

VISOA Bulletin - FEBRUARY 2019

Editor's Angle

David Grubb, Editor

The old year passeth but not without some turmoil in the last little while as far as the larger picture of adequate housing for the low and middle income people impacts the strata world!

The provincial government and several municipal governments have been trying, or are trying, to impose extra taxes on home owners, and there is a considerable move afoot to ban any kind of rental restriction in stratas on the supposition that doing so will automatically lower prices and allow these groups some affordable housing. But this may not be so, and there are those who disagree with these moves. Although individuals are welcome to contribute articles to the *Bulletin* on both sides (or in the middle) of this issue for

our education, VISOA's Board does not take sides on it as there are so many opinions. But you are welcome to write to the Minister of Municipal Affairs and Housing, the Honourable Selina Robinson, with your thoughts and concerns, be they positive or negative.

There are a variety of other issues included in this edition. Shawn Smith has once again put his finger on an anxiety felt by many an inexperienced chair about conducting a formal hearing. There is an article by Paulette Marsollier about the necessity of all Realtors, management companies and strata owners to become better educated about this fourth level of government which the owners are entirely responsible for.

We also wanted to look back a little. This is not for the sake

of nostalgia, but to show that "the more some things seem to change, the more they may remain the same." The articles by John Grubb (September, 2009) and Jennifer Childs (November, 2010) show that we need constant reminders!

2019 will bring more changes as we work to grow our membership and offer more ways to pass on the knowledge of the many experts who are always willing to assist us in our endeavours. The budget for next year will be a topic of great interest at the AGM. And of course we are always looking for experts who will give us talks on the topics you would like to hear about at seminars and workshops, as well as those who will write articles that we can include in our Bulletin for

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everyone's edification. Please let us know!

Also, we will see a changing of the guard – a tad! The Board will miss Deborah Fraess who is retiring after sterling service, but will be blessed by the nomination of several new members who, if elected, will bring fresh ideas because of their backgrounds. It will be an exciting time!

See you at the AGM on February 24 at The Comfort Inn!

~ 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.

Strata Strategies - On My Soapbox

By John Grubb

[First published in the September, 2009, edition. The more things change, the more they stay the same!- Ed.]

Forgive me folks, but I just found my soap box in the closet...and another half-page newspaper advertisement from a strata developer promoting a "Maintenance Free Lifestyle". What planet does he live on anyway..?

Have any of you - strata owners, home owners, building owners – ever come across a building, and its integral systems, that didn't require maintenance? I've been in this business for over 30 years now and I've never seen one. No sooner is a structure built, that it starts to deteriorate – slowly, for sure – but very few of the materials used in common residential construction in Canada today, will last forever...but

that's what the developer is suggesting.

Oh..! The Strata Corporation is responsible for maintenance.

Yes, it is...But what is the Strata Corporation, and who's running it to make sure the maintenance – annual and long term - gets done? Strata owners... That's you...!

You - and your fellow owners –

are responsible for the operation of your strata corporation. No one else is going to do that for you.

“But....We're not self-managed. We have a Strata Manager, and he'll take care of everything.” you say. Sorry to disillusion you, but your Strata Manager isn't going to do that for you - other than the day-to-day, minor repairs - unless Long Term Maintenance Planning is part of the contract. In our experience, most do not take on any significant planning responsibilities, and most Strata Corporations don't ask them to. This also makes the point that every strata owner lives in a self-managed strata. There is no other kind, and you must manage the manager, to ensure that he is living up to the terms of the contract he has with you.

A “Maintenance Free Lifestyle” may mean that you aren't going to pick up the tools yourself, but I promise, you and your fellow owners are still responsible for the planning, funding and execution of every single maintenance project in your strata, and ignoring that responsibility virtually guarantees that you will have problems with that idyllic, “maintenance free” home you purchased.

John Grubb is a Property Maintenance Consultant serving Strata Corporations and building owners on Vancouver Island. 250-893-3445 or www.unityservices.ca

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Can Government Actions That Involve Stratas Help the Rental Shortage?

Opinion by David Grubb



Recently the Provincial Government and various Municipal Governments have taken, or are taking, action to try to ease the undeniable problem of adequate housing either through purchase or rental for low-income and middle-income people. The efforts seem noble, but such legislation is likely to have adverse consequences for condominium owners, whether purchasers, sellers or residents, and it is likely they will have very little effect in mitigating the problem.

OWNER DEVELOPER RENTAL DESIGNATION

Some municipalities are demanding that owner developers set aside a number of strata lots as rentable.

Currently, the owner developer of a new strata plan is permitted by Section 139 of the *Strata Property Act* (SPA s.139) to use Form J (Rental Disclosure Statement) to designate any and all strata lots to be rentable for many years – even one hundred or more! So it is no problem for them to acquiesce to any municipal requirement to designate units as being rentable.

