



Vancouver Island Strata Owners Association

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VISOA Bulletin - JUNE 2010

# President's Report

Our long time VISOA Board Secretary Claudio Procopio will be leaving the Board this month. Claudio has been instrumental in the growth of VISOA during the 5 years of his Board membership. Claudio has contributed to the popular “nuts and bolts” workshops, set up an electronic archiving system, and increased seminar attendance - at times beyond capacity - not only with better facilities, audio and video resources, but with improved seminar quality. Claudio, we will miss your excellent minutes, your enthusiastic contribution to VISOA activities and your friendship. Good luck in your future endeavors.

Please welcome Marlene Smaill to our Board of Directors. Marlene lives in Nanaimo and brings an up-island view to our board discussions as well as pro-

viding people who live up-island with a local contact.

One of your board’s commitments at our recent AGM was to have a VISOA presence up island. So on March 20 your Association was in Campbell River and on March 21 in Courtenay. The March 20 workshop was given at the Campbell River Elder College series and was aimed at seniors considering strata living. There were about 20 people in attendance. The next day, March 21, we had a VISOA seminar in Courtenay on the “Nuts and Bolts of Strata Living” and we had an excellent attendance of 88 people. This was an exhausting trip for those driving up from Victoria but the feedback from the participants made it worthwhile. Special thanks to all the volunteers that made this seminar such

a success.

On April 18 we were back up-island in Nanaimo for a seminar presentation by Virginia Wigmore, a lawyer with McCarthy Tétrault in Vancouver. Virginia spoke to us on “Recent *Strata Property Act* Amendments, Implications for Strata Owners”. Her presentation is posted on our website. We also had a question and answer session on general strata matters. Due to the large attendance we did not have time to answer all the written questions, but the answers to these questions are now posted on our website.

Your Board has decided to explore other options for your convenience when purchasing publications or renewing your memberships. We have been investigating the use of online payment for purchases and will be trying out PayPal as a means of purchasing publications. So expect to see some changes to our website. If it is successful then we will probably extend the service to membership. We are aware that some of you may not be comfortable with online purchase so we will continue to have the publication and membership purchases available by mail and at our seminars.

Please don’t forget to attend the VISOA Seminar in Victoria on June 13. “Strata Management 101: Should We Self-Manage or Hire a Strata Manager?” A variety of speakers will be discussing the pros and cons of both options. This topic is often requested and we do hope you can join us at the Pro Patria Legion on June 13th for this Seminar.

- Tony Davis, President

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# Editor's message *by Sandy Wagner, Bulletin Editor*

Welcome to the June edition of the VISOA Bulletin. I hope you notice the increased number of pages with this edition! We had so many excellent articles for this issue, and I could not think of a reason to exclude any of them. We aim to publish 16 pages with each issue but we hope you will forgive us if we occasionally revert to our former 12 pages.

In my "non-VISOA" life, I manage a busy retail store, and consequently I don't have all the time I would like to write articles myself. As I mentioned last issue, I do reprint excellent material from other sources when I find it, and in this edition you will see a "Strata Council Code of Conduct" from the Canadian Condominium

Institute, and a "Guide to Strata Management" from Interlink Realty and the Web Page Condominium News. We have also found a very well-written "Strata Council Responsibilities" guide written by a Victoria strata corporation's By-laws Committee. All three of these articles will be so helpful to our members, and will give you an advance insight into the content of our June seminar on "Strata Management 101".

VISOA's Helpline Team is comprised of four volunteers from our Board of Directors, and Harvey Williams has written a piece to let you know just what we do as that team. The Helpline is often the most visible part of our services to members, and if you have called

the Helpline you have likely spoken to Harvey or Laurie. If you've emailed, your reply has likely been from David or Harvey. I help out if any of the other three are on a "day off" but as three retirees, they have more free time than me, and never seem to want a day off from their Helpline duties.

I am grateful to the rest of this month's contributors: VISOA's own Deryk Norton has written a timely article on "The Matter of Fining Strata Owners". Business Member Don Nicholas of Sterling Fire Safety and Services tells us about "Changes". Lawyers Joyce M. Johnston of Victoria and Shawn W. Smith of White Rock have each written an article of interest to you – Ms. Johnston on "Indemnity Agreements" (commonly referred to as Alteration Agreements) and Mr. Smith on "Smoking and Strata Corporations".

In our April 2010 issue, we incorrectly attributed an article by Shawn Fehr, an Insurance expert, to Shawn Smith, our lawyer contributor. I hope you weren't too confused by this error. Shawn Fehr was most gracious in accepting my apology – and I don't think Shawn Smith received very many calls regarding insurance.

As always, we would like to hear from you, our readers and members. Two members' letters are printed this month. I hope to hear from you too.

Please write to me at [editor@visoa.bc.ca](mailto:editor@visoa.bc.ca). Please email me at [editor@visoa.bc.ca](mailto:editor@visoa.bc.ca)

# You asked: *How Much Can a Strata Raise Fees?*

*by Harvey Williams*

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

## Question:

Last year I purchased a strata because the fees were lower than other similar units. This year the fees went up 50%. Do I have to pay the increased fee?

## Answer:

Buying a strata unit because the fees are low can be a costly mistake. Many stratas keep their fees low by allowing their buildings to become run down. It is likely that a large increase in the budget was necessary because the building required maintenance. Yes - you do have to pay the increased fee.

## SPA Copies for Sale to Members

A current unofficial consolidated version of the **Strata Property Act** (includes the Regulations) is available from the Queen's Printer for \$35.53, includes GST and shipping. To order directly from the Queen's Printer, phone 1-866-236-5544. VISOA made a bulk purchase of these and will have them for sale for \$25 at our seminars while quantities last.

<p>Selling your condo or townhouse?</p> <p>Want excellent professional and friendly service?</p> <p>Free accurate market analysis</p> <p>Free advice to maximize your \$\$\$\$ return</p> <p>Call today!</p> <p>We both live in and understand strata properties!</p>	 <p>Lorne or John Tuplin RE/MAX Camosun</p> <p>Call Lorne 250-217-4600 or John at 250-217-0206</p>
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# The matter of fining a strata owner

*Presented by Deryk Norton, VISOA Board Member*

Many of us have heard of cases where the fining of a strata owner has become quite controversial. One such BC case involved a large accumulated fine for a barking dog and recently appeared in newspapers across Canada.

