



Vancouver Island Strata Owners Association

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VISOA Bulletin - MAY 2012

# President's Report

I'd like to thank all of you who attended our AGM on February 26th.

You re-elected John Webb, Harvey Williams and me to the Board of Directors, and elected five other Directors: Al Prentice (appointed by the Board during 2011), Bev Grubb, Cleve Patterson, and Paulette Marsollier. Adding our newest recruits to the other Directors who are in the middle of their two-year terms, your Board is now 12 strong. The increase in size of the Board is needed, as our Association is growing so rapidly.

We grew our membership by almost 6% in 2011 - we currently have about 360 strata corporation

members representing over 8400 strata units, and 260 individual members.

To make some comparisons going back to 2006, we have increased our corporate members by 82% which represents 99% more strata lots, and individual members have increased by 70%. It is evident that our growth is on a steep curve. We can attribute that in part to the many strata properties that have been built, especially in Greater Victoria and the North Island. Total residential stratas in the province represent about 28% of properties, and in Victoria that figure rises to more than 50%. So the potential for growth of VISOA is enormous.

Two of the main services we offer to members are our seminars, and our Helpline. In just the last 3 years, we have seen a 30% increase in seminar attendance. Part of that is because we now put on 6 seminars per year, having expanded into Courtenay. So each year we now hold 3 seminars in Victoria, 2 in Nanaimo, and one in Courtenay.

The Helpline service continues to grow year after year. Last year, our Helpline Team answered more than 800 phone calls, and just over 700 emailed questions. When you consider that the average time spent researching and replying to a question is between 1 and 3 hours, and the total number of questions averages out at 4 per day, every day, that's over 3000 volunteer hours that the Helpline Team puts in.

At our AGM, you voted to approve the budget presented. Some of the highlights of the budget include changes to the way we produce this Bulletin. Most stratas and individual members are now receiving their quarterly Bulletin by email, but we have also been mailing one printed copy to each member strata or individual who requests it. However, this is one of the most costly services to members. Since the Bulletin can be accessed free of charge on our website, we intend to print fewer and mail them out only on a cost-recovery basis by charging an annual

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### BOARD OF DIRECTORS 2012

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 Paulette Marsollier

## President's Report

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subscription. So as your memberships come up for renewal this year, you will see on your renewal invoices a line for "optional postal bulletin" for those members who prefer to have a printed copy or cannot access the Bulletin online.

Another change, approved in the budget, will be increased costs for non-members to attend our seminars, and a small charge for members who do not pre-register. We encourage all attendees to pre-register as this will ensure we have sufficient seats for all, and also enough printed material and refreshments.

With respect to seminars, this year's first three have all been on the topic of Depreciation Reports: the topic currently uppermost in most members' minds. Our guest speakers have been lawyers, engineers, appraisers, and a Senior Policy Advisor from the BC Provincial Government, all enlightening you on this new requirement for your stratas. Our June seminar in Victoria will again be on Depreciation Reports, but this time we are planning a panel discussion to give you different viewpoints on the subject. You will find details on our website very shortly.

At our AGM, we also received your approval for an increase in

membership fees. Although on a percentage basis the fee increase sounds high, on a "per door" basis the increase is very small. There are two main reasons for the fee increase:

First, we have grown to the point where we must hire a part-time Administrative Assistant to consolidate many routine but essential managerial and bookkeeping duties and free the Board members to focus on services to members. We are looking for someone who has computer word processing, spreadsheet, and database software skills and enjoys meeting the public. The person would work closely with the VISOA board to help us provide services to our members. If you are interested send us an email to [adminassist@visoa.bc.ca](mailto:adminassist@visoa.bc.ca) outlining your skills and availability.

Second, we will also have an office within the next few months where the Administrative Assistant, Board members and volunteers can provide greater access to the public as well as furnish space for the many files and other property of our organization which are currently spread out in many homes and a locker.

In this issue of the Bulletin, six of the nine articles are written by Board members, which demonstrates the wealth of knowledge represented amongst your Directors. The

remaining three are written by Ken Tanner, a business member with an interesting departure on holding council meetings; lawyer Shawn M. Smith enlightening us on user fees; and an article on finding the best people for your strata council, written by Angela Ford, a property manager in Chicago. I happened upon Angela's blog at [www.treefreeonline.wordpress.com](http://www.treefreeonline.wordpress.com) and enjoyed her piece so much that I asked her permission to reprint it here for you.

We are excited by the changes I've noted above, which we anticipate will help to improve the way we carry out our mandate:

*To promote and encourage strata living as a desirable way of life; to assist strata councils and strata owners by providing education, training and assistance; and to represent the interests and concerns of strata owners to the government and to the public.*

Your Board looks forward to another year of service, to you our members.