Will this situation alter the price of buying or renting where all units are rentable? No. A new strata building will have a basic price as well as the profit invested by those who developed it. This will not be cheap: it is very probable that, sold or rented, the owner developer or the owner of a unit is going to demand the market price for it.

Thereafter, when owner devel-

opers have done due diligence and turned the operation of the strata over to the strata council at the first AGM, they can walk away and neither the municipality nor the provincial government can hold them any further to account. The governments must deal now with the strata council. And the strata is not allowed to interfere in the rental agreement between the landlord and the tenant.

MUNICIPAL RESTRICTIONS

As pointed out, the owner developer currently has the ability to designate units as rentable anyway (no skin off his nose!) under SPA s.139. So why is a municipality condemning the owner developer to selling these units so they can be rented out at a lower than market rate and trying to pass that easement onto the strata corporation? Who is going to buy a unit if he can't live in it himself but has to rent it out at below market value? Would that saddle the owner developer with continuing to own those particular strata lots and if so, would he accept having to remain an owner and landlord of these below-market units? Probably not. That could result in fewer developers and fewer stratas.

Perhaps those few units in the strata could be bought by some of those marvelous non-profit organizations who specialize in finding or developing buildings and units which can be used for lower-rental accommodation. The majority of non-profit societies at present appear to own complete apartment buildings, so that they retain complete control, or else they count on the governments and/or private

donations to subsidize low income seniors and some other low- to middle-income people. But are these organizations interested in buying, and becoming the owners of a few units in a condominium? Do they want to subsidize their tenants but pay the strata corporation's fees (including contingency reserve fund and any special levies), just as any other owner must? They will have to bear in mind that the strata lot itself and its owner are governed by the SPA, not the *Residential Tenancy Act* (which governs the relation between only the owner and the tenant).

So will a municipal bylaw of this nature be effective in a significant way? On paper it may appear that the municipality is "doing" something, but practically speaking, very likely not.

BANNING ALL RESTRICTIONS ON RENTAL OF STRATA LOTS

Almost universally in North America, there is an assumption that if you own your individual house, you can rent it (or not) to anyone you want and set your own terms in doing so. There are those who feel that individual strata lots are exactly the same and that the other owners as a community (the strata corporation) should not be able to ban or regulate rentals at all. They point out other provinces whose Condominium Acts give no authority to condominiums to do so, and some owners don't seem to have a problem.

There is a saying that *You don't know you are missing something if you have never heard of it!* It

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would be interesting to ask those condo owners in the rest of Canada if they would like rental controls!

In BC, strata owners point out that the *Strata Property Act* was designed to make the owners responsible for the governance of the Strata including the creation and enforcement of the bylaws which have been approved by the owners.

For example, at the inception of the SPA, stratas were only allowed to follow the lead of apartment building owners (under the *Residential Tenancy Act*) in declaring that a building could be restricted to occupation by people who were 55 years of age and older. But a rental apartment block generally has only one owner (or maybe a consortium of them under a single ownership): therefore all the units belong to the owner who can set his own conditions (e.g. no pets, no smoking, etc.)

However, pressure from stratas

resulted in the provincial government including SPA s.123 specifically to allow the owners both to define whether they wanted to apply any age restrictions (e.g. 25+, 45+), as well as how many pets (and their breed, dimensions and expected behaviour) the occupants in the strata corporation were permitted (or not permitted) to have.

At present, senior governments do not seem interested in deleting this section. The strata, as a fourth level of government, can, in their bylaws, make such judgments and decide for themselves on these issues which don't affect the finances or provision of shelter of other stratas or the larger population. Moreover, neither concern has the social repercussions that senior governments currently face regarding the availability of accommodation at an affordable cost.

Rentals, on the other hand, can affect the economy and result in

pressure from society as a whole. Even so, it is interesting to note that the provincial and municipal governments are happy to see the "short term" restrictions recently added to the SPA Regulation 7.1 which allow a strata corporation, as long as they create a bylaw, to impose a substantial fine -- *in the case of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel or temporary accommodation, \$1,000 for each contravention of the bylaw.* And the maximum frequency under s.7.1(2)(b) is daily.

A fine of \$1,000 per day will certainly curtail the activities of an owner (or his tenant) from using the strata lot for short term rentals. Who could make an adequate profit from a suite after deducting such a daily fine?

Thus provincial and municipal governments are delighted to ap-

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pear to be doing something about reducing the number of entrepreneurs buying condo units just to use them as revenue generators outside the “hotel” business. Even if short term rentals are permitted, some municipalities (depending on their zoning) are collecting yet another annual fee to “licence” them as they do with similar businesses.