The SPA (*Strata Property Act*) (section 119) requires a strata corporation to have bylaws and permits a strata corporation (under section 130) to fine an owner, visitor or tenant who contravenes the bylaws. The Strata Property Regulation (section 7.1) limits such fines to a maximum of \$200 for each contravention and a maximum frequency of every 7 days for a continuing contravention. The SPA also imposes obligations on a strata corporation in its enforcement of bylaws and the use of fines as a means of enforcement.

In acting on behalf of the strata corporation, some strata councils have been known to make mistakes in enforcing bylaws. Some of these mistakes have been:

1. Levying a fine for an alleged contravention of a bylaw that is vague and open to a wide range of interpretations,
2. Selective enforcement of bylaws,
3. Failure to give a warning or time to comply with the bylaw,
4. Failure to give the owner an opportunity to answer the complaint underlying the alleged contravention,
5. Including an amount of unpaid fines in the filing of a lien against a strata lot in re-

spect of an unpaid strata fee.

A bylaw that is vague or ambiguous is difficult for a person to interpret and apply to his or her actions. For example, a bylaw that permits “temporary parking of an RV on a strata lot” is open to a wide range of interpretations. Not having defined the meaning of “temporary” in its bylaw a strata corporation would be on shaky ground trying to fine an owner for parking an RV on his strata lot for the entire summer season. A reasonable argument can be made that the summer season is only “temporary”. An alternative to fining the owner in such a situation would be to amend the bylaw at a general meeting to specify a time limit for parking an RV on a strata lot. In the absence of bylaw clarity it is unlikely that any fine levied (for perceived “contravention” of the bylaw) would be enforceable in court.

If a strata council decides to fine an owner for contravening a bylaw and it is later proven in court that the same bylaw contravention by others was ignored by the strata council, the court will likely “toss out” the fine. The courts tend to take a dim view of decisions based on prejudice or arbitrariness.

Section 135(1) of the SPA Act says that a strata corporation must not impose a fine on a person unless the strata corporation has received a complaint and the subject of the complaint has been given a reasonable opportunity

to answer the complaint, including a hearing if requested. In the case of *Dimitrov v. Summit Square Strata Corp.* (2006 BCSC 967) the failure of the strata corporation to comply with this section resulted in dismissal of the strata corporation’s claim for payment of unpaid fines even though the facts of the alleged contravention were not in dispute. Where a strata council complies with section 135(1) of the SPA in responding to a complaint it may be able to put an end to the alleged contravention through a warning or by giving the owner a reasonable amount of time to comply with the bylaw. By ignoring section 135 of the SPA it is clear from the *Dimitrov* case that the strata council places itself in an extremely weak legal position.

Where a strata council has followed section 135 of the SPA and levies a fine that remains unpaid, the amount of the fine cannot form part of a lien against the offender’s strata lot. Section 116 of the SPA specifies amounts that may form part of a lien and specifically excludes an “amount owing in respect of a fine or the costs of remedying a contravention”. However, under section 171(4) of the SPA the strata corporation may take the matter of an unpaid fine before the Small Claims Court. It may do so provided such action is authorized by either the bylaws or a ¾ vote of owners at a general meeting.

Sometimes an owner is

pressured into paying unpaid fines at the time of sale of that owner’s strata lot. This is made possible by a requirement under section 59 of the SPA to provide the purchaser with an Information Certificate (known as Form B). This certificate discloses “any amount that the owner owes the strata corporation, other than an amount paid into court or to the strata corporation in trust”. This means that, if the matter of unpaid fines has not been referred to either a court or an arbitrator, the unpaid amount could block completion of the sale of the strata lot. A wary purchaser may be unwilling to complete the deal fearing future liability for the amount of unpaid fines. The owner selling the strata lot could then pay the fine to remove this impediment and complete the sale. However, before doing so that owner should obtain the advice of a lawyer and consider paying the fine amount into court.

Both the strata council and the accused strata owner should obtain advice of qualified legal counsel when a bylaw complaint is escalating to the point of a fine being considered. This would help avoid a mistake by the strata council that could lead to high court costs, potentially requiring a special levy on all owners. It would also help ensure that due process is followed and the accused owner is not simply “bullied” into paying a fine that is levied unjustly.

# Ch-ch-ch-changes

by Don Nicholas, of Sterling Fire & Safety Services Ltd.

Change is inevitable. Change can be good or bad, depending on your perspective and how the change affects you. For instance, the need for change may come unannounced: catastrophic failure of a roof or boiler; a water pipe failure that's flooded part of the building. These are considered negative changes.

However, here are some of the known changes that affect fire safety planning which are coming on the horizon:

- New BC Building Code
- BC Hydro rate increases
- HST

Over the last ten years, we have had two building code revisions, which drastically changed the fire alarm installation process, both in technology and cost. As technology has progressed, building codes have embraced the advances made in detection and notification, making systems more reliable and

more comprehensive than ever. With the new building code upon us, there are sure to be new measures and advances that will be implemented, but at what cost?

The new building code will not be fully implemented until January 2011. This means that any strata that has electrical fire alarm upgrade drawings in hand, or the desire to upgrade before the new code comes into play, can do so with their existing drawings and current code standards. This applies to all drawings dated 2006 and newer. Those without plans in hand at this time, who want to take advantage of the current code standards and costs before the code changes, still have time to do so. All drawings generated January 2011 and beyond will reflect the new building code requirements, with the new standards and costs associated with those changes.

Given the technological and cost increases that we have seen during the past code revisions, we expect we will see similar changes this time around. As such, we encourage stratas to balance the pros and cons of cost and safety at this time, before the cost of safety increases.