As always, if you have any suggestions, comments, questions, complaints, beefs or bouquets for us, please contact me at [president@visoa.bc.ca](mailto:president@visoa.bc.ca)

Sandy Wagner  
VISOA President

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# Profiles of a successful strata council

By Angela Ford, TreeFree Property Management, Chicago

As a Property Manager for years, I got the hang of determining, right away, the anatomy of a strong collaborative strata council. When I started my firm, I was excited to work for anyone... not an ideal growth strategy. As we stabilized, I wanted to select great fits for my team. I wanted them to stick with our firm. (Good people tend to seek jobs with less stressful environments!) From the first meeting with a potential new client (the council), I could determine if this was a strong council. Great strata councils tend to run great strata corporations and make great clients! Is your council made of these kinds of personalities? You tell me:

**The Career Executive** – whether retired or currently in the position, this person understands time is money and tends to remove the

emotion from decisions that must be made. The career executive quickly assesses the true situation at hand and likes to stick to the facts. He/She is also very sensitive about time and helps assure the promptness of meetings and decisions.

**The Detailer** – This is someone who enjoys keeping records, is quick to create a sign-up sheet and doesn't mind taking notes, posting signs, etc. They tend to work with the Property Manager and act as eyes and ears for signage being removed, etc.

**The Experienced Contractor/ Handyman** – It's always good to have an owner justify the expenses for repairs or quotes. When no one on the council understands the true costs of repairs/maintenance, it tends to be an uphill slog when the Manager presents estimates for anything!! This member adds

a trusted voice of reason and helps matters move forward.

**The Cheapskate**

– The grumpy, frugal holdout is good for the strata council. Once this person finishes scrutinizing everything, if they vote for the improvement, the strata corporation feels comfortable they got the best bargain. There's nothing wrong with bargain shopping, but it

has to end with everyone feeling whole.

**The Young One** – The new young and idealistic homeowner that gets involved is a sign of the future! They have ideas to keep the strata corporation modern and attractive to new purchasers. They encourage electronic communications and social media. Moving forward is always a good thing!

**The Respected Elder** – This person keeps you from repeating mistakes of the past. They serve as historians for the best the strata has done. They know where the hidden closets are in the basement and when the elevators were last overhauled! With all the playbooks from the past in their head, as a Property Manager, you can certainly win!

**The Reluctant Member** – This is the introvert that joined the council for reasons other than power. They tend to remain neutral as factions form in councils. They tend to vote strictly for what's best for the strata corporation. When most often, the more aggressive members push their agenda, the reluctant one serves as a good barometer for what is REALLY best for the strata.

Of course, I look for an odd number of councilors to eliminate ties. I also listen to each member talk about their concerns for the strata. If the members talk to each other respectfully, you know you have a group that is capable of working well together and then with you.

This list may seem obvious, but I assure you, it's not!

What do you think? Do you know these people?

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# Proxy voting explained

By Sandy Wagner

What is a proxy?

The term proxy may mean similar but different things, depending on the context.

A proxy is the written document authorizing a person to represent someone else in a vote.

A proxy is also the person authorized to exercise someone else's vote.

I have lived in my strata home for twenty years, rarely miss a General Meeting, and have served on my strata council every second or third year; consequently I am well-known among my fellow owners and am often asked to take a proxy vote when another owner can't attend a General Meeting.

At my strata's last General Meeting, I held six proxy votes in addition to my own vote. Some of the owners had given me specific voting instructions, and others had said to vote as I saw fit. During one of the votes, when I held up 5 voting cards for "no" and 2 for "yes" another owner asked me why I wasn't voting the same with all seven of my voting cards. I quickly explained that I was casting proxy votes on behalf of other owners, and that I was voting the way they had instructed me to.

She seemed surprised – but what surprised me more was that she had to ask at all, as she has lived in this strata for over ten years and has given her proxy to others during some of those years. Was this most basic of a strata owner's rights, the right to vote, so misunderstood?

I have heard of strata owners assuming that someone at a General Meeting will record any voting instructions written on all proxy appointments, and check the voters to ensure they are voting the way they were instructed to vote.

This is a false assumption! This is all the *Strata Property Act* has to say about proxy voting:

Proxies

56 (1) A person who may vote under section 54 or 55 may vote in person or by proxy.

(2) A document appointing a proxy (a) must be in writing and be signed by the person appointing the proxy,

(b) may be either general or for a specific meeting or a specific resolution, and

(c) may be revoked at any time.

(3) The following persons may be proxies:

(a) only if permitted by regulation and subject to prescribed restrictions, an employee of the strata corporation;

(b) only if permitted by regulation and subject to prescribed restrictions, a person who provides strata management services to the strata corporation;

(c) subject to the regulations, any other person.

(4) A proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions and participate in the discussion, unless limited in the appointment document.

If that all sounds a little confusing, the Province of British Columbia Instructional Guide 9: "What to Know About Voting" puts it into simpler language:

A proxy is a written authorization given to enable the proxy holder to act on behalf of the person giving the proxy.

**A proxy:**

- must be in writing, and be signed by the person appointing the proxy;

- can be given for general purposes or for a specific resolution or for a specific meeting;

- can be revoked by the person appointing the proxy at any time; and

- can be held by any person except the strata corporation's strata manager or an employee of the strata corporation.

A proxy holder may do anything the person appointing the proxy can do, including: voting, proposing and seconding motions and participating in discussion at an annual or special general meeting unless limited in the appointment document.

Note that, although it's a great idea, there's nothing specified in either the SPA or the Guide about a requirement to ensure that the proxy holder votes as instructed.

