council is thinking of is to have a Special General Meeting to see if the 63 owners would agree to these four specific cats being exempted until they die and then not be replaced. Can we do this? Unfortunately, this has become very emotional.

A. Regrettably, pets are always an emotional issue and common in stratas that have them. Moreover, cats can create problems because they do not respond to training like (most) dogs. There are a few cat owners who have got their cats used to a leash, but these cases are relatively rare. Very often, a strata bylaw will require that cats be "indoor cats" and not permitted outside at all, but it is likely there are no records on how effective this is in townhouse stratas or the residents on the ground floor of an apartment who have a patio door access to the grounds.



As for your questions, first, Council is not permitted to exempt anyone from obeying any bylaw: indeed they are obliged to enforce them by SPA s.26:

Council exercises powers and performs duties of strata corporation

***26** Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.*

So the council has no authority to override the current bylaw.

Next, although the fact that former councils may have failed to enforce the leash bylaw might be challenged by some owners as rendering it unenforceable, it would take a decision of the CRT to have legal effect (and would require a new bylaw to be passed). But, this might be dismissed by the CRT, provided the current council shows that it has actually started the process by gathering information about specific times and places as to when a particular cat was on common property with a list of such events, and, pursuant to SPA129(2), by sending at least a warning to the owners. You would need a series of such complaints from owners - and preferably with photos to identify the cat: it is not good enough to have vague statements about "I saw Mrs. J's cat outside yesterday!" with no other details.

To amend the bylaw by "grandfathering" those four cats is not legal either. The bylaw would have to stipulate that all animals which were resident in the strata on the date the bylaw was passed were exempted, but would apply thereafter to all animals.

I am sure that you see the chaos and frustration this would cause amongst all the residents! It would be an incredible chore for council to maintain a register of animals

Continued on page 4

"before" and "after"!

So, Council is once more left with the unpleasant requirement to begin to enforce the bylaw against those four owners. You will have to give them notice that you will be doing so, and that confirmed and reliable evidence of their cat being on the common property without a leash will result in the council enforcing the strata corporation's Bylaw XX, in accordance with Section 135 of the *Strata Property Act*.

The owners have to recognize that strata living involves, as several supreme court judges have stated (and CRT adjudicators have repeated), that owners have to adopt an attitude of "We're all in this together." There are going to be some bylaws and rules that some might not like and think are "unfair", but such is grass roots democracy at work.

And since there are no "strata police", the owners expect - and should respect - that the council must perform this unpleasant duty.

YOU ASKED – ACCESS TO COMPLAINT LETTERS

Q. I wrote to the strata council requesting a copy of each of the complaints about our dog being at large; for which the council intends to charge a fine.

The council replied citing the strata's Personal Information Protection Policy by which they refuse to provide copies of these alleged complaint letters.

Can the strata legally defy SPA s.36 and PIPA s.18(1)(o) or override this with a conflicting strata bylaw?

A. The *Personal Information Protection Act* (PIPA) requires strata corporations to develop and follow privacy policies and practices necessary to meet their obligations under PIPA. However, the strata's privacy policy is just that - a policy. It is not law – not even a bylaw – in itself but it is subject to PIPA and cannot contravene that Act, nor the interpretation of PIPA by officials of the Office of the Information and Privacy Commissioner (OIPC).

In the context of a council refusing to provide copies of documents, here are two responses the Strata Support Team received from the OIPC in correspondence with them in January, 2017, about the obligation of council to provide letters of complaint to anyone who requests them without redacting any information - including especially letters from the complainant. **(Bold is mine)**

<u>17 January 2017</u>

The short answer is there is nothing wrong with Shawn's statement that: "However, if the offending owner asks for a copy of the complaint letter pursuant to the SPA they are entitled to it, **without redaction**."* [*Lawyer Shawn Smith, see the November, 2017, edition of the *Bulletin*. Ed.]

*The SPA is clear, as an owner you are entitled to view the correspondence that the strata receives. Section 18(1)(o) of PIPA says that if another piece of legislation authorizes the disclosure then the disclosure is PIPA compliant. **In this case the OIPC's position is that such a disclosure of a complaint letter is authorized by law (namely SPA). *****

[**PIPA 18 (1) An organization may only disclose personal information about an individual without the consent of the individual, if: [….] **(o) the disclosure is required or authorized by law.** Ed.]

For the most part the Guidelines focus on PIPA and not SPA. However, section 35 of SPA is explicit as to what an owner is entitled to.

<u>19 January 2017</u>

There is no easy explanation for the intersection between SPA and PIPA.

*Handling complaints is always a sticky subject. With the prior approach a complainant was not able to know who their accuser was, which also caused problems. **The most important issue now is for strata corporations to explain to owners how future complaints will be handled so that no one is surprised that they need to stand behind their complaints.***

Insurance Claims Under the *Strata Property Act*

By Shawn M. Smith, Cleveland Doan LLP

One of the common things which strata corporations have to deal with is the repair of damage to one or more strata lots caused by a single event; most often a water leak. These situations are often frantic and the lines of responsibility not clear cut. This article will hopefully help strata corporations, strata managers and owners better understand how to deal with those situations and the aftermath of them.

To properly deal with such situations, it is important to understand the differences between the duty to repair and the duty to insure. Although the two appear to overlap in some respects, they are separate and distinct obligations at law.

Pursuant to s.149 of the *Strata Property Act* ("SPA") the strata corporation is required to insure:

(a) the common property;
(b) buildings shown on the strata plan; and
(c) fixtures (ie. carpeting, plumbing fixtures, lights, etc) installed by the owner developer;

As such, damage to any of these will be covered by the strata corporation's insurance policy (provided that it arises from an "insured peril", the cost to repair exceeds the deductible and the damage is not otherwise excluded by the policy – e.g. mould).