They say the only things that are guaranteed in life are death and taxes. But BC Hydro rate increases should be added to that list as well. While Hydro is encouraging people to become more energy-conscious and to work harder at conservation, they are also con-

## NEW BUSINESS MEMBERS

**Industrial Plastics and Paint** first opened its doors in Victoria over 55 years ago; their success over that time has seen the company grow to 8 locations, 3 on Vancouver Island including Nanaimo and Courtney. Although well known for their plastic, fiberglass, and marine products and supplies, they are also suppliers of many products of interest to stratas and strata owners for the continual maintenance of strata property. Not only everyday maintenance products such as interior/exterior paints, line making paints, anti fatigue entrance matting, Plexiglas, Lexan and a variety of cleaning supplies, but also specialty products that can remove green algae, black mold, moss, graffiti, and oil from concrete surfaces, even products that can encapsulate rust on steel without removing it.

**Reliance Asset Consulting** carries out insurance appraisals and reserve fund studies throughout Western Canada. Their highly specialized consultants are licensed and insured professionals. Reliance understands that every property is unique in its physical characteristics and as such is committed to listening and working closely with strata council and management companies to provide a clear and comprehensive plan for the future. Strata owners and councils, insurance agents and property managers can remove fiduciary responsibility or a co-insurance loss by using an insurance appraisal.

**Fineline Road Marking** has been providing professional pavement markings service for over 15 years on Vancouver Island. Priding themselves on their finished workmanship, Fineline employees are constantly training and upgrading their skills and knowledge in pavement marking standards, bylaws and techniques. Roadways or parking lots, new or existing, standard color or reflective paint with "cat's eyes", stop bars, speed bumps, or even recessed pavement slots, Fineline have the expertise needed for the job.

**Adedia** is a website design and development company. They offer a great range of website products and solutions for all types of businesses, but of particular interest to us is the website solutions they offer to stratas. Custom website features can include the following: Secure login; Document access and archiving (agendas, minutes, bylaws, budgets, contracts, insurance etc); Online forms (allowing residents to submit questions to the strata council, request maintenance services, parking, amenity booking, storage lockers etc); Community news, and so much more.

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# Strata council members' statement of principles

The following ethical principles are suggested for adoption of all strata council members:

## **Honesty and Good Faith**

I will act honestly and in good faith with a view to the best interests of the strata corporation. I will do nothing to violate the trust of the unit owners I serve.

## **Care, Diligence and Skill**

I will exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. I will make a concerted effort to attend all council and owners' meetings. I will act responsibly and with due diligence to become familiar with the affairs of the strata corporation and to uphold its Bylaws, Rules, Resolutions, Policies, Agreements and Requirements of the *Strata Property Act* and other legislation.

## **Conflict of Interest**

I am not currently aware of any actual or potential conflict of interest with respect to any contract, transaction, building deficiency claim, warranty claim, legal action,

proceedings or any matter detrimental to the corporation. If I become aware of any conflict, I will immediately disclose it to the council. I will not promote my own interests or those of any owner, resident, family member, friend or contractor to the detriment of the corporation.

I will not seek any special benefits or privileges as a council member or officer or accept any compensation either personally or on behalf of any other person except as permitted by a Bylaw. I will act only in the best interests of the strata corporation as a whole and I will not favour the interests of any individual or group of owners or residents.

## **Transparency**

I will not withhold information to which an owner is entitled access under the *Strata Property Act*. I will not support any resolution of the council which would deny an owner access to information to which that owner is entitled under the *Strata Property Act*.

## **Confidentiality**

I will not disclose to any person (including my spouse) information decided by the council to be confidential or privileged or which reasonably ought to be deemed confidential. When in doubt, I will request determination by a resolution of the council.

## **Good Conduct**

At all times, I will conduct myself in a professional and businesslike manner at meetings of council members or owners. I will approach all council issues with an open mind, preparing to make the best decisions on behalf of the corporation. I will act ethically with integrity and in accordance with legal criteria. I will comply with rules of good conduct and will deal with others in a respectful manner. I will comply with principles of good governance and procedural rules of order.

## **Support**

I will abide by decisions of the majority of the council members even though I may disagree, but I reserve

the right to express my own views to owners upon non-confidential issues.

## **Defamation**

I will not make erroneous or defamatory statements about the corporation or any owner, resident, council member, officer, manager, staff or contractor of the corporation.

## **Minimize Conflict**

I will attempt to prevent or minimize conflict and disruption and will promote good relations amongst persons involved in our strata community. I will promote a first class image for our corporation, its units, owners and residents.

## **Education**

Recognizing that governance of a strata corporation involves complex and changing requirements, I will continue to educate myself by reading relevant magazines or bulletins. I will support attendance by one or more council members at strata/condominium seminars presented by a strata education organization at the cost of the corporation.

*Adapted from the Code of Ethics provided by the CCI - Northern Alberta (with permission). VISOA invites your comments on these guidelines – how would they work in your strata? Have you some better suggestions? We'd like to hear from you. Email: editor@visoa.bc.ca*

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# Smoking and the Strata Corporation

by Shawn M. Smith

Simply by writing those words I have undoubtedly stirred up controversy. Rest assured, however, that I do not intend to enter into a debate as to whether one should smoke or not. Rather, as a result of some inquiries I have received lately on this topic, it appeared to deserve some comments in general. In particular, I want to draw attention to some of the legal restrictions that have been placed on smoking in the strata context and the need to have a bylaw that reflects those restrictions in order to comply with the relevant legislation.

As a starting premise, under s.119 of the *Strata Property Act* the strata corporation has the ability to pass bylaws dealing with the use of both common property (including limited common property) and strata lots. This includes the ability to pass bylaws banning smoking altogether. While banning smoking within a strata lot might be going a bit far, certainly the banning of smoking in common areas and on balconies would appear to be consistent with other steps taken within our society as a whole to restrict when and where one can smoke. Where smoking is permitted within a strata lot, a bylaw regarding smoke not escaping from the strata lot would certainly be reasonable (just as a bylaw prohibiting other offensive activities from “escaping” a strata lot is).

