



VANCOUVER ISLAND STRATA OWNERS ASSOCIATION

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VISOA BULLETIN - JUNE 2007

PRESIDENT'S REPORT

Harvey Williams

Attendance at our Nanaimo seminar exceeded our expectations, in large part due to the hard work of Nanaimo volunteers Marg and Nes Mostaway and Brian Smith. Volunteers from Victoria, in addition to VISOA board members, were Laura Neilson and Maida Neilson. Due to a miscommunication regarding cleanup from the night before, a VISOA board team led by

Cathy Turner had to clean the hall before the seminar.

This was the first time that board members have contributed so much directly to the seminar program. VISOA's board members, along with business member John Grubb of Unity Services, presented the program.

Our next seminar on June 3 will be back in Victoria at the Pro Patria Legion on Gorge Road. **Mr. Kevin Thom, executive secretary of the Strata Property Agents of BC**, will discuss the role and responsibilities of strata property agents under the RESA and provide an insider's view of a strata management firm. Following his formal presentation, Kevin will answer questions from the floor.

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Deryk Norton

PRESIDENT'S REPORT

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VISOA has been updating and expanding its publications. We would like to make them available at no charge, but the cost would be prohibitive, so we sell them at cost. We

can't make promises, but if members have suggestions for publications, our publications committee, headed by Cathy Turner, will attempt to make them available.



VISOA BOARD MEMBERS

Front row: Elsie Lockert, Harvey Williams, President, Felicia Oliver, Vice President

Second row: Tony Davis, Daryl Jackson, Treasurer, Deryk Norton

Third Row: Claudio Procopio, Secretary, Allan Anderson, Cathy Turner.

Photo courtesy of Stan Coe.



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YOU ASKED:

Should we employ an owner as a handyman?

Harvey Williams

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

An owner who has recently retired from the building trades was elected to our strata council at the last AGM. He wishes to be employed on a part-time basis to do maintenance and repair work on the premises. Should we employ him, and, if so, what issues might arise?

The Strata Property Act does not prohibit strata corporations from employing owners as service providers. Section 34 of the Act allows council members to be paid if provided for in the bylaws, included in the budget, or approved by a 3/4 vote at a General Meeting.

But the question at hand is about employing owners to provide services such as building and grounds maintenance, cleaning, and other tasks. Assuming the necessary skills and work ethic, there are distinct advantages to having an owner as a resident service provider. An owner is more likely to take a personal interest in protecting and maintaining the strata property. A resident service provider would be familiar with the premises, available on short notice, and more likely to anticipate problems before they arise.

On the other hand, an owner might not be as responsive to direction and supervision and, because of personal feelings, might

not treat all residents equally. There have been reports of owners providing paid services, or even voluntary services, developing a sense of proprietorship and behaving in an authoritarian manner.

The relationship between the strata council and an owner acting as a service provider should be business-like. He or she should be held to the same standards and receive the same pay as any other service provider. The employment process for an owner as a service provider should be as rigorous as that for any other service provider. There should be a clear job description and a cost-comparison with quotes from other potential contractors.

The owner being considered should be absent during strata council discussion and votes relating to their employment. If the proposed employment is for a specific project, such as painting a building, quotes should be obtained from other contractors to ensure a fair price for the required service.

Be sure that anyone your strata corporation pays for services is covered by Workers' Compensation. The employers' liability for a worker injured on the job is horrendous, but it's simple and inexpensive to avoid that liability by registering your strata corporation with WorkSafe BC. Just click on the WorkSafe website: www.worksafebc.com/ and follow the instructions.

Employing a service contractor just because the applicant is also an owner can be a disaster. But with the right person, a proper job description, a careful cost comparison, and coverage by Workers' Compensation, an owner as a service provider can be a great benefit to a strata corporation.