However, just because the strata corporation is required to insure an owner's strata lot does not mean the strata corporation is required to repair it when the insurer won't. Where the strata corporation's insurance policy does not respond to fix damage, the bylaws of the strata corporation will apply. Responsibility to fix the damage will depend on what is damaged (strata lot or common property) and whose responsibility that is under the bylaws to repair that area.

Those same principles apply even where the cause of the damage came from the common property (whether it be from a pipe or the exterior of a building). Damage to a strata lot stemming from the common property does not automatically make the strata corporation liable for the owner's loss. In *Wright v. Strata Plan 2050* (1998), 43 B.C.L.R. (3d) 1(CA) affirming 20 B.C.L.R. (3d) 343 (SC), the court verified that the strata corporation is not an insurer. Nor is there a corresponding strict liability standard when it comes to damage arising from common property (as there is for damage originating in a strata lot) - *John Campbell Law Corp v. Strata Plan 1350* 2001 BCSC 1342.

The strata corporation becomes liable to fix damage to a strata lot only if it were negligent and breached its duty to repair and maintain the common property – *Capek v. The Owners, Strata Plan VR1706* 2017 BCCRT 42. Where it knows of a problem and doesn't fix it, the strata corporation will be liable for the costs incurred by an owner to repair resultant damage - *Fudge v. Owners, Strata Plan NW2636* 2012 BCPC 409.

The CRT succinctly summarized the approach to repairs in *Zhang v. The Owners, Strata Plan BCS 1039*, 2017 BCCRT 56 when it said:

> "Both the owner and the strata appear to link the responsibility of repairing the resultant damage caused by the leaking pipe to the responsibility of repairing the leaking pipe. That is not the case. Under the SPA, the duty to repair the leaking pipe is determined by the location of the pipe and whether it is common property or part of a strata lot. When determining the obligation to repair resultant damage, the strata's bylaws, factors relating to negligence and whether the strata's insurance policy responds to the claim must be taken into consideration."

Deductibles

Where a claim is made against the strata corporation's insurance policy, a deductible will be payable.

Payment of the deductible in relation to a claim is governed by Section 158 of the SPA. Subsection (1) provides that the deductible is a common expense to be contributed to by all owners on the basis of unit entitlement. Subsection (3) allows the deductible to be paid from the Contingency Reserve Fund or for the imposition of a levy on the owners; both without a 3/4 vote.

Continued on page 6

Typically the deductible is paid by the strata corporation as contemplated in s.158(1). However, in *Louie v. Strata Plan VR-1323* 2015 BCSC 1832 the court held that where the damage was caused by the owner and was only to that owner's strata lot, the strata corporation was under no obligation to pay the deductible and then collect it from the owner. The owner was obliged to pay it directly.

The most common issue faced with respect to deductibles is who is ultimately responsible for it. In other words, when can an individual owner be made to pay the entirety of it? Section 158(2), reproduced below, addresses that issue:

> "Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is <u>responsible</u> for the loss or damage that gave raise to the claim." (emphasis added)

The application and meaning of Section 158(2) was first considered by the court in *Strata Corp. VR 2673 v. Comissiona* (2000), 80 B.C.L.R. (3d) 350 (BCSC). The issue in *Comissiona* was whether or not the strata corporation could sue an owner for deductible paid by it as a result of water coming from the owners' strata lot. The court held that there is nothing which prevents an insured person or entity (ie. a strata corporation) who has made a claim under an insurance policy from suing the person who caused the damage in order to recover the deductible. The court also held that s.158(2) does not create a right to sue an owner for deductible paid by them. That right already exists at law. Rather all that subsection does is not restrict the strata corporation's ability to do so. Thus the action brought by the strata corporation was permissible at law. Whether the strata corporation would succeed at the end of the day depended on a number of things, including the bylaws of the strata corporation. Since the decision dealt with an application to dismiss the case on the basis that there was no claim in law against the owner, several important questions pertaining to such claims went unanswered.

The primary thing the decision in *Comissiona* did not address was the standard by which an owner becomes liable to pay the deductible. Section 158 uses the word "responsible" instead of language such as "liable", "negligent" or any other word which is similar in nature. What does "responsible" mean? What does the strata corporation have to prove in order to

Continued on page 7

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~ Benjamin Franklin

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make an owner reimburse it for the deductible?

That question was eventually answered by the British Columbia Supreme Court in the cases of *Strata Plan KA1019 v. Keiran* 2007 BCSC 727 and *Strata Plan LMS 2835 v. Mari* 2007 BCSC 740.

Both cases were appeals from decisions of the Provincial Court (Small Claims Division) wherein the court, in essence, held that where the cause of the damage which gave rise to a claim originated in a strata lot, the owner(s) of that lot were responsible for payment of the deductible.

In *Keiran* the damage covered by the insurance claim came from a pipe which burst in the wall of the strata lot. The bursting of the pipe was as a result of a coupling that failed due to the high acid level of the local water and "not to a negligent act or omission of the owner". The main question before the Provincial Court was whether or not Ms. Kieran was liable for the costs of the repair, which fell well short of the deductible of $10,000.00.

In determining whether or not Ms. Kieran must pay for the whole of the repairs, the Provincial Court first looked at the repair and maintenance responsibilities of the strata corporation and the individual owners under the bylaws of the strata corporation. The pipe was not within the scope of what the strata corporation was responsible to repair and maintain since it was not a common property pipe. It was clearly the owner's responsibility.

Next the Provincial Court looked at the wording of s.158(2). The court noted that the section uses the phrase "responsible for the loss". Without going into any real analysis, the court concluded that "because the damage occurred within the unit and not to common property, this is a situation where the homeowner had the duty to repair and maintain and is therefore 'responsible for the loss' *regardless of the absence of fault or negligence on their part"* [emphasis added].

On appeal the Supreme Court agreed with the decision reached by the Provincial Court concluding that "being responsible is not the same as being negligent" and that "owners of a strata unit are "responsible" for what occurs within their unit. Since the Legislature used the term "responsible" rather than "liable" or "negligent", it obviously meant for a different standard to apply. The stricter standard therefore was to apply.