Even if a strata corporation does not have a bylaw that expressly prohibits smoking, there already exists a restriction in most bylaws on doing so. Standard Bylaw 3(1)(c) prohibits someone from using their strata lot or the common property in a way that unreasonably interferes with another

person’s use and enjoyment of their strata lot or the common property. Depending on the severity and frequency of the smoke, the act of smoking could well fall within the scope of that bylaw. Standard Bylaw 3(1)(a) prohibits someone from using their strata lot or the common property in a way that causes a hazard to someone else. Given the known dangers of second hand smoke, allowing it to travel from a balcony or out of a unit and into another could well constitute creating a hazard. However, a strata corporation (for the reasons set out below) cannot rely solely on those provisions to address the issue of smoking.

Section 2.3(1)(a)(iii) (in conjunction with Regulation 4.21) of the Tobacco Control Act prohibits smoking in the common areas of condominiums. Unfortunately there is no definition of what constitutes a “common area” and that term is not used in the *Strata Property Act*, but presumably it includes areas such as hallways, recreational rooms, parking garages and courtyards; any place where the owners have equal rights of access. Nor can a person smoke within three meters of a doorway, window or air intake leading to any common area. There does not appear to be an express prohibition against smoking on decks and balconies or in backyards unless it is said that those, in the aggregate, constitute “common areas”; which is a possibility. The prohibition on smoking would certainly apply, however, where a deck or balcony were within three metres of an entrance door

Under the Tobacco Control Act, the strata corporation (and quite likely the strata council and possibly the strata man-

ager) become liable to see that these restrictions are observed. However, so long as they have exercised reasonable care and diligence to prevent the contravention, they will not be liable. To meet the test of having “exercised reasonable care and diligence” would require: (1) a bylaw prohibiting smoking in the common areas and within three metres of a doorway, window or air intake leading to any common area, (2) signage announcing the prohibition; and (3) rigid enforcement of the bylaw when there is a breach.

In addition to the provisions of the Tobacco Control Act, many municipalities have passed their own bylaws dealing with this subject. Some have bylaws which, while allowing smoking within a dwelling unit (which would include a strata lot but does not expressly include balconies or decks), prohibit smoking “within seven and one-half metres measured on the ground from a point directly below any point of any opening into any building, including any door or window that opens or any air intake”. Nor can smoking take place on any “premises” unless otherwise permitted in the bylaw. “Premises” are defined to be that portion of a building in respect of which a person has exclusive possession (other than a

dwelling unit of course). Where a balcony is designated as limited common property (thereby making it for the exclusive use of an owner) it could arguably form part of a “premises”. Combining these provisions, it would appear that smoking on balconies and patios of strata lots in municipalities with such a bylaw is prohibited.

Municipal smoking bylaws apply to strata corporations since they are often included in the definition of “responsible person” and are therefore obligated to enforce the bylaw, post the required signage and be subject to penalties if it does not do so. As such, councils should become familiar with such municipal bylaws and take steps (including passing a bylaw that incorporates its provisions) in order to comply with the provisions of the bylaw.

Strata corporations which contain commercial strata lots should also consider the provisions of the Tobacco Control Act and any applicable municipal bylaw in light of the restrictions placed on smoking in and around businesses and “customer service areas” (which include outdoor patios). Strata corporations can be as equally responsible for enforcement of the restrictions as the business

*Continued on page 7*

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## Smoking and the Strata Corporation

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operators, particularly if the customer service areas are on common property.

Clearly strata corporations should be enacting a bylaw that incorporates the provisions of the Tobacco Control Act and the applicable municipal bylaw. Doing so will:

(i) ensure that compliance with those pieces of legislation is clearly required;

(ii) ensure that compliance can be enforced; and

(iii) help to ensure that the duty to see that the restrictions are complied with is met.

Lastly, two decisions under the Human Rights Code (*Brown v. Strata Plan LMS952 2005 BCHRT 137* and *Kabaloff v. Strata Corp Plan NW2767 2009 BCHRT 344*) have left open the possibility that where an owner suffers from a medical condition that is exacerbated by second hand smoke, that there may be a duty to accommodate that person by passing a bylaw that prohibits or restricts smoking. This is another reason for strata corporations to consider putting a smoking bylaw in place; particularly if they have such an owner in the building.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith practices in the area of strata property law as a partner with the law firm Cleveland Doan LLP and can be reached at (604)536-5002 or [shawn@clevelanddoan.com](mailto:shawn@clevelanddoan.com).

## Ch-ch-ch-changes

Continued from page 4

tinuing to raise their rates to discourage power use. Although the Power Smart Program itself is changing somewhat, some of the incentives available are worth looking into.

In the past, people wishing to save energy on their fire safety equipment would look at having their exit signage replaced with new LED signage that uses about 10% of current incandescent units. After the installation was completed, they would submit their invoice and permit to Hydro for a very sizeable rebate.

The program has changed somewhat, as people must first ensure their eligibility for the Product Incentive Program. As of April 30, only commercial, industrial and residential strata customers without a Key Account Manager at BC Hydro will be eligible for the Product Incentive Program. All other commercial customers with a Key Account Manager can access the Power Smart Partner Express program for incentives on simple retrofit projects that they used to complete under the Product Incentive Program. This will require that they apply to their Key Account Manager for pre-approval of the project

that they wish to undertake. This affects not only upgrades on fire safety lighting, but all electrical upgrading that stratas are contemplating in their buildings.

Some stratas will have a Key Account Manager, especially if certain property management companies manage them. The easiest way to establish your eligibility is to call B.C. Hydro's Power Smart Business Helpdesk at 1-866-522-4713. Once you know your status, you can better plan your upgrades to take advantage of BC Hydro's rebate programs.

Last but not least, the dreaded HST...

Whether you support it or not, the HST is coming this summer. It will affect everything to do with fire safety. It will apply to all service contracts, repairs, equipment that was previously

Continued on page 15

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# The Helpline Team

by Harvey Williams, member of the Helpline Team

VISOA's Helpline is a frontline member service providing information to strata councils and strata owners on a one on one basis by telephone or email. VISOA's Helpline team consists of Board members; David Grubb, Laurie McKay, Sandy Wagner, and Harvey Williams.

The Helpline provides two levels of service, one for individual members and the other for corporate members. The service for individual members assists them in dealing with their individual problems such as obtaining information from the strata council that they are entitled to under sections 35 and 36 of the Strata Property Act, dealing with a noisy neighbour or their personal rights as owners.