PITFALLS IN STRATA MANAGEMENT CONTRACTS

Deryk Norton, VISOA Board Member

A contracted provider of strata management services is required to be licensed as a "brokerage" under the Real Estate Services Act (RESA). As a licensed "brokerage," the provider is subject to Rules set down under RESA and enforced by the Real Estate Council of British Columbia (RECBC). Section 5-1 of these Rules applies to written strata management contracts. An unofficial copy of this section can be found at <http://www.recbc.ca/pdf/RECBCRules.pdf>

VISOA has been receiving complaints from members about their strata councils being presented with strata management contracts that are either ambiguous or one-sided in favor of the strata management company.

Some of the offensive aspects of these contracts are:

- ♦ No provision for a termination date in the contract;
- ♦ A provision whereby the strata corporation would agree not to contract with any present or past employee of the strata management company for a period of time after the termination of the strata management contract; and
- ♦ No provision for how to handle requests from owners to examine or copy records of the strata corporation.

Section 39(2) of the *Strata Property Act* clearly contemplates an expiry date for a strata management contract. If there is none in the contract signed by the strata council and the relationship with the strata management company turns sour, the strata council could be faced with trying to obtain a $\frac{3}{4}$ vote of strata owners before giving two months notice to terminate the contract according to section 39(1).

Furthermore, section 5-1 of the RESA Rules requires that the contract specify a contract duration and the circumstances under which the contract may be terminated by either party.

The future employment of a strata management company's employee may be a contractual matter between that employee and the strata management company. However, it is quite inappropriate for a strata management company to attempt to use its client (i.e., a strata corporation) to enforce any such contractual arrangement with an employee.

It is alleged that some strata management companies have discouraged owners from examining or copying records and contracts. Section 36 of the *Strata Property Act* requires a strata corporation to make specific records available upon request by a strata owner. The contract between a strata corporation and a strata management company should clarify how owner requests should be handled in order for the strata corporation to meet the requirements of section 36. Unfortunately, some contracts are silent on this matter.

Before signing a strata management contract, a strata council should have it reviewed by competent legal counsel and request that the strata management company modify any offensive provisions or add any missing provisions. Furthermore, VISOA members are encouraged to contact the RECBC when they are concerned about whether a strata management contract complies with the RESA Rules. If a VISOA member is dissatisfied with the RESA Rules, that member should make it known to the Minister of Finance, who is the minister responsible for the RESA and the RECBC.

ENFORCING BYLAWS - STEPS TO IMPOSING A FINE OR REMEDYING A CONTRAVENTION

Joyce Johnston, Attorney at Law

Section 135 of the *Strata Property Act* provides as follows:

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) deny a person the use of a recreational facility for a contravention of a bylaw or rule unless the strata corporation has
- (d) received a complaint about the contravention,
- (e) 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
- (f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

(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 decision in the case of *Dimitrov v. Summit Square Strata Corp.* provides some

guidance for strata corporations in carrying out the necessary steps a council must take prior to imposing a fine.

The *Dimitrov* is a 2006 decision. The strata corporation's building manager notified Ms. Dimitrov that a complaint had been made against her for having a cat as a pet, contrary to bylaw, and presented the appellant with written notice of complaint. The notice also informed the appellant that a fine of \$50.00 had been imposed against her as a penalty and demanded that the cat be removed.

Subsequently, every seven days, the building manager delivered a notice indicating that a new fine had been imposed for a continuing contravention and demanding that the cat be removed. The letters invited the unit owner to contact the building managers if she had any questions or concerns, and they would set up a meeting with the strata council.

The strata corporation eventually sued the unit owner for the fines. One of the unit owner's arguments in court was that the council had no power to impose fines on her because it had failed to comply with the mandatory provisions of s.135 of the *Strata Property Act*. She submitted that the council failed to give her an opportunity to answer the complaint before it decided that she had contravened the bylaw and decided to impose the fine. The strata corporation argued the unit owner was given an opportunity to answer the complaint, since they invited her to contact the council if she wished to discuss the actions taken against her.

The court holds that the strata corporation

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ENFORCING BYLAWS

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had not complied with section 135. The weakness in the strata corporation's position is that the invitations to the unit holder were given after the decisions had been made that she had contravened, or continued to contravene, the pet bylaw, and after fines had been imposed.