Are senior governments interested only in regulations to acquire funds? Or are they interested also in the consequences of a majority of residential stratas where the owners are concerned about how short term rentals will affect safety, access to keys, use of the building, insurance, etc.? Apparently these considerations are, at best, secondary for them.

Even so, the change, once again, does acknowledge that the strata corporation is a fourth level of government, and still controls how their particular strata organization

chooses to regulate the affairs of their own community in exactly the same way as they can regulate pet and age restrictions.

Importantly, it should be noted that it is the strata council which must enforce the law and the fines. That lets the province and the municipality off the hook, because it is a “private property” issue to be handled entirely by the strata corporation!

Will making all strata lots rentable improve the housing crisis? Probably not. It might make more strata lots available, but the sale and rental of strata lots will remain at market prices which currently inhibit the lower- and middle-income people.

THE SURPLUS TAX ON EMPTY HOMES

A strata owner from out of province interviewed on CHEK TV, 19 January, 2019, said: *You can't hold a gun to my head to force me to*

rent my home!

This is a new tax to be imposed by the provincial government in an attempt to get the owners either to free up rental properties or to sell them. At present it will affect only areas which have denser populations such as Greater Victoria, Greater Vancouver, Nanaimo, Kelowna, Chilliwack, etc. – if it is passed at the next session of the provincial legislative assembly.

This is likely to have a drastic effect on strata properties, let alone free standing houses. Some people, including strata owners, don't want tenants. These people have a condo “second home” so they can stay in a location for a longer period such as “snow birds” coming to the coast, or ski enthusiasts staying near slopes in Kelowna, for two or three months. Others have units in stratas just so they or their friends can spend a few weeks for relaxation. And some simply want

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to have a unit into which they intend to move either on retirement or perhaps if they anticipate a career move.

Many of these owners want flexibility, and have furnishings and other personal belongings which they want to leave in place (and don't want damaged or stolen). Nor do they want to be bothered with moves in and out by tenants or themselves, finding appropriate tenants, or administering the rental. Possibly they do not want to hire an agent either.

So the government will force them to pay the surplus tax just for the privilege of retaining a second home on which they already pay full tax and strata fees.

Even if they do rent out the unit, it will be at market rates, and therefore, be somewhat useless to the lower income renters.

As a result, while it could give the unit owners and the strata council more complications, the

senior governments can once again point out that they "have" done something, all the while collecting money but not necessarily doing anything significantly "practical" in providing low rental accommodation.

Will there be more stratas available?

As Sophocles said: *Without the law there is chaos.* That is why we have the SPA. But that law devolves authority on the strata corporation in order for the owners to operate in a manner they choose. One such delegation is to allow the owners, by democratic choice, to regulate the number of rentals.

The provincial and local governments are trying hard to find a means of providing adequate housing for those who are financially unable to do so at the moment.


Raising wages for the lower income people would be terrific, but unlikely to happen throughout the business world.

Acquiring and building appropriate housing, both private and public, is happening slowly. But it requires money. So the current situation is not such that adequate funding is available in order to promote an overabundance of housing sufficient to cause sales and rental prices to drop significantly.

So the current senior governments' desire to use legislation, such as they have been proposing recently, make it "appear" as though they are doing something positive, but it will not improve the situation significantly for those who need it or the strata owners themselves.

Do I have an answer? Nothing clever. Unfortunately for governments and low- to middle-income people, it is primarily the market place that determines the price of housing. So it seems that tinkering with the SPA or municipal bylaws will not produce the desired effect in this case.

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How Much Do You Know About Stratas?

by Paulette Marsollier

When we plan a move into a community, affordability is the first and most important consideration. We have likely driven up and down streets and mentally chosen streets and homes or a strata complex that we would like to view or buy into. We may have a friend or relative nearby which also tips the choice of area. As with a house, we tend to buy a strata unit in a similar unknowing, uneducated fashion. Check the neighbourhood, check the unit, check the décor and the decision is made.

When moving into a city or municipality we do not first go to city hall to review documentation regarding the city or municipality. We do not review the mayor's or the municipal council members' education, experience or background or experience. We do not review the municipal bylaws, the city infrastructure, the budget or the tax hikes that may be looming nor the actual politics of the city. We do not take the steps to

understand our city and the basis on which it functions be it functional or dysfunctional. We simply move into the city, municipality or neighbourhood and never look at such details until we have a problem. And when we do have a problem it generally is too late to reach out. Our investment is at the mercy of the city.