Corporate members and their owners receive the full range of information that the Helpline can provide such as how to conduct an AGM or a council meeting, how to prepare a budget or an annual financial reports, and the

responsibilities of the strata council. Members who contact the Helpline should keep in mind that it provides information only which should not be construed as legal advice.

All calls to the Helpline are held in strictest confidence. We sometimes discuss cases among ourselves in an effort to better understand them but never reveal the names of those who call or email us to anyone else. Occasionally, we encounter a case that has broad implications. When we write about such cases, we are always careful to disguise details so they cannot be connected with any particular strata corporation or owner. This is not as difficult as it might appear, since most problems are not unique to any particular strata corporation.

**VISOA Helpline: [info@visoa.bc.ca](mailto:info@visoa.bc.ca)  
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Our Treasurer will be leaving us soon and we are looking for a member to sit on the Board as Treasurer. The Board meets monthly in the Victoria area. A financial background would be useful, or if you are currently treasurer of your own strata that would be good too.

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I know you are interested, so please contact me at VISOA's Helpline: email [info@visoa.bc.ca](mailto:info@visoa.bc.ca) or call 250-920-0222 or 1-877-338-4762. Tony Davis, VISOA President



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# Indemnity Agreements - When can they be requested?

by Joyce M. Johnston

The authority for the request by the strata corporation (through council) for an owner to sign an indemnity agreement is in Standard Bylaws 5 and 6. The indemnity agreement request is made when an owner requests permission to do certain alterations, and is granted permission. It is not mandatory that council request such an agreement.

## Obtain approval before altering a strata lot.

5 (1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:

- (a) the structure of a building;
- (b) the exterior of a building;
- (c) chimneys, stairs, balconies or other things attached to the exterior of a building;
- (d) doors, windows or skylights, on the exterior of a building, or that front on the common property;

(e) fences, railings or similar structures that enclose a patio, balcony or yard;

(f) common property located within the boundaries of a strata lot;

(g) those parts of the strata lot which the strata corporation must insure under section 149 of the Act.

(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

(3) This section does not apply to a strata lot in a bare land strata plan.

## Obtain approval before altering common property

6 (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

(2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

To understand these bylaws, reference must be made to the scheme under the *Strata Property Act* (SPA) for assigning responsibility for repair and maintenance of property.

Section 72 of the SPA governs the responsibility for repair and maintenance.

Subsection 1: the strata corporation must repair and maintain common property and assets, except as provided in Subsection 2.

Subsection 2(b): a strata corporation may pass a bylaw making an owner responsible for repair and maintenance of common property, BUT ONLY IF THE PROPERTY IS IDENTIFIED IN THE

*Continued on page 10*



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## Indemnity agreements

Continued from page 9

### REGULATIONS AND SUBJECT TO PRESCRIBED RESTRICTION.

The last section above is capitalized because there are presently no regulations identifying property under Section 72(2) (b); any bylaw passed under this section would not be effective.

Therefore, if an owner alters common property, for which the strata corporation has repair and maintenance obligations, as well as insurance obligations, the only way a strata corporation has to shift these responsibilities for the altered common property is by written agreement.

While most people would see the fairness of taking responsibility for altered common property, why do strata corporations sometimes request indemnity agreements when the alteration is to a strata lot? Again, we must look at the legislation that apportions responsibility for repair and maintenance.

The basic scheme of this legislation, the SPA and Standard Bylaws, is that the strata corporation repairs and maintains common property while the individual owner repairs and maintains his strata lot. But this scheme is sometimes not

easily applied. One can have reference to the complicated provisions of SPA section 66 for determining the boundaries between the strata lot and common property, which involves a determination of the midpoint on the structural portion of the wall, floor or ceiling. This makes repairing and maintaining some elements of the property difficult. The legislated solution is Standard Bylaw 8(d). Under this bylaw the strata corporation repairs and maintains that part of the strata lot that is:

- (i) Structure
- (ii) Exterior
- (iii) Chimneys, stairs, balconies, etc.
- (iv) Doors, windows, skylights, etc.
- (v) Fences, etc. that enclose patios, balconies and yards

This bylaw is passed under the authority of SPA section 72(3) which says a strata corporation can assume responsibility for the repair and maintenance of specified portions of the strata lot. The thrust of legislation is that the structure and exterior elements will be maintained by the strata corporation. Failure to maintain these, or too much variation in maintenance of these elements, could affect all owners.

If one is doing interior work, it is often necessary to determine whether the reno-

vation will involve the structure. You can determine the structural portions of an applicable wall, floor or ceiling by looking at the structural or “as built” drawings for a building. An architect or engineer can also give an opinion of whether a wall, floor or ceiling portion is a structural portion.

If you look at Bylaw 5, set out above, the same elements are set out as in Bylaw 8(d). Two additional elements are also set out in Bylaw 5, these being common property located within the bounds of the strata lot and those parts of the strata lot which the strata corporation must insure. Alterations involving these elements trigger the need to request permission for an alteration, and potentially, can trigger the request to sign an indemnity agreement. Therefore if the strata corporation must repair and maintain an element of property, or if they must insure an element of property, permission must be sought when an alteration involves that element, and at the strata corporation’s discretion, as a condition of approval, an indemnity agreement can be required.

*Joyce Johnston practices law in Victoria, BC. This article is not intended as the provision of legal advice.*



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# Strata Council Authority and Responsibility

The following is adapted from a Victoria strata corporation's Strata Council Handbook. I am certain all our members will find this to be useful information, whether self-managed or professionally managed.

*Sandy Wagner, Bulletin Editor*

## Council Authority and Responsibility:

The *Strata Property Act* (SPA) states: ...the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

Subject to the SPA, the *Strata Property Act Regulations* (SPAR) and the bylaws of Strata Plan XXX ...the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

The strata corporation may direct or restrict the Council in its exercise of powers and performance of duties by a resolution passed by a majority vote at an annual or special general meeting, but not ...if the direction or restriction is contrary to the SPA,

the SPAR, or the bylaws.