In *Mari* the claim also involved water damage, this time from a faulty water level sensor in the washer located in the Maris' unit. The trial judge in the Provincial Court determined that the Maris were responsible to pay the deductible because they "were clearly the people who allowed or 'caused' the washer to be used." On appeal the Supreme Court upheld the decision stating:

> "I am satisfied that the legislation is clear and that no finding of negligence is required. The Legislature used the term "responsible for" in s.158(2) rather than terms such as "legally liable, liable, negligent." The choice of the term "responsible" provides the owners with the opportunity to allocate to a particular owner the cost of an insurance deductible in cases where an owner was thought to be responsible for a loss… The owner will be responsible for the deductible notwithstanding that the owner was not negligent. Section 158(s) simply allows

Continued on page 8

the Strata Corporation to set the same standard for the payment of a deductible as would exist in a single family residence."

In *Mari* the court also determined that there was a policy rationale behind making an individual owner pay as opposed to sharing it amongst all the owners. That rationale is one of the "disciplining effect of a deductible". In other words, if an owner is made to pay the full deductible (or knows that he or she will have to) it will cause them to be more cautious.

In both instances the court made it clear that a strict liability standard will be applied: If the cause of the damage arises from inside the strata then the owner is liable for the deductible.

Although a strata corporation can rely on s.158(2) to recover the deductible, many enact bylaws that allocate the responsibility for payment of a deductible to an owner. Such a bylaw is not necessary to collect the deductible - *The Owners, Strata Plan VIS 6634 v. Brown,* 2017 BCCRT 86. S.158(2) can stand on its own as a basis for the claim.

However, strata corporations which do so enact bylaws of that nature must take care in how they word them. Where the bylaws establish a different standard from that of s.158(2), that different standard will be deemed to apply – *Strata Plan LMS2446 v. Morrison* 2011 BCPC 519; *Crichton v. The Owners, Strata Plan KAS431* 2017 BCCRT 33; *The Owners, Strata Plan VR194 v. MacKinnon* 2017 BCCRT 46; *Clark v. The Owners, Strata Plan LMS 3938* 2017 BCCRT 62; *The Owners, Strata Plan BCS 1589 v. Nacht et al*, 2017 BCCRT 88.

A different standard can be established through using words which convey a meaning other than that given to "responsible"; for example terms such as "negligence" or "omission". A reference to "negligence" requires the establishment of a specific standard that the reasonably prudent strata lot owner must meet and the ability to prove they failed to meet it. For example, in Morrison the court held that the failure to remain in the bathroom until a toilet was done flushing amounted to negligence. Conversely, in Clark the fact that the owner knew their washer was aging but did not replace it was not considered negligence on their part.

Although s.158(2) of the SPA refers to "sue", that does not preclude a strata corporation from seeking recovery of a deductible from the CRT - *Zhang v. The Owners, Strata Plan BCS 1039*, 2017 BCCRT 56.

Must a claim be made?

Since an individual owner is a named insured on the strata corporation's insurance policy by virtue of Section 155 of the SPA, the strata corporation cannot prevent them from making a claim against the policy. However, the strata corporation can certainly encourage them not to do so. In such a case the strata corporation would have to be prepared to pay the amount above the deductible. (The owner would remain liable for the amount of the deductible if the test in Keiran and Mari applies to them).

In *Lalji-Samji v. Strata Plan VR2135* (January 13, 1992) Doc. Vancouver A913001 (BCSC), the court held that an owner could not be sued for the cost of repairing damage which the strata corporation was required to have insured. Although this case was decided under the Condominium Act, it reinforces the concept of the owner being able to rely on the protection

Continued on page 9

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of the strata corporation's insurance policy.

What if a tenant causes the damage?

Section 158(2) refers only to the "owner" (a defined term under the SPA) being responsible for the damage giving rise to the deductible. What if it the strata lot is occupied by a tenant? Can the strata corporation still rely on Section 158(1)?

This question was answered in *Strata Corp. LMS 2723 v. Morrison* 2012 BCPC 300 where the court held that:

> **9** In my view, Justice Burnyeat determined that "responsible for" should be interpreted broadly because, one, owners of a strata unit are responsible for what occurs within their unit, and, two, unless there is a mechanism to direct the payment of the deductible by an owner, an owner is free to act without consequence that affects homeowners in a single family home, where the homeowner's insurance will repair the damage but the homeowner will be responsible for the amount of the deductible.
>
> **10** Applying those principles to this case, like the presence of washing machines, dishwashers, air conditioners, and water dispensing refrigerators, tenants pose a risk. While I appreciate that Ms. Morrison had no control over the candle, the owner is responsible for what occurs within their unit. Finally, it would be unfair to impose liability on all owners for what would ordinarily be insured by an owner of a particular unit if that owner owned the unit as a single family dwelling.

As such, the owner is responsible for the actions of their tenant where they give rise to a claim and a deductible which is payable.

What if the strata corporation repairs a strata lot when there is no insurance coverage available?

While the strata corporation is responsible to insure a strata lot, it is not responsible to repair a strata lot. As such, where damage is caused to a strata lot and that damage comes from another adjoining lot and there is no insurance coverage (ie. it is either under the deductible limit or the damage was not caused by an insured peril) then the strata corporation has no obligation (and arguably no authority) to repair the damaged strata lot. The owner must repair their own strata lot and pursue the person who caused the damage for the cost of doing so.

However, if the strata corporation undertakes repairs it is not necessarily precluded from recovering the repair costs. In *Pham v. Strata Plan NW2003* 2007 BCSC 519 the strata lot owned by Ms. Pham was rented out and was being used as a marijuana grow operation. The grow operation caused damage to a neighbouring strata lot and the common property. As a result, there was no insurance coverage available. The strata corporation decided to carry out repairs to the strata lots and to the common property to the tune of $106,000.00. It then sued Ms. Pham for the costs of the repairs. The court held that the strata corporation could recover the monies spent for the repairs on the basis of Section 133 of the SPA.