We have all heard that the largest most expensive home in the neighbourhood isn't generally the wisest choice, as the surrounding smaller homes tend to lower the average maximum price that the largest home could be sold for. The same applies to a strata lot. If you purchase the most renovated or largest unit, be aware also that come sale time the recent averages of sales in your strata or condo complex may require you to lower your price.

When purchasing a single family home, a home inspection is normally done by a professional home inspection company with the results either

accepted by the buyer or re-negotiated with the seller. In addition, when purchasing a strata lot we also have corporate documentation that should be requested by the buyer's contracted representative for the buyer's review. The documents may be reviewed by a Strata Lawyer or a company that reviews the documents on your behalf although it would be preferable if you personally do so as well. Any deficiencies may be negotiated with the seller.

However, the documents accompanying a strata lot are far more complex than a single family dwelling because they involve the strata corporation's Depreciation Report, Form B, Financials, Budgets, Bylaws, Rules, AGMs and SGM minutes and generally two years of council meeting minutes, etc. The strata may be a townhome, apartment, bare land, or air space strata and may be with or without a commercial component.

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A home inspector generally assesses the strata lot and those areas of common property which could affect the sale. Home inspectors, however, do not review strata documentation. Deficiencies, special assessments and other corporate issues discovered in the strata package of corporate documentation are a different issue with the buyer deciding whether they use a lawyer or a company that reviews documentation on their behalf or the buyer reviews the documentation. [Note: While Alberta has such companies, BC does not have many at the moment.]

Buyers so often invest in a strata complex without understanding how the council functions (or doesn't). They should read the latest Depreciation Report but may simply gloss over it. They may review all the documentation with a professional. Or, without a professional, they may comb through the documentation on their own as they trust they have the business acumen to analyze the

corporation and all that goes with it. On the other hand, they may buy simply because their friend lives in a well-run building and loves it. In that case, they may simply ignore the documentation in another strata which may not be as well run.

You have lived in a city but didn't have much, or, in most cases anything, to do with the mayor and council. In fact, you may have had no involvement with your city. You knew little about what they were doing and really weren't terribly concerned or educated in the whole process and you may never have met any of them or did not have the need to do so.

But, you have now moved into a strata. You may live next door to the president or a member of council. They may be a door down or a floor above but you are all in proximity. You are in fact living within a private form of government and all 6, 20 or 100 of you make decisions under the *Strata Property Act* and the collective voice of all the owners of the complex.

Most buyers or investors don't get involved in their city and likewise, unfortunately, they don't get involved in their strata. Should they?

Generally, strata owners only get involved when it affects them directly. It is all too often that they realize that their knowledge is limited or even next to nothing regarding strata living. In some stratas, the council and president too may be new and learn-

ing on the job. So what does one do if something goes wrong?

Condominiums are also significantly impacting the legal system of Canada. The individual private suites along with property which belongs to everyone become specific communities of owners thereby creating thousands of small scale private governments. All these owners of each strata are in essence running their own small government.

One would hope that you are at the forefront of the education and legalities involved in this fourth, and very personal, level of government. Or are you?

Termination of our oldest condominium buildings is now a reality. Are you prepared to approach and handle the legalities and machinations of the termination process?

Generally seniors or the younger generation move into a strata, but it is likely that the majority of us will live in one sooner or later. In densely populated urban centres like Greater Vancouver and Greater Victoria, stratas can comprise 50 – 60% of the residences. Education for residents is becoming a must and most certainly for the council, but who, currently, has the knowledge for a smooth running, financially healthy strata complex?

It is the lack of education and understanding of the owner's role, the strata's role, the council's role and the *Strata Property Act* that contribute to most issues affecting the successful, or ineffective, operation of a strata. As with anything, "education" is critical to progress and success.

At VISOA our goal is to educate, to answer questions and to not leave any of you on the fringe of your strata, but rather to keep you informed and intelligently involved in the conversation regarding your home and your investment. The seminars,

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How Much Do You Know About Stratas?
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workshops, *Bulletins* and Strata Support Team are available to help answer members' questions. Membership is available for strata and non-strata owners to learn, and to obtain ongoing education and assistance in order to make or maintain a successful investment.

The volunteers at VISOA are dedicated to providing information relevant to strata issues. View www.visoa.bc.ca for the many services and contact areas available. Make sure all your friends and your stratas know about our benefits. (NEW - An Associate Membership is now available with VISOA for those interested in education but are not strata owners at this time).

2019 is another year with change ahead. Embrace it! Don't be left behind.

Paulette Marsollier was, for many years, a realtor and a strata owner in both Alberta and B.C., and, as a VISOA Board member Vice President, is currently the Chair of the Membership Committee.



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- June 23 – Victoria – Guest Speaker Shawn W. Smith, Lawyer: Human Rights and Stratas

September 22 – Courtenay – Topic TBA

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'Making Strata Maintenance Manageable'

We All Need Professional Help!