The judge holds that he is unable to find any evidence in the record to indicate that any meeting of council was held where it was decided, on the basis of some evidence, that the unit owner was continuing to contravene the pet bylaw.

Conclusions that we can draw from this case are:

- ♦ There must be a complaint about a contravention;
- ♦ A notice of the complaint can be given to the offending party, with a notice of fine, but if they are done at the same time, it is necessary to tell the offending party that they are entitled to a hearing. The actual imposition of the fine on the offending party's account should not be made until after the time limit for requesting a hearing is up. It might be safest to send a second letter confirming the fine; and
- ♦ There must be a consideration based on evidence, at a council meeting, for every imposition of fine, including a fine for a continuing contravention.

Dispute Resolution for Stratas

- *Mediation*
 - *Arbitration*
 - *Facilitation*
 - *Circles*

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ANNUAL MAINTENANCE SCHEDULES: PART 1 - ADMINISTRATION

John Grubb SMA, RPA, RRO

Working on the basic premise that the real purpose of a Strata Corporation is to operate and maintain the property on behalf of its Owner/Shareholders, we offer the following series of articles with the hope of providing readers with some pertinent information and a practical approach to the task.

Some Stratas struggle with the practical aspects of maintaining their properties, and we've found this mostly due to having a limited understanding of what is required.

Much of the confusion can be overcome, first, by listing the various common property systems for which the Corporation is responsible, and second, by creating an Annual Maintenance Schedule and Task List for each.

In many cases, once a system has been identified and its Maintenance Task List created, there is little more to do than ensure that the appropriate contract is in place and the contractor lives up to his responsibilities.

In other cases, members of the Maintenance Committee will undertake certain duties themselves: to go through the property and buildings to inspect and list general deficiencies and identify minor repair and maintenance projects.

It is here that a formal Schedule and Task List presents its real value to the Owners because, in spite of any changes in the ranks of the volunteer owner/committee members, the inspection requirements remain constant from year to year, and over time a significant written history of the property evolves.

We cannot over-emphasize the value of this information as it develops over time, and very high on the Task List priority is the administrative duty of the Maintenance Committee (and the Strata Council) to develop an appropriate method of filing and accessible storage of this documentation.

Computers, of course, lend themselves exceptionally well to this work, but we must caution those owner/volunteers who would use their personal computers. We remind the reader that this information is "public" in nature and all the owners have a right to access it. While we encourage the use of this "electronic memory," we must also advise, if it is the chosen method of storage, that the Corporation purchase its own computer system.

In addition, as any experienced user can attest, the computer should never be relied

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- additional fees for scanning or layout may otherwise apply.

ANNUAL MAINTENANCE SCHEDULE *...continued from page 7*

on as the sole method of information storage. Maintenance and storage of inspection forms, reports, and other documents in paper form are perhaps the most important duties imposed on the Council and its sub-committees.

"Well," you say, "That's the job of the Strata Manager," and indeed it can be if one is involved, but we consider it likely that he will maintain only those records necessary to fulfill his contractual obligations to the Corporation. Given the likelihood that the Strata signed the Manager's contract, we suggest that, unless it was added into the document during negotiations, none of this information will reach his files.

Aside from that, the Strata Manager is *just* another contractor, and handing over various administrative duties to him does not allow the Owners or Council to abrogate their responsibilities in this regard.

To bring us back to the subject at hand, we also suggest that a Manager will rarely provide the kind of services that these Annual Maintenance Inspections require and the work will still be the responsibility of the Maintenance Committee. It is, in fact, by the internally generated inspections that the Manager (or the contractors in the case of self-managed properties) can be directed.

The development of the Inspection Task List starts with the identification of the various systems for which the Corporation is responsible. This list will vary widely from one type of strata to another (condo vs. townhouse), but newer developments can start with the "Maintenance Manual" that each developer is now required to put together and turn over to the Council.

The title is something of a misnomer because what most of these manuals turn

out to be is a collection of the warranty information and instruction manuals for some (but not all) of the installed "common" equipment. While this is an excellent start, there is still an effort required to glean the pertinent maintenance information from its contents.