Pham therefore stands for the principle that where there has been a breach of a bylaw which gives rise to a need to carry out repairs, the strata corporation can do so and recover the costs. However, where no such breach has occurred caution should be taken lest the strata corporation finds that it cannot recover the monies spent because it has no statutory authority to do so.

Even if a strata corporation does not repair damaged strata lots, it may incur emergency expenses responding to such situations (A strata corporation has a duty both at law and under its insurance policy to respond and mitigate the extent of the damage). In order to collect those expenses if not paid as part of an insurance claim, the strata corporation must have a bylaw which permits it to do so - *Tam v. The Owners, Strata Plan BCS 282*, 2017 BCCRT 93.

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

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How Depreciation Reports Can Help Manage The Contingency Report Fund

By Chris Chapman

The Depreciation Report

The description of the Depreciation Report in the *Strata Property Act* (SPA) can be summarized as a triennial report produced by a "qualified person" which must contain:

(1) an inventory of the common property and common assets of the strata showing their expected lifetime and their expected costs of renewal and/or replacement over a period of 30 years; and

(2) a financial forecasting section which must include:

(a) the anticipated maintenance, repair and replacement costs for common property and assets that usually occur less often than once a year or that do not usually occur, projected over 30 years, and

(b) at least 3 cash-flow funding models for the contingency reserve fund relating to the maintenance, repair and replacement over 30 years of the common property and assets.

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Although the SPA requires stratas to prepare a DR every three years (with some exceptions), there is nothing that imposes an obligation on the owners to do anything about it.

Nevertheless, we can identify two primary objectives of the Depreciation Report:

(1) To disclose to owners & potential buyers the extent and condition of common property and assets and the expected future costs of their renewal and/or replacement; and

(2) To provide a data base of the common property as a tool to enable owners to do long term financial planning for the repair and replacement of that property.

The Contingency Reserve Fund

According to the SPA, a strata must have "a contingency reserve fund (CRF) for common expenses that usually occur less often than once a year or that do not usually occur". In other words, a CRF is for other than normal annual operating expenses.

The amount of the annual contribution must be either:

(1) the amount required to keep the CRF at the specified minimum (25% of the current year's operating fund expenditures), or

(2) if the CRF equals or exceeds the minimum, any amount approved in the annual budget.

The strata corporation must not spend money from the contingency reserve fund unless the expenditure is:

(1) consistent with the purposes of the fund as set out in section 92 (b), and

(2) approved at an AGM or a SGM. (except in emergencies).

It is generally acknowledged that having a CRF of some amount is just good financial management. We can identify two practical reasons to have this fund:

(1) To enable the accumulation of financial assets for the purpose of paying all or

Continued on page 13

part of the cost of the renewal or replacement of common property components in order to avoid or reduce the need for special assessments.

(2) To act as a resource in the event of unexpected expenses

The SPA requires each strata to have a CRF consisting of at least 25% of the annual budget of the current operating fund. There is no requirement that the CRF exceed the minimum and there is no maximum limit on the fund.

Minimum Funding

Minimum Funding of the CRF would mean keeping contributions to the CRF at the amount required to satisfy SPA's the statutory minimum. If this funding strategy were adopted, all large renewals or replacements of common assets would have to be funded by special assessments.

Why would owners choose the minimum funding strategy? For several reasons:

1. They believe that, in spite of the tax free status of the CRF, because of the severe restrictions on the choice of investments available to CRFs, owners can achieve a better after-tax rate of return in their own investment portfolio.

2. They want to retain ownership of the funds which otherwise would be the property of the strata.

3. They do not agree with the concept of intergenerational equity – the building up of funds to pay for future major repairs and replacements regardless of who may benefit from them at a later date – because they may no longer be owners in the strata when the repair or replacement is made in order to recoup the value of their own contribution.

4. They are concerned that there is no assurance that money in the CRF will be reflected in the market value of their units.

Maximum Funding

Because there are always some large future renewal/replacement (R/R) expenses whose timing and cost are reasonably predictable, some owners would prefer to set aside regular monthly contributions to be saved in the CRF to pre-fund these expenses thereby avoiding special assessments.

Continued on page 14

They have the opinion that, in the case of the many components of the common property of the strata which are depreciating over time, it is appropriate for current owners who are enjoying the use of these assets to set aside a regular contribution to the CRF sufficient to accumulate the estimated cost to R/R these components. This may be thought of as an attempt to achieve "intergenerational equity" amongst owners. In most cases, when this approach is taken, it shows the owners have the forethought to plan for those future repairs to maintain their equity in the entire common property in which they all have an undivided share. This should be reflected in a heightened market value of strata units since all money in the CRF becomes a common asset of the strata, to which owners have no individual entitlement, that is dedicated for the most part to the preservation and improvement of the common property.

Owners who support these points of view will be inclined to pre-fund renewals and/or replacements of some or all of the common property components. Pre-funding requires making predictions about the timing and cost of these expenditures. It is important to recognize that for each common asset the certainty of the timing and cost of the R/R can be quite different. For some assets, the timing and cost of the R/R can be confidently predicted within a reasonable range. For other assets, not only is the probability of occurrence low and the timing virtually unpredictable, but the cost can be very high resulting in such components having an unwarranted and distorting significance in financial projections. Hence, a decision must be made for each and every component as to whether or not, and to what degree, it should be pre-funded.

Some will assert that all assets identified in the DR should be pre-funded. Most informed owners would not agree with this since consultants who prepare depreciation reports find it in their best interest to identify any and all possible asset R/Rs including those which have very uncertain predictability and, if included in financial projections, would result in distorted and meaningless results.