## Council Purpose and Function:

On behalf of, and in the best interest of, the Strata Corporation, the Council manages and maintains the common property and common assets of the strata corporation.

To assist Council, the Strata Corporation may contract the services of a property management company to which it delegates, subject to direction and oversight of the Council, certain duties and responsibilities under the SPA with respect to the management and administration of the Strata Plan.

Subject to the mandate of the SPA and Bylaws, Council responsibilities may include, amongst others:


1. Managing the financial resources of the strata corporation, including annual budgets.
2. Developing an annual plan outlining goals, objectives and priorities for the fiscal year, for presentation at the annual general meeting.
3. Preparing, retaining and enabling

access to strata corporation records.

4. Obtaining and maintaining insurance.
5. Making arrangements for the strata corporation to hold annual general meetings and any special general meetings.
6. Reporting to and communicating with owners.
7. Responding to complaints.
8. Enforcing the bylaws and rules.
9. Developing preparedness plans for emergencies such as fire and earthquake.
10. Ensuring that the strata plan remains current and filing any changes in the strata plan at the BC Land Title Office.
11. Responding to or filing legal proceedings.

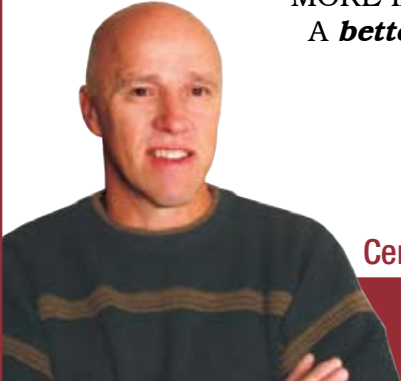
**Council Composition:** As stipulated in the Bylaws, the Council must consist of not less than four (4) or more than seven (7) members, elected by the owners at the annual gen-

*Continued on page 14*



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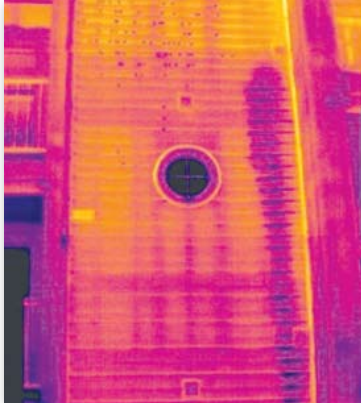
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Right is a photo taken at a condominium. The dark (cool) streak is water in the wall from a leaking washing machine on the third floor. Water was detected in the basement. The camera showed the source.

# Strata Management

*Adapted from an article originally published by Interlink Realty News*

## GENERAL OVERVIEW

As more and more Canadians select condominium living for various reasons, the requirement for professional management becomes increasingly important. The same advantages that make condominium living attractive also present the owners with some challenges that if not managed properly may result in costly operational, emotional and financial problems.

A professionally managed strata corporation will benefit from the economies of scale achieved by sharing a variety of services and amenities. The price of a detached single family home on a conventional lot in a desirable location may be prohibitive, whereas a stratified lot may be very affordable and desirable.

Strata corporations all face the challenge of governance. Although legislation provides direction, the owners must still determine how the actual day to day operation will proceed. Many alternatives are available to the strata corporation in terms of operational management. However, having numerous choices inevitably creates a dilemma for owners who may differ greatly in their opinions as to the best solution. Ideally, whatever form of management is chosen, a community environment should be encouraged creating an atmosphere;

- open to participation
- transparent to actions
- beneficial to all the owners

## OBSTACLES

Before proposing a management solution or creating any specifications for professional management services, it is helpful to identify any existing obstacles in the way of achieving successful management. The ability of a strata council to mutually agree on the day to day operations will likely depend on overcoming several typical issues.

Most council members have preconceived ideas about how their strata

corporation should be managed. Failure to concur on the method of management and the duties and responsibilities of all parties is a major obstacle that should be thoroughly addressed if successful management is to be achieved.

Another obstacle which often has regrettable results for all parties is the retention of an in-house service provider who is an owner in the building. Most common of these relationships are owner-caretakers or owner-janitors. When hiring an owner to do paid work for the corporation, other owners often assume that since the individual is also an owner with a vested interest in the building, there will be no problems and the quality of the work will be excellent. This is often not the case.

Directing the work and supervising a worker who is also an owner becomes difficult for both council and the manager. At such time the relationship needs to be severed a complicated and awkward situation results. Regardless of the type of contract that may exist between the worker-owner and the corporation, an employer and employee relationship is created. Many responsibilities accrue to the employer that the corporation may not wish to assume. While legislation does not prohibit hiring an owner to work for the corporation, it may be advisable to avoid these situations by amending bylaws to prevent this potential problem.

Every strata corporation will face different obstacles, some more difficult to overcome than others. Other obstacles may include council members' personal agendas, lack of communication, inappropriate management services, un-informed owners, micro-management by council or a tendency to become polarized in the absence of strong and reflective leadership.

## OPERATIONAL SOLUTIONS

By developing and implementing a

win-win philosophy, increasing communication and defining areas of responsibility, most obstacles can be overcome. Open communication between council members and between council and owners is essential for a successful operation. Owners' forums should be encouraged by an effective council.

To assist council members with their role, an orientation outlining their duties and responsibilities is beneficial to both the individual and the corporation. The election of a pragmatic council president with focus and vision is certainly desirable although not always possible. Strong leadership qualities are often necessary to influence council decisions based upon recommendations from experts or based upon the wishes of the majority of owners.

Once council has determined their priorities and the action required, a management agency would typically take over implementation and overall management within the parameters of the current budget and established Bylaws and Rules. Except for the very smallest of condominium corporations, professional property management is recommended.

One of the reasons homeowners select condominium living is the widely advertised – but poorly named – concept of a carefree home. The quest to achieve the carefree living objective must be tempered with a realistic perspective; some work and participation are required. The owners and council must be diligent in the fulfillment of their individual roles and responsibilities. Most, but not all, of the operational management may be delegated to the management agency.