By Jennifer Childs, Reprinted from 2010

We all need professional help at some point to help take care of our homes. With the growing DIY (do it yourself) movement, more and more people are taking on projects around their homes, and this often extends to the common property of a strata.

While there may be many skilled people in your strata willing to help out and do some work, there are a few things that should be considered when deciding whether to call in a professional, and how to choose who to trust with your investment. The potential of the future sale of your property and possible litigation could depend on your choices.

TO DIY OR NOT?

When evaluating a project or ongoing maintenance at a property, it is important to look at the size and scope of work, as well as the impact of that work on the integrity of the property. If a project is large or involves continual maintenance, it may be better to call in a professional to complete work on schedule and be relied upon for ongoing maintenance. While volunteers are inexpensive, they also have other priorities and demands on their time. Work that may compromise the integrity of any major system in a property should also be left to the professionals. These include building envelope, structural elements, heating and ventilation, electrical and utility services among others. Remember that water related damage is the number one claim to insurance companies and taking on any work that may result in water damage can have an enormous impact on any residence. Water damage may come from many different sources (such as skylights, windows and doors, exterior drainage, plumbing and hot water tanks, any opening for electrical and municipal services



and others), and should be taken very seriously.

The tools, skills and materials required should also be considered. If a project requires complicated or expensive tools, it is worthwhile to consult a professional who has access to the required tools and the skills to use them correctly. It is also important to look at the cost of materials and the associated expense if mistakes are made. Expensive materials can include flooring or trim, wall coverings, lighting and even landscape plantings.

Most importantly, any safety concerns and required follow-up need to be addressed, when deciding on who should take on a project. Working on your electrical system can not only be dangerous to the worker, but any mistakes could lead to catastrophic events. Work that involves heights, small spaces, or municipal services such as gas can also be inherently dangerous and any cost savings are not worth risking safety. Even working on small step ladders can result in injury - most ladder injuries are falls less than four feet off the ground. Ladder safety is paramount whether working in your own home, or changing light bulbs around your building.

Complicated or dangerous tools can also pose a safety hazard if the worker does not have the experience or familiarity required to complete the work safely and properly. Having the work performed by someone who can follow up if there are any issues is also important. A volunteer will not be able to provide a warranty on any of their work, and will leave the strata council responsible for any problems.

DIY projects can be a great way to get residents involved and save some money for the strata council; however, only if the right people are taking on

Continued on page 14

the right projects. Even a project as simple as painting may not prove to be a big cost savings, if it needs to be redone twice as often. Professionals may also be able to provide you with different options or suggestions on how to do a project, or maintain current systems so they will last for many years to come.

HOW TO CHOOSE A PROFESSIONAL

Whether you need to paint your building, change out a light fixture, or have your elevator maintained, there are a few simple things that should be considered when looking for a Professional. They should be experts in their field, well established, able to stand behind their work and offer you value-added services; while completing the task to a high standard, in a timely manner and with the highest regard for safety.

By doing your research, you can develop long standing relationships

with reliable contractors, which will benefit strata council and residents alike. By working with these professionals you have experts to rely upon and can also provide residents with a list of people who are familiar with your property and can take care of their individual needs. Well established professionals should be able to give you references (which you should call) and a warranty on their work. Many contractors will also extend the warranty on parts and materials to the customer if it is purchased through them. The warranty may not apply to equipment that is not installed by a professional, depending on the product or project.

Experts should be able to give you advice on your project and also know if a permit is required; you should ask about permits and double check with your municipal or provincial office to see if a permit is required. Never go ahead with a project if a required permit has not

been pulled, and just because you have been charged for a permit, does not mean that the contractor has requested one.

Professional contractors should have a Work Safe BC number and be willing to discuss their safety record and safety training of their employees with you. Ask a potential contractor what safety precautions they would take on your site to keep themselves, your residents,

guests and passersby safe. They should also be well insured, including liability insurance.

You should ask potential contractors about their experience in different sized projects to ensure they can look after your immediate work, and can also be called upon for larger or smaller jobs. That way you only have to deal with one company for each area of expertise, and they may also be able to help residents with smaller jobs around the house. Their experience can also lead you to connections with other well established businesses and recommendations for suppliers and reliable products. Additionally, experienced contractors should be well versed in any incentives that may be available to you, such as BC Hydro Power Smart. It is also important to note that for many government sponsored incentives, the contractor must be a pre-approved vendor in order for you to qualify for any rewards.

Choosing whether to take on projects yourself or hire a professional often comes down to cost, but it should really be a question of responsibility. A strata council needs to seriously address any safety or liability issues when ensuring that the integrity of their property and the investments of the residents are maintained.