The biggest hurdle to overcome may be understanding that a Depreciation Report is a high-level financial plan based on a number of assumptions, including fairly low-level cost estimates. It does not contain sufficient information to immediately implement a renewals project. (from *The Wall* blog, "4 Steps to Taking Action with Your Depreciation Report", publication of RDH Building Science Inc., Posted on October 28, 2014)

The necessity to select, component by component, which will be pre-funded and which will not means that the number and costs of components chosen for R/R pre-funding will vary with the preferences of each strata's owners, will normally be fewer than all the components identified in the DR and will consequently result in differences in the extent of maximum funding from one strata to another.

Management of the Contingency Fund

Good long term financial planning combined with proper funding and operation of the CRF can offer peace of mind and considerable potential financial benefits to the owners of the strata.

In order to manage the CRF **the strata owners must agree on a funding strategy** which means they must decide whether the CRF will be kept at a minimum or whether, and to what extent, common property R/Rs will be pre-funded. This is an essential but often debated process because there is a very wide range of possible strategies between minimum and maximum funding. There are both philosophical and practical considerations which must be considered by strata owners before a consensus funding strategy can emerge.

- The owners' disposition toward pre-funding common property R/R in general.
- The owners' preference for allocating strata fees between pre-funding and current operating costs.
- The affordability of the amount of pre-funding if chosen.
- Owners' concerns regarding the possibility of large future assessments.

Once a **funding strategy** is agreed upon, a funding plan must be developed for the CRF which will identify the initial amount and rate of increase of the CRF contribution. The process involved in choosing a funding plan involves making a num-

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ber of financial forecasts varying the assets to be funded and the financial assumptions until a best fit with realistic assumptions and owners preferences is found. This process can be complex and time consuming and requires a financial forecasting tool.

The CRF is an unallocated fund the sole purpose of which is to pay for common expenses that usually occur less often than once a year or that do not usually occur. Hence, regardless of the component involved or the cost or the assumptions used in the funding plan, any qualifying expense which is incurred may be charged entirely or in part to the CRF or to a special assessment. Such decisions must be approved, case by case, by the owners. This means that the funding plan for the CRF must constantly be revised and updated to reflect the effect that expenses actually charged to the CRF will have on the funding plan.

Strata Council's Role

The key issue here is that the strata owners, collectively, must decide on a funding strategy for their CRF. Their decision as to whether the funding strategy is to be a minimum, a maximum or somewhere in between will be the most significant determinant of the funding plan developed for the CRF. Without a proper plan you don't know what you are funding and, consequently, whether your contribution plan is adequate or excessive. If the contribution plan is inadequate it will defeat the owners' funding strategy and if excessive, owners are just making unnecessary contributions to the strata. The strata council has an obligation to make its best efforts to ensure that owners understand the implications of their decisions and the different options available to them, and to work with owners to develop a consensus funding strategy. Anything less would be a failure to act in the best interests of the owners.

About the Author

Chris Chapman became a Fellow of the Society of Actuaries in 1964, a Fellow of the Canadian Institute of Actuaries in 1965 and served as President of the Canadian Institute for 1983-84. During his 33 year career in the life insurance industry, he spent 3 years pioneering the design and development of financial models to forecast both operational and financial performance of a large, multi-line, international insurer and was respected as an expert in this discipline. Chris has been a co-owner of strata properties in British Columbia for the past 28 years and has served on strata councils as treasurer and in other capacities in two different stratas. He was the chairman of the owners' committee which reviewed his current strata's 2013 Depreciation Report, and designed and recommended a funding plan for the Contingency Fund. Chris currently resides in a condominium in Victoria .

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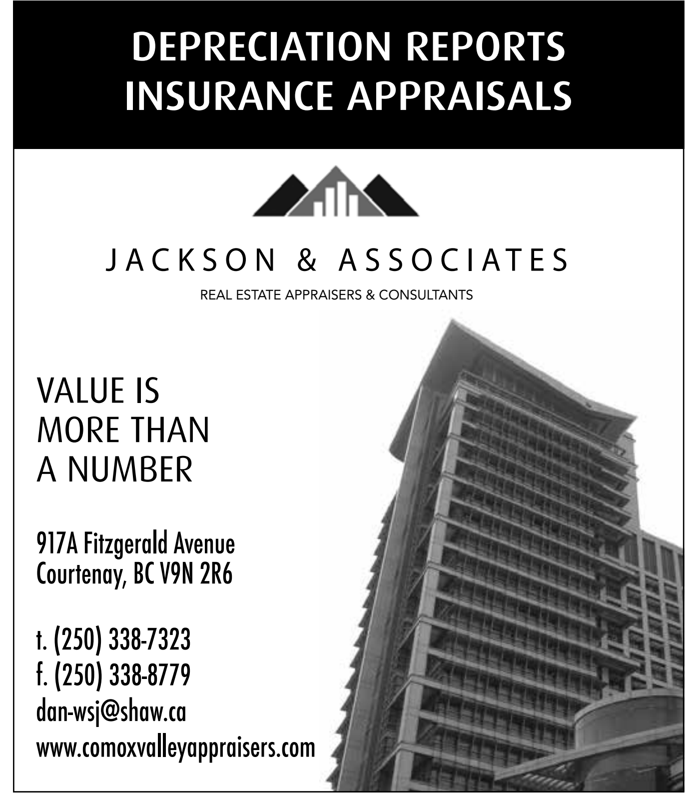
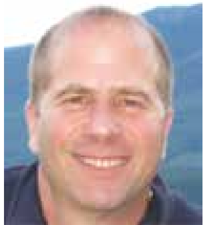


Strata Lot Purchaser's Sanity Test

By Barry Burko



When I owned Summit Strata Management one of the ongoing jokes in the office was that there should be a test for would-be strata lot owners and now that I am not affiliated with any strata management company, it seems like a good time to create that test. Keep in mind that my tongue is firmly implanted in my cheek!