In British Columbia the creation, ownership and administration of condominium developments are legislated by the *Strata Property Act* and Regulation. Section 26 of the Act stipulates that the powers and duties

*Continued on page 13*

# Strata Management

*Continued from page 12*

of the Strata Corporation must be exercised and performed by the council, subject to the Act, the Regulations and the Bylaws. Under Section 38 of the *Strata Property Act*, the strata corporation is permitted to enter into contracts in respect of its powers and duties. Additionally, the Schedule of Standard Bylaws, Section 20, enables Council to delegate its powers and duties with some minor exceptions as defined in Section 20 (4) of the Standard Bylaws.

This flexibility of operation is crucial as it enables each strata corporation to respond in a manner that suits its own unique requirements. A strata corporation should select the level of professional management that most closely corresponds with the expectations of the owners.

There are several types of property management formats:

**Self Managed** – this option requires enthusiastic council members who are well informed with knowledge in all areas of operation including governance, administration, maintenance and finance and who have the time to attend to these matters. This type of management is common in smaller developments where the workload is manageable. This option has and continues to serve some strata corporations well. A strata corporation may be self-managed but may out-source the bookkeeping function.

**Strata Agents** – primarily task oriented receiving day to day instructions from a council and usually not in a leadership or significant advisory role. Services tend to be responsive and administrative in nature and not significantly involved in the management of the physical asset. This option works well if a council is active, knowledgeable and has the time to become involved at an operational day-to-day level. This type of management is common for smaller condominium corporations where the workload for council members is not significant.

**Property Managers** - take a pro-active role in the management of a condominium corporation including the

financial and physical assets. Activities include advising councils, making recommendations and implementing approved operating strategies. In this situation the council depends on the manager to provide a leadership role in the areas of governance, administration, maintenance and finance. The council makes final decisions based on information compiled or recommended by the Property Manager.

**Asset Managers** - may have power of attorney to act on behalf of the owner in all aspects of ownership, are retained by major investment funds or insurance companies. The asset manager is advised of certain financial objectives that need to be met and is required to analyze performance, develop, implement and continually modify strategies to manage the assets to meet the financial objectives or in some instance to re-develop the property to its highest and best use. Asset managers may retain Property Managers to engage in the day-to-day management. This is not a management option suitable to a strata corporation.

## IMPROVING MANAGEMENT PERFORMANCE

While opinions may vary on the type of management solution that is best for a particular property, councils do have the power to improve management results. That is, a council may improve the level of management and reduce management cost by focusing on the following activities, or developing other pertinent strategies.

- Improve budget and financial planning process to reduce number of meetings and make serving on council more attractive to volunteers.
- Increase lines of communication to eliminate the Ivory Tower perception and create a transparent council to reduce friction and keep all owners in the loop.
- Prescribe specific functions for council members and create working committees and hold regular committee meetings. This will get more owners involved on committees and eliminate committee work at the council meeting, making for more productive meetings.

- Meet with the property manager to review how information will be shared, lines of communication and areas of responsibilities. If you already have a manager, it may be a good idea to refresh the relationship from a revised perspective.

- Establish a relationship with the property manager where you are able to rely on his or her expertise and resources. Over time property managers develop a range of contacts for trades and services that have a proven track record and are cost effective. The qualified property manager is a resource; use him/her to your benefit.

## DEFINING DUTIES AND RESPONSIBILITIES

To keep the management activity on track, it is important for all the stakeholders to be aware of the lines of communication and areas of responsibility.

In a situation where the council has delegated some or most of the management responsibility to a manager, it is important to agree upon the specific areas of responsibility. The more comprehensive the list of responsibilities, the better it will function to ensure tasks are completed and misunderstandings are minimized.

## INFORMATION DISTRIBUTION

Some of the traditional methods to distribute or share information with all the owners are by way of minutes, newsletters, special mailings, committee reports, notices on bulletin boards or notes attached to council minutes when they are distributed. Unfortunately these can be time consuming and reactive measures creating significant lag time with news sometimes received after the event. Also it is not practical to copy and distribute all operational information all the time for all the owners regarding matters contemplated by council. In a large condominium the copying cost would be significant and the property manager would expect compensation for this extra time consuming work.

One way to achieve immediate transparency and also reduce photo-

*Continued on page 14*

# Strata Management

Continued from page 14

copying and postage costs is to utilize the Internet. Unlimited documents can be posted on a dedicated web site accessible only by the owners within a specific condominium complex. A strata corporation may post all their documents, minutes, contracts, by-laws etc. as well as communicate with owners and create an electronic filing cabinet for current and historical records. This system provides maximum flexibility for owners as access is available seven days a week, twenty-four hours a day.

## LINES OF COMMUNICATION

Even though all parties may have a common goal, sometimes directions or instructions are not properly communicated and result in avoidable misunderstandings and even financial loss.

Unless specified otherwise, a manager should take instruction only from the President of the council, or act upon approved resolutions or motions from properly convened meetings. Individual owners should not instruct the manager nor should they be out

## Strata Council Authority and Responsibility

Continued from page 11

eral meeting. The incoming Council members must elect from their number a President, Vice-President, Secretary, and Treasurer. Customarily the remaining members (assuming a seven member Council) are appointed to be Chairs of the Repairs & Maintenance, Gardening, and House Committees. (See under "Committee Chairs".)

**President:** The president takes the lead in the affairs of the strata council. The President's functions may include:

1. Chairing annual and special general meetings.
2. Chairing Council meetings.
3. Representing the Council when communicating with owners.

and about conversing with or directing trades or contractors who are executing specific work orders issued by the manager pursuant to council directions.

Day to day operations may be further improved by encouraging ongoing interaction between council members and committee members between scheduled council meetings. This will result in smoother operations without the spikes of activity usually caused when issues escalate into crisis situations.

A realistic financial plan and operating budget created by council and approved by the owners are critical to the successful management of any property. A professional manager can implement the plan without further council involvement and can avoid the need for crisis meetings during the budget period, except for emergency situations.

While owners are correct in stating the property manager works for them, this is a beneficial relationship as the manager actually works for, represents and reports to the strata corporation.