In 2010, Jennifer Childs was Preventive Maintenance Specialist with Houle Electric Ltd.

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How to Conduct a Council Hearing

By Shawn M. Smith

The *Strata Property Act* (“SPA”) allows owners and tenants to request a hearing before the strata council in four situations:

1. To answer an allegation that they have breached a bylaw of the strata corporation s.135(1)(e) SPA;
2. To make a request for an exemption from a rental restriction bylaw – s.144(2)(b) SPA;
3. To address council on a particular topic. – s.34.1 SPA;
4. Prior to proceeding with a Civil Resolution Tribunal (CRT) claim – s.189.1(2) SPA;

In all four cases the request for a hearing needs to be made in writing (email will suffice). In the case of a request for an exemption under s.144 it must set out the reason an exemption should be granted. In the case of a request under s.34.1 it must state the reason for the request (i.e. what will be discussed). In the case of a response under s.135, it should set out the reasons why the recipient of the complaint feels they are not in breach of the bylaws. (In *The Owners, Strata Plan BCS 3625 v. Wiltsey et al*, 2018 BCCRT 155 the CRT held that the proper time to present evidence in defence is when responding to the initial allegations).

The SPA also sets time lines within which hearings must be held. Both sections 34.1 and 144 require the hearing to be held within 4 weeks. Although s.135 does not specify a time frame, the four week provision of s.34.1 arguably applies. If a hearing is not held under s.144 the owner is automatically granted the right to rent their strata lot. Section 34.1 does not specify what happens when a hearing is not held in time.

The absence of a provision similar to that found in section 144 would indicate that there are no automatic consequences. Rather the failure to hold a hearing (unless there is reasonable justification for not doing so) would likely be considered significantly unfair to the owner requesting the hearing and relief may be granted pursuant to s.164 of the SPA. In *The Owners, Strata Plan NW2170 v. Broadbent* 2017 BCCRT 114 the CRT dismissed fines that were imposed by a strata corporation without providing the owner an opportunity for a hearing.

With the consent of the owner, the hearing can be held later than the four weeks specified under s. 34.1 but not under s.144. However, the onus is on the strata council to ensure that it is scheduled in a timely way. In *Owners of Strata Plan NW 391 v. Forsberg*, 2010 BCSC 1301 the court set aside fines which accrued during the period in which the strata corporation should have been scheduling a hearing but didn't.

Not every request for a hearing must be granted. In *Macdonell v. The Owners, Strata Plan 1875* 2018 BCCRT 11 the CRT determined that a hearing request can be denied where it is being used as a “forum to make demands with respect to the governance of the strata corporation invoking discussion and rebuttal”. In *Hales v. The Owners, Strata Plan*

NW2924 2018 BCCRT 91 the CRT outlined the various circumstances in which a hearing could be refused. Those include where:

- (a) The owner has not been fined nor penalized;
- (b) The owner has made previous requests and was granted a hearing
- (c) The owner acted abusively at a previous hearing and the council could expect the same conduct at another hearing;
- (d) The owner wished to discuss alleged contraventions by the strata; and
- (e) The reasons for the requests were with respect to the governance of the strata and could be more properly addressed at a meeting of the owners, or by majority direction of the owners.

Regulations 4.01 and 7.2 of the

Continued on page 16

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SPA define “hearing” as “an opportunity to be heard in person at a council meeting”.

When it comes to the hearing itself, the strata council has the right to govern the process of its own meeting. This includes the manner in which the hearing will be conducted, the length of the hearing and whether or not to adjourn it. However, in making those decisions the council must ensure that it does not act in a manner which is significantly unfair to the owner or tenant pursuant to s.164 of the SPA. In other words, the length of time of a hearing should be reasonable. Dictating that an owner should only have five minutes for something when it could not possibly be explained within such a short period would not be reasonable and would be significantly unfair.

A hearing is a council meeting and thus the quorum requirements set out in the bylaws must be met. The provisions of s.32 of the SPA should also be observed. Where a council mem-

ber has a direct or indirect interest in the matter which would materially conflict with their duty as a council member, they should not participate in the meeting nor the decision. (Such a conflict can arise when the council member is the complainant, or if the council member is being specifically complained about).

Where the bylaws of the strata corporation allow for observers, they usually address whether observers can be present in relation to certain matters. Standard Bylaw 17(4) provides that observers cannot be present for:

- (a) bylaw contravention hearings under section 135 of the Act;
- (b) rental restriction bylaw exemption hearings under section 144 of the Act;
- (c) any other matters if the presence of observers would, in the council’s opinion, unreasonably interfere with an individual’s privacy.

the fact that minutes need only record decisions, not discussions. The Guidelines state that “strata councils should ensure that only the minimal amount of personal information required to provide an accurate and objective account of its decisions is recorded in the meeting minutes”. To that end the Guidelines add that only strata lot or unit numbers should be recorded, not the names of owners or tenants. (The only time when the sharing of any personal information is strictly prohibited is in relation to a hardship application under s.144 of the SPA. In that case, only the fact that a decision was made to grant or deny the application should be noted).