So without any further ado here's my simple test:

- Have you ever owned a detached home?
- Do you have trouble following arcane rules?
- Do you feel angry when you get a speeding ticket?
- Do little things bother you?
- If you're in your car and there's a rattling noise, do you stop the car and look feverishly to find out the source of the noise?
- Do you think you know more than other people?
- Do you have trouble parking your vehicle between the lines?
- Do have an expensive bike that you are deeply attached to?
- If you're in your car and stopped at a stoplight and another car pulls up beside you with their stereo blaring and you can feel the bass throughout your body, do you want to scream obscenities out the window?
- Do you delay paying your bills?
- Do you often ask to speak to someone's supervisor?
- When faced with a seemingly trivial challenge, do you make it your life's work to remedy?
- Are you below a 5 on the Zen-scale?
- When you unbox a new appliance, electrical device etc., do you skip reading the instruction manual?
- If you have a dog, do you look the other way when he's pooping?
- Do you like gardening?
- Do you like fixing things yourself?
- Do you like working on your car?

If you've answered yes to any of the above questions then I would strongly advise you not to buy a condominium unit, and if you think I'm crazy read what I have to say:

Living in a strata corporation requires a certain mindset: you need to be forgiving, patient, abide by all the rules and bylaws as ludicrous as they may seem. You need to have empathy, compassion and be able to pay-it-forward for all the other residents with single digit IQ's (remember my tongue is in my cheek!).

You need to have skin as tough as an alligator. Criticism thrown your way needs to roll off your back and have zero effect on your psyche. In other words, you need to have had a lobotomy!

Crazy, silly, ridiculous things happen in strata corporations that will test your mental stamina. People will park in your parking space even though it's clearly marked – and you're likely to get fined for parking in someone else's spot!

People will leave their dog feces all over the property, even though there are poop bag dispensers everywhere. People will blast their stereos well into the early hours of the morning without regard for anyone else. You will forget what a good night's sleep is like. You'll receive letters, threats, and dirty looks from your neighbors, strata council members and anyone else if you breach a bylaw and it gets reported in the strata corporation's minutes – you'll become a pariah!

You'll no doubt see an unpruned bush in the garden sitting there for weeks wondering why no one else sees it and why no one has done anything about it. It will get on your nerves, it will fester like a boil until the only solution is to lance that boil by selling your strata lot and going back to your comfortable detached home from whence you came – or you might give a townhome a shot instead!

Barry Burko is a 25-year veteran of strata management, who started and ran Summit Strata Management for 18 years. He is also an Arbitrator/Mediator/Negotiator with certification from the Justice Institute of BC. Barry is not a lawyer, but he does know the ins and outs of the Strata Property Act and likes the challenge of achieving fair and equitable mediations under the Act. www.burkoconsulting.com

Privacy Matters

The following are from the Strata Frequently-Asked Questions section of the Office of the Information and Privacy Commissioner (OIPC). Read more at https://www.oipc.bc.ca/guidance-documents/1805

Q: *How should minutes be prepared when an individual making or seconding a motion objects to having his or her name recorded?*

When an individual makes or seconds a motion, they are providing implicit consent for the collection of their personal information pursuant to s. 8(1) of PIPA. If the individual withdraws his or her consent then the individual is not able to move or second a motion.

Q: *Can a strata council make an electronic recording of a council meeting?*

Unless the majority of owners or strata council members pass a resolution in favour of allowing meetings to be recorded with an audio or visual recording device, strata council or general meetings should not be recorded either by the strata corporation or by an individual. However, PIPA does not apply to the acts of a private individual, but only applies to the actions of an organization, such as a corporation. Therefore, a strata corporation may wish to consider passing a bylaw forbidding any audio or visual recording device to be used at a strata council meeting or general meeting without the prior approval of the majority of eligible voters, who are present in person or by proxy at the time that the vote is taken.

Q: *When an owner writes to a strata council requesting approval of a renovation, may the strata minutes record the unit number, lot number, or other identifying description of the unit that will be doing the renovation?*

The strata minutes need to accurately reflect what decision was made. As long as the unit number or strata lot number is mentioned and the owners are not individually named, the minutes would not contravene PIPA. To be transparent, you may wish to advise the strata lot owner that this will happen if approval is granted.

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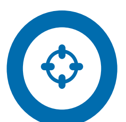

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PROXIES FOR COUNCIL MEETINGS

Q. We have five people on council, and three members constitute a quorum. Our President & Vice-President will both be absent at the same time for approximately 20 days. Standard Bylaw 18(1) says that council members must be present to vote at a strata council meeting. Can you confirm that this means that strata council members cannot give someone else their proxy? The other question is can council or all strata owners elect a council and/or a non-council member to fill in for the President or Vice President when they are away?

A. Council members have no authority under the SPA to give anyone a proxy to act at any council meeting, because such a person has not been elected by the owners at an AGM.

So the three members (as the minimum quorum for five council members) now must all be present for a council meeting to be legitimate, and any motion must be passed by at least two of the three members remaining to be valid.

In the absence of both the President and Vice President, the remaining members must elect one of the three of you to chair the council meeting, and the minutes must reflect such an election for that meeting. You should also ensure that the three members have signing authority for bank accounts, etc.

Remember that although the President may be assigned certain duties and authority pertaining to the strata's administration (as may all the officers), all decisions must be made as a council to be effective, whether the President is there or not, or even if the President disagrees with a motion.

As for a "temporary" president or vice-president, it is the council which elects its officers after the AGM, not the owners. Should an officer step down from their office (even if remaining on council) the council could vote in any other council member to replace the officer who ceases to act in that role.

Officers

13 (1) At the first meeting of the council held after each annual general meeting of the strata corporation, the council must elect, from among its members, a president, a vice president, a secretary and a treasurer.

(2) A person may hold more than one office at a time, other than the offices of president and vice president.

(3) The vice president has the powers and duties of the president

(a) while the president is absent or is unwilling or unable to act, or

(b) for the remainder of the president's term if the president ceases to hold office.