Chaos would result if each individual owner expected to direct and participate in the activity of the manager on a

4. Representing the Strata Corporation in communicating with, overseeing, and giving direction to employees of the Strata Corporation.
5. Representing the Strata Corporation in the conduct of the business of the Strata Corporation.
6. Signing corporation documents.
7. Providing support for Council committees to facilitate the achievement of their respective mandates.
8. Overseeing the preparation and distribution of reports of the Strata Corporation.

**Vice-President:** The Vice President's functions may include:

1. Assuming the President's duties, during his/her absence.
2. Attending Council meetings.
3. Working with, and providing assistance to the President.
4. Presenting to Council the annual report of the Nominating Committee.

daily basis. Owners should direct their concerns or questions to the council, preferably in writing, for distribution to all council members for review at their next meeting.

If inquiries and concerns are not addressed, owners' frustration will rise, council may suffer burn-out and the manager's time is consumed by non-productive work.

Unintentional misunderstandings may also arise distracting the various parties from the important task of managing the assets of the corporation.

Implementing the recommended procedures for;

- sharing information
- establishing lines of communication
- defining areas of responsibility for both the council and manager will create a participatory and interdependent environment. In such a positive atmosphere the owners will realize their concerns matter, council will become effective managers of the corporation's assets and the property manager can focus on productive management.

Management of strata corporations will evolve as legislation changes and owners' requirements change. Seek out progressive and flexible managers.

**Secretary:** The Secretary's functions may include:

1. Attending Council meetings.
2. Ensuring the:
  - a. Recording and distribution of minutes of all council and general meetings.
  - b. Preparation and maintenance of Strata Corporation's records, and the availability of those records in accordance with SPA Sections 35 and 36.
  - c. Preparation, as directed by Council, of responses to correspondence received by the Strata Corporation.
  - d. Preparation and distribution of reports of the Strata Corporation.

**Treasurer:** The Treasurer's functions may include:

1. Attending Council meetings.

Continued on page 15

2. Providing information and advice to council concerning financial matters.
3. Administering and maintaining all financial records of the strata corporation in accordance with the SPA, or reviewing such information as maintained by an employee of the corporation.
4. Preparing summary monthly financial reports and alerting council to financial issues, questions or concerns.
5. Controlling the Petty Cash Account.
6. Coordinating the preparation of the annual budget.

**Committee Chairs:** While Council as a whole is responsible for the upkeep and maintenance of the physical property (buildings and grounds), historically, since the early 1980s, it has divided certain functions amongst its members so that one Councilor is customarily delegated as Chair of each of the Repairs & Maintenance, Garden, and House Committees with authority to take the prime lead in managing the details in these areas.

If the Council is composed of a full seven members, those Chairs generally devolve upon the Councilors who are not officers: If fewer, then the remaining Councilors, whether officers or not, take on those functions. These members attend Council meetings and assist (and are assisted by) the officers of Council in the administration of the Strata Corporation's affairs within their jurisdiction.

## Ch-ch-changes

Continued from page 7

PST exempt, fire alarm and electrical upgrades. All we can do at this time is encourage you to look at work that needs to be done and decide if you can push it forward and have it completed before the July 1st implementation date. That is a very narrow window, but there are some projects, such as exit sign upgrading that may fall into this category.

In an effort to support our customers and encourage the upgrading of fire safety in their buildings, Sterling Fire will be covering the PST

portion of the HST through to the end of 2010, for those who are considering upgrade work under the current codes and standards. In this way, people can deal with the known costs and standards, as opposed to the increased costs and changing standards that are on their way.

When it doubt, remember the "Serenity Prayer":

"God grant me the serenity to accept the things I cannot change; courage to change the things I can; and wisdom to know the difference."

# TALK TO US



## This page belongs to you.

Have you read something in our Bulletin or our Website that left a lasting impression on you? Or perhaps you've followed some advice that you got from the Bulletin or the helpline and would like to share the results with other members? Or would you like to comment on an article that really "hit the spot"?

We welcome letters and email from Bulletin readers. This is your Bulletin and your Letters page. Speaking to Vancouver Island strata owners like you is our mandate - hearing from you is our pleasure.

*The following is a letter to VISOA's David Grubb of the Helpline Team:*

Thank you very much for your comprehensive reply to my questions. Your information, complete with positives and cautions, will greatly assist our Council discussions. I also appreciate the time you took to send us your reply. VISOA is certainly proving to be a worthwhile organization to assist strata owners. By the way, I attended The AGM and want to complete the entire VISOA board for a well-run and interesting meeting. Extra thanks for the excellent audio and visual which ensure everyone can hear and see what is going on. The venue continues to be a good one. The almost overflow crowds are testimony that your hard work is appreciated. The exchange of ideas regarding a minor wording change to allow off-island membership was most amusing. We too have sometimes had the same experience at our own meetings when proposing some minor housekeeping change. Thank you once again for your guidance.

Cheers

Alastair Wade (Strata 2118)

*The following is a letter regarding our "You Asked" column in the last issue of the VISOA Bulletin, and a response from Harvey Williams:*

Dear Editor,

The strata manager was partially correct in their response in the "You asked" column of in the April 2010 Bulletin regarding s36 of the *Strata Property Act*. Section 31 of the Act requires that councils use care and due diligence. This requires that a council refuse to provide information to an owner whom it suspects might use it in a malicious manner. PIPA Guidelines discussed in the February 2010 Bulletin require that personal information be protected. All stratas should have a privacy policy in place, which stipulates the information they need to collect and what will be provided to other owners and under what conditions. There are times when it is best to exercise due diligence when providing information to owners.

Miina Piir, Courtenay VIS 5938

*Response to letter from Harvey Williams*

Thank you for your comments regarding strata corporations and the Personal Information Privacy Act (PIPA). I stand by my "You Asked" response. I do not dispute the requirement of the Privacy Guidelines for Stratas that personal information not required by law be withheld. However PIPA specifically exempts personal information required by another law in this case, the *Strata Property Act* (SPA). Section 36 of the SPA requires that the information listed in section 35 of the Act be provided to owners upon request. Refusal of a strata council to release that information in a timely manner when requested violates the SPA. All citizens are obliged to obey the law including laws with which they disagree.

Email us at editor@visoa.bc.ca

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