Not only must minutes record the decision made but also the basis for having reached that decision. In *Doig v. The Owners, Strata Plan VR 1712* 2017 BCCRT 36 the CRT determined that the strata corporation acted in a significantly unfair manner when deciding that the owners had breached one of the strata corporation bylaws. The basis for the CRT’s conclusion lay in the fact that the strata council did not provide reasons for its decision after the owners had requested a hearing. In other words, how did it reach the decision there was a breach? At paragraph 64 the adjudicator said the following:

“Under the principles of procedural fairness established by the Supreme Court of Canada in *Hill v. Hamilton*, [2007] 3 SCR 129, a written decision must allow a party (in this case, the owners) or a reviewing tribunal or court to understand the meeting’s outcome, and why the outcome was reached. The form and detail of adequate reasons can be different in different situations. Applied to

Given that a hearing is a council meeting, minutes of the meeting are to be kept and the votes recorded as required in Standard Bylaw 18(3). When preparing minutes of the hearing, the strata council must keep in mind its obligations under the *Personal Information Protection Act* to protect an owner’s personal information. To that end, the “Privacy Guidelines for Strata Corporations and Strata Agents” confirms

Continued on page 17

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this case, Hill says that reasons must meet the parties' functional "need to know" concerning council's reasoning in reaching its decision about their hot tub."

It was held that an adequate decision under s.34.1 of the SPA (which would apply equally to a hearing requested pursuant to s.135) should contain:

- (a) a list of who is present at the meeting;
- (b) who voted on its outcome;
- (c) the process followed at the hearing;
- (d) the facts the Council relied upon in reaching its conclusion;
- (e) the reason why it reached its decision; and
- (f) the outcome of the hearing (i.e. the decision reached).

The CRTs conclusion in *Doig* was similar to that of the Alberta Court of Queen's Bench, in *Condominium Corp. No. 072 9313 v. Schultz* 2016 ABQB 338 where it applied administrative law principles. In that case the

court held that when making a decision, such as imposing a fine the strata council should provide reasons for its decision. Otherwise "a reviewing court might just as well assume that the absence of reasons means that the decision is arbitrary, or that there are no proper purposes for it".

While the decision needs to be recorded in the minutes, the details outlined in *Doig* are perhaps best recorded in a separate in camera set of minutes (although doing so is not mandatory, except in the case of a hardship request under s.144 of the SPA).

Once the council makes a decision not only does it need to be recorded in the minutes but it needs to be conveyed to the owner or tenant. Both s.34.1 and s.144(4)(a)(i) require the decision to be conveyed to the owner in writing within one week of the hearing. (In *The Owners, Strata Plan LMS3442 v. Storzuk* 2014 BCSC 1507 the court held that this requirement was not met because the council conveyed the decision orally to the owner at the hearing instead of in writing in accordance with the SPA.)"

S.135(2) provides that a decision with respect to a bylaw contravention must be conveyed to the owner or tenant "as soon as feasible". Since that section applies to both hearings and responses received in writing it is best to apply the seven day deadline in s.34.1. A failure to convey a decision to impose a fine means the fine is invalid. - *Tantillo v. The Owners, Strata Plan NW1317* 2018 BC-CRT 54.

As can be seen from a number of CRT decisions, especially those in relation to the imposition of fines, procedure is of great importance. It is important to not only follow the procedural requirements but also to ensure that they are done in a way that is fair and transparent. Failure to do any of those things in relation to hearings could put the decision in jeopardy.

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. He can be followed on Twitter @stratashawn.



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YOU ASKED – HOW DO WE GET AN AGREEMENT WITH OUR NEIGHBOUR?

Q.

My neighbour has installed a waterfall feature run by a pump and holding tank on his limited common property in the back yard. He runs this waterfall everyday throughout the day from about 8:00 a.m. to 10:00 p.m. which is allowable under our bylaws. However, for the most part the water runs full-on creating a constant rushing of water, such that it pretty much eliminates any possibility for us to get any peace or silence in our back yard, and we even have to keep the back windows and doors

shut so we are not disturbed.

I will write a letter to my neighbour, not as a council member but as an owner, to ask him to run the waterfall only a limited number of times per week to be agreed on, and then get council to ratify and endorse it.

If he will not agree to this, I will write a formal letter to council and ask them to resolve and enforce the matter.