(4) If an officer other than the president is unwilling or unable to act for a period of 2 or more months, the council members may appoint a replacement officer from among themselves for the remainder of the term.

However, you will note the requirement of bylaw 13(4)

Continued on page 20

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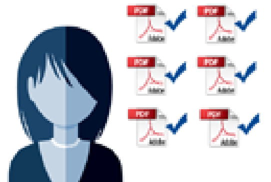

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Continued from page 19

to allow at least two months before appointing someone else, and even then, the officer could remain able and willing, and could still remain in touch.

As for replacing any council member (not just as an officer), if any council member cannot continue to act, then Standard Bylaw 12 applies.

Replacing council member

12 (1) If a council member resigns or is unwilling or unable to act for a period of 2 or more months, the remaining members of the council may appoint a replacement council member for the remainder of the term.

(2) A replacement council member may be appointed from any person eligible to sit on the council.

(3) The council may appoint a council member under this section even if the absence of the member being replaced leaves the council without a quorum.

(4) If all the members of the council resign or are unwilling or unable to act for a period of 2 or more months, persons holding at least 25% of the strata corporation's votes may hold a special general meeting to elect a new council by complying with the provisions of the Act, the regulations and the bylaws respecting the calling and holding of meetings.

So the council cannot appoint two new people to council in the brief absence (20 days) of the two current members, especially since they are not resigning.

The one way you could try to allow for the two members to participate at a council meeting while they are away is if they can be at the meeting electronically, provided all people at the meeting are in contact at the same time (though awkward, this is especially true where there is a formal hearing of an owner - e.g. permission to rent for hardship reasons, bylaw contraventions, etc.). E-mail does not apply because all the participants cannot communicate with each other simultaneously. But a telephone or video conference call (e.g. Skype) is certainly acceptable.

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- Postal mailed bulletins are available to members for $15 annually per address.

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By email: $15.00 per year and by postal mail $25.00 per year

VISOA Regular Office Hours:

Mondays 9:00 am to 1:00 pm

Tuesday, Wednesday, Thursday
9:00 am to 4:30 pm (closed for lunch 12:30-1:30)

Fridays 9:00 am to 1:00 pm

STRATA ALPHABET SOUP

BCREA – British Columbia Real Estate Association

CMHC – Canada Mortgage and Housing Corporation

CRF – Contingency Reserve Fund

CRT – Civil Resolution Tribunal

FAQ – Frequently Asked Questions

FICOM – Financial Institutions Commission

HPO – Homeowner Protection Office

HRT - Human Rights Tribunal

LCP – Limited Common Property

LTSA – Land Title and Survey Authority

OF – Operating Fund

OIPC – Office of the Information and Privacy Commissioner

PIPA – Personal Information Protection Act

RECBC – Real Estate Council of British Columbia

REDMA – Real Estate Development Marketing Act

RESA – Real Estate Services Act

SPA – *Strata Property Act*

VISOA – Vancouver Island Strata Owners Association

PUBLICATION COLLECTION

1. A Practical Guide to Budgeting and Financial Reporting
2. Best Practices for BC Strata Treasurers
3. Depreciation Reports for BC Strata Corporations
4. Management of the Contingency Reserve Fund
5. New to Council
6. Sample Strata Residents Manual
7. Strata Insurance
8. *Strata Property Act*

This collection includes all seven of VISOA's Publications on a USB, so you have them all in one spot at a savings of 10% over individual prices. As a bonus it also includes the Strata Property Act and shipping. Available at https://www.visoa.bc.ca/?post_type=product

Shawn Fehr, BA, CAIB, CIP, provides expert advice whether you're insuring a duplex or a 500-unit strata complex. Call him today for a competitive quote! **250-478-9110** or e-mail sfehr@seafirstinsurance.com

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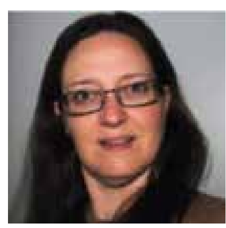
Word of Mouth in the 21st Century

By Wendy Wall



One of my favourite experiences as a VISOA member is meeting other strata owners at seminars and workshops and hearing about both the challenges and the success stories in their respective strata communities. Quite often someone will say how grateful they are for the help they have received from the strata support team (formerly known as the Helpline), something they learned at a VISOA seminar, a workshop or from reading our publications and bulletins.

Another frequent comment expresses how they wish more people knew about VISOA and the services and learning opportunities that are available. Well, guess what?...there are a lot of ways you can spread the word.

These days "word of mouth" is easier than ever; there are so many ways to share that great recipe you just discovered, show your amazing shot of yesterday's sunset or that hilarious cat video that has you howling with laughter and… tell your friends and family members how much you learned at a VISOA seminar.

You know what I'm talking about...social media. Of course we'd still love it if you would talk about VISOA wherever you are, at work, on the golf course, waiting line at the grocery store, but you've probably discovered how easy and fun social media can be. So next time you are on Facebook looking through the latest photos of your adorable grand-kids or checking the special of the day at your favourite restaurant, take a minute to tell someone about VISOA.

And don't forget to tell your social-media obsessed kids. As single-family homes are nearing unattainable prices for young or first-time homebuyers, there is a considerable wave of young people purchasing condos and townhouses. We joke about it but it's true that many people seem to have phones in hand 24/7. All the information they need is online and they can connect with friends using Facebook, Twitter and other social media at any hour of the day. Social media is a great way to spread the word about VISOA. And when they have a question or a situation arises, they will know our name and be able to find VISOA for the expert information and help that they need.

So please post, tweet and message to your heart's delight. With your help we can help improve the lives of strata owners and prospective strata owners across BC.

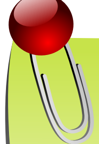
How-to:

On Facebook, www.facebook.com/VISOA.BC:

invite friends to like our Facebook page; like, comment or share a post from VISOA's page; write a review; write a visitor post to share something strata-related on our page; or create a post in your newsfeed with a link to our website.