The other single, most important source of information on the property and its systems is found in the plans and drawings generated by the developer. We have discussed these, and their significance, in a previous article, and we cannot overemphasize the importance of acquiring and regularly updating these very valuable documents.

As this series unfolds, we'll try to address some of the more generic systems and their seasonal inspection and maintenance requirements. Because each property is unique, there will be many systems that we will not cover, and it will be up to your Maintenance Committee to "fill in the blanks." Just remember that a new one can always be added and most important - *It's never too late to start.*

John Grubb is a Facilities Maintenance Consultant and welcomes Member inquiries at usc@shaw.ca

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HOW AN OPERATING COST AUDIT CAN LOWER FEES

Harvey Williams

Strata fees can often be significantly reduced through an **Operating Cost Audit (OCA)**. An **OCA** is a careful examination of operating budget categories for possible cost savings. The list below illustrates possible savings that could result from an OCA.

Management Services

For a one-hundred unit strata corporation these services are likely to cost upwards of \$18,000 per year. Contracts of such magnitude attract competition. Competing quotes presented to the AGM could result in the 3/4 vote necessary to terminate the present management contract in favour of a more cost-effective management contract.

Smaller strata corporations might revert to self-management or employ an owner at a lower cost, which is permissible under RESA. Employment of an outside book-keeper is legal so long as the person does not have cheque-signing authority.

Management companies sometimes have favoured service contractors. Strata corporations should obtain their own quotes for services for comparison purposes.

Elevator Service

In advance of the expiration date of your elevator service contract, check with municipal officials to see if inspection frequency can be reduced and obtain quotes from competing companies.

Garbage and Recycling Pickup

Companies providing these services are fiercely competitive. Never mind the five-year contract your strata council may have signed. Such contracts are unenforceable. Quotes should be obtained every two years. Refuse to sign the contract if it is for more than two years.

Strata corporations of less than 20 units can often get by with biweekly garbage pickup, thereby reducing garbage pickup costs by as much as 40%. **And if you live in the Capital Regional District, don't forget to apply to the CRD for the recycling subsidy. Stratas in other districts should investigate what programs are available for them.**

Switch to the New Fluorescent Light Bulbs

As they burn out, incandescent light bulbs in fixtures on common property should be replaced with the new energy-saving fluorescent lights.

Outside Lighting

Install motion-sensor lights wherever feasible.

These are just a few examples of the ways in which an **OCA** can reduce strata fees. By carefully reviewing expenditures at least every two or three years, a strata corporation can be assured that it is receiving maximum benefit for minimum expenditures.

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DISCLAIMER

The material in this publication is intended for informational purposes only and cannot replace consultation with qualified strata professionals.

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

The Vancouver Island Strata Owners Association
PRESENTS

STRATA MANAGEMENT AGENTS AN INSIDER'S VIEW

Kevin Thom, F.R.I., R.I. (B.C.)

Executive Director, Strata Property Agents of B.C.

- * Why use a Strata Management Agent?
- * How are Strata Management Agents Regulated?
- * The Pros and Cons of Self Management

Questions from the floor will be addressed

SUNDAY JUNE 3, 2007

1:00 - 4:00 P.M.

Registration begins at 12:30 p.m.

Trafalgar/Pro-Patria Legion
411 Gorge Road East,
Victoria

**There is no charge for
VISOA members**

(If your strata plan is a member, all owners in your strata may attend)

**Non - Members \$20
Memberships will be
available at the door**



VISOA'S UPCOMING 2007 SEMINAR SERIES:

Date :	Sunday, June 3, 2007
Location:	Trafalgar/Pro-Patria Legion, Victoria
Topic:	STRATA MANAGEMENT AGENTS - AN INSIDER'S VIEW
Speaker:	Kevin Thom, Executive Director, Strata Property Agents of BC
Date :	Sunday, September 16, 2007
Location:	Memorial Hall, Legion #256, Nanaimo
Topic:	To Be Announced
Speaker:	To Be Announced
Date :	Sunday, November 18, 2007
Location:	Trafalgar/Pro-Patria Legion, Victoria
Topic:	To Be Announced
Speaker:	To Be Announced