Even so, he might take the matter to the CRT if he objects to any council decision (or even without it) which limits his ability to run the waterfall at any time, commensurate with our bylaws. If he does, what would be involved and how would the CRT arrive at a decision?

A.

Your plans seem logical and may result, in the first place, in an equitable solution if your neighbour is happy to work with you. However, at this stage, you cannot expect council to ratify or enforce such an agreement, written or otherwise, between the two of you. It is not the council's job to do so at this stage.

If the neighbour will not agree and continues to disturb you because of the noise and timings, you have the option of writing a letter to council and include as much information as you can about when and how you are bothered. You could possibly use Standard By-law 3 (or your equivalent) with respect to noise and disturbance:

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Use of property

3 (1) *An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that*

[....]

(b) *causes unreasonable noise,*
(c) *unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,*

As a council member, of course, you must recuse yourself from any meeting or decision of the council on the matter, as would any member of the family of the other person if they are on council as well. Having received the complaint, the council must take action under SPA s.135:

Complaint, right to answer and notice of decision

135 (1) *The strata corporation must not*

(a) *impose a fine against a person,*
(b) *require a person to pay the costs of remedying a contravention, or*
(c) *require a person to pay the costs of remedying a contravention, or*

(d) *deny a person the use of a recreational facility for a contravention of a bylaw or rule unless the strata corporation has*

(e) *received a complaint about the contravention*

(f) *given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and*

(2) *The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter*

referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) *Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.*

The council will have to investigate and must offer the neighbour the opportunity of commenting either in writing or through a hearing in accordance with SPA s.34.1 (or both):

Request for council hearing

34.1 (1) *By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.*

(2) *If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.*

(3) *If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.*

If either party is dissatisfied with the judgement of the council, or the neighbour doesn't conform, they, and the council, are all entitled to take the case to the Civil Resolution Tribunal (CRT) for a decision. The process is normally done via email, but clients can certainly use the telephone, and on rare occa-

sions present the case in person. The process may be obtained from the CRT website at <https://civilresolutionbc.ca/how-the-crt-works/tribunal-process/>

Bear in mind that if the person receiving the complaint has not had the opportunity to have had the council conform with SPA s.34.1(d) and (e), the CRT is likely not to entertain the case until this is done.

This may seem to take time to you, but it will certainly be shorter and far less money than going to Supreme Court.

Bulletin Subscriptions

VISOA provides four information-packed bulletins each year.

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President's Report



It's hard to believe that it has been 12 years since I first volunteered for your board. My own strata had used the helpline service quite extensively over a particular issue. After our issue was complete and life returned to "normal" I contacted Felicia who was then the Helpline phone support to thank her for the help. I said that, as my time was no longer taken up with the strata problem, I might volunteer for VISOA with some spare time. I always say that Felicia reached right through the telephone line and pulled me to the next VISOA board meeting to observe, never one to let a volunteer escape!

We've come a long way since then, but our motto hasn't changed: Strata Owners Helping Strata Owners. No one is on your board unless

they are a strata owner themselves, so we all know exactly what matters to you, and the challenges you face. We've "been there, done that" and we are all so very passionate about helping you and giving back.

Keep that in mind, April 7-13 "National Volunteer Week" and for those of you who volunteer for your strata council, toast yourself and your fellow councilors, and we'll toast along with you. Thanks to all volunteers!

At our AGM - February 24, 2019 – your board will welcome four new volunteers to the board. Two appointed during the course of 2018, and two new nominees, will stand for election. Two of your current board will stand for re-election, and three of us are in the middle of our two-year term. One board member left partway through her term, and so we'd like to thank Betty-Ann Rankin for her service; and Deborah Fraess is not standing for re-election so thank you to her as well, for 6 years of coordinating our volunteers and organizing the North Island discussion group.

As always, members can be nominated from the floor as well.

See you at the AGM, which will be followed by a seminar on "The ABC's of the CRT".

We've recently launched a subscription service to our updates. All current Corporate Member strata council members, as well as Individual and Associate Members, are automatically subscribed. However, if you are an owner within a Corporate Member strata you might not always get our news – so we're making it easy for you. Click the big green "Join Our Mailing List" button on our home page (bottom right) at www.visoa.bc.ca and you'll be taken to a subscription form to our email list. And do pass this link along to friends who may be interested, as it's not restricted to members. Using the subscription method also makes it quicker for our office staff or volunteers to send out information to you. Don't worry, we won't send too many...just enough to keep you in the know!

If you have any questions or comments, beefs or bouquets, I always enjoy hearing from you.
president@visoa.bc.ca

— Sandy Wagner

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georgias
designstudio
@gmail.com