On Twitter, www.twitter.com/VISOA_BC: follow us, share our tweets, or create your own tweet with a mention (@VISOA_BC) or a hashtag (#VISOA). If you visit our website (www.visoa.bc.ca) look for the sharing icons to instantly tweet (or post to Facebook) the information you want to share.

With gratitude, Wendy Wall
VISOA social media volunteer



Save the Date - 2018 Planned Seminar Dates

April 15 (Nanaimo) Bowen Centre
May 27 (Courtenay) Crown Isle
June 24 (Victoria) Comfort Inn
September 16 (Nanaimo) Bowen Centre
November 18 (Victoria) Comfort Inn

Mark your calendars

March 3 –
"For New Strata Owners" is an all-new workshop for those who have bought their very first home, or downsized from a single-family residence to a strata. Will answer all the questions you didn't know you had.

March 10 –
"For New Strata Council Members". Just elected to council, or thinking of letting your name stand at your next AGM? This workshop will tell you all about your obligations and responsibilities, as well as tips for helping to keep your strata running smoothly.

March 24 –
"For Strata Treasurers". This workshop will help treasurers or any strata owner understand the financial requirements of the *Strata Property Act*, as well as provide you with tools to make your task easier.

April 7 –
"Best Practices for Strata Secretaries". The Act is not prescriptive on many of the strata secretary duties, but this workshop will share best practices for record keeping, correspondence, minutes and more.

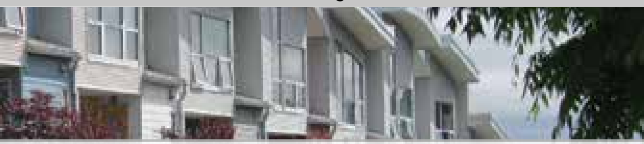
May 26 –
"Strata Maintenance Plans". This popular workshop will show you how to develop your own strata maintenance manual.

The March and April workshops are held at the Union Club in Victoria; May workshop will be at Crown Isle Resort in Courtenay. All are full-day interactive workshops with plenty of time for questions. Lunch and handout material included.

Corporate Members $75 • Individual Members $85
Non-Members $95
REGISTER AT:
https://www.visoa.bc.ca/?visoaevents_categories=workshops

Protect Your Investment

We have been assisting Stratas and Property Owners for over 20 years in British Columbia and over 30 years across Canada in developing their Reserve Fund Studies (Depreciation Reports) and in the maintenance of their buildings.



- Depreciation Reports
- Building Envelope Engineering
- Roofing and Waterproofing
- Fall Protection Engineering
- Structural Engineering
- Thermal Performance

Contact Us:
Nanaimo: Jennifer McAskill, AScT, CCCA, PMP (250) 716-1550
Victoria: Terry Bergen, CTech, CCCA (250) 386-7794
rjc.ca

And now let us welcome the new year, full of things that never were.

- Rainer Maria Rilke

BULLETIN SUBSCRIPTIONS

VISOA provides 4 information-packed bulletins each year.

VISOA
Vancouver Island Strata Owners Association
VISOA Bulletin - MAY 2016
Must a Strata Admit Census Takers?
By Sandy Wagner
In this issue...

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YOU ASKED By VISOA Strata Support Team

What is Council's Authority under SPA s.98 Emergency Repairs?

Q. Our council has a discretionary spending limit of $7,000 without asking owners approval with the exception of emergencies and unless budgeted. We face a plumbing task that will cost roughly $12,000. We've known about the problem for several weeks. Efforts by the plumber determined that the full range of remediation would far exceed merely snaking out the line; an under slab sewer line affecting twelve units is broken in two. The work entails excavating through a first floor bedroom down more than five feet, sending the resident to a motel for ten days.

We have a budgeted plumbing category for $15,500 of which to date we have spent $5,000 on other plumbing needs. The question is: can this be regarded as an emergency as the full extent of the work was revealed, or can we expend the $10,500 remaining in the plumbing budget and any amount over that would be within the $7,000 discretionary limit, and a special general meeting not be required?

A. Despite the value of a reliable tradesman of any sort, this is too large a task for him in terms of liability. You may be facing major work on your foundations as well as the pipe itself so you definitely need to consult an engineer to determine the extent of the problem.

Although you may have had difficulties with insurance companies because of a series of water damage issues and are leery of your deductible going up again (and you are not alone), as a council you still have a responsibility to do everything you can to protect the interests of the strata corporation, and trying to get your insurance to cover much of the work is part of providing that protection if it is contained in your policy.

I suggest that it is prudent to find out what the insurance will cover since the strata corporation must retain full coverage under SPA s.149(4). But keep in mind that you have the option of proceeding with the insurance claim or not, depending on what the company presents to you.

Regardless of the evaluation you may receive from the insurance company, you must still take care of the situation.

So I suggest also that failing to get an engineer's estimate might wind you up in significantly more trouble should other problems that might have been predicted occur and cost you much more. For example, the possibility of more serious damage to the building structure than originally anticipated.

The more knowledge you have, the better. Once you have as much information as you can reasonably expect from an expert, you will be in a better situation to determine how urgent the work is and the options for paying for it.

Your quandary, then, is whether

(a) to use the CRF under SPA s.98(3) (if there are sufficient funds);

(b) to use up the plumbing budget plus the discretionary $7,000 (which may not be the wisest choice);

(c) to consider a combination of those two solutions (under SPA s.98(3) both of which council might theoretically be able to authorize on their own; or

(d) to hold an SGM so that your owners understand what the threat is and what the project will entail, the estimated costs, and the situation with respect to insurance coverage.

Whatever is chosen, an engineer can set the whole process in motion including specifications, obtaining the appropriate permits, sending out requests for quotations, etc., and -- to your benefit -- would take on the legal responsibility to see that all the work is properly done.

~ DISCLAIMER ~

The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.