A proxy is a legal document to say that you trust the person you are giving it to, and are empowering them to vote on your behalf. You may wish to vote "no" to project X and might even indicate this on your proxy document, but you have no way to ensure that your proxy holder votes the way you desire. You must have trust in them.

There's not even any requirement to use a specific form (although at the Helpline we have heard of stratas forbidding an owner to vote because the proxy wasn't on the "proper form"). It may be written on a paper napkin! And it is valid so long as it contains the appropriate information and is signed by the person giving it.

The proxy can be given for any length of time, although in a strata the proxy is often given for one specific meeting. A proxy may be given for an indefinite time period, until revoked – this is called a general proxy. The unit owner revokes a general proxy either by issuing a newer proxy; or by written notice to the secretary; or by attending a meeting and exercising the vote for their unit. Merely attending the meeting, without actually casting a ballot, will not revoke the proxy.

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A proxy may be given to anyone – even a stranger, although that’s unlikely! The only persons who cannot hold a proxy in a BC strata General Meeting are the strata corporation’s strata manager, or an employee of the strata corporation.

The proxy holder should retain the proxy letter to prove they have the right to vote on your behalf – but at many General Meetings, the secretary collects the proxy letters. This is not a requirement of the SPA – but instead of causing a scene at the sign-in table, I suggest you retain the original proxy letter and turn in a copy to the secretary. I have also attended meetings where the proxy form listed specific voting instructions, and the proxy holder did not want the secretary to know how they were instructed to vote. Again, keep the original for yourself and turn in a copy to the secretary, with voting instructions blacked out if you wish.

If an owner leaves a General Meeting before its conclusion, he may give his proxy to someone else, provided that fact is recorded on the register of owners at the meeting; especially since it concerns a possible alteration of quorums or vote counts if unrecorded.

However, a proxy holder who leaves cannot pass the proxies he may hold to any other person – that would be violating the trust of the owner(s) who have issued the proxies. So if that proxy holder leaves, as mentioned before, the quorum and vote counts will be very much affected. The proxy issuer should ensure that he gives it to someone who will be in attendance for the entire meeting.

Your right to vote at your strata’s Annual and Special General Meetings is one of the fundamental democratic rights you hold – but if you cannot attend the meeting, this should provide you with the basic knowledge to choose a proxy to represent you.

## Selecting a Strata Property Management Company

*By Laurie McKay*

There are as many different types of property managers as there are different types of strata owners. When things are going smoothly in our strata corporations, property management agents become slightly invisible – someone you see once in a while, and think little about. However, when the bottom falls out of things, some owners think first to make life miserable for the Strata Management Company, who should, in their minds anyway, be solely responsible for the entire basket.

This is neither realistic nor productive thinking. Strata owners and councils must recognize that employing a Strata Management Company doesn’t change the responsibilities of the strata corporation. The strata council is a group of volunteers who have been elected by the owners and their responsibility is to work together for the benefit of the owners and the strata corporation as a whole. Even with a Strata Management firm in place, the owners, through their elected council, are still ultimately responsible for the successful running of their corporation.

In an inclusive strata, the council might feel there is a need for property management services but recognizes also that the strata corporation must be responsible for the development of the contract. Section 38 of the SPA, “Capacity to enter contracts and join organizations”, gives council the authority to sign contracts on behalf of the corporation. With respect to contracting with a Strata Management Company, some councils might take this action without the approval of the owners but many councils see the benefit of including owners in the process and look to a different route.

A committee of owners including one or two council members should be formed to decide on the types of services to be included in the contract. With examples from other contracts and perhaps input from other stratas, the committee, with assistance from a lawyer and the council, should create

a contract that meets the needs of the strata corporation. It is particularly important that this contract sets performance expectations for both parties to the contract, performance review mechanisms, and a termination or renewal process.

The next step would be to hold an informal meeting with all the owners to freely discuss the merits of the proposed contract.

Using the results from that meeting, the committee would then contact several Strata Management Companies to discuss the required services and associated fees. The committee should also ask for a list of some of the Strata Management Companies’ clients who would be willing to provide more information. It is important that the committee contacts all of those references since the information obtained should help them make a decision in narrowing down their selection of companies.

The committee then begins negotiations with one or more Strata Management Companies before recommending a contract with a particular company to the council.

Once a particular Strata Management Company has been selected by council, the final step is to work with a lawyer who is well versed in strata and contract law to develop a final draft contract that meets the needs of the strata corporation and that should also be acceptable to the Strata Management Company. Many strata corporations either vet the final negotiated contract with their lawyer or actually ask the lawyer to attend the final negotiation meetings before signing the documents.

The council can then proceed with the contract in confidence that the process has identified the needs of the strata corporation through open and clear communication, has negotiated a contract that protects the strata corporation and lays the basis for a mutually supportive relationship with their chosen Strata Management Company.

# Are you finding council meetings frustrating?

By Ken Tanner

One of the universal frustrations seems to be the complexity and challenge of holding successful Strata Council meetings. Inevitably, the council meeting encounters a challenge: members unable to show up thus reducing input, often a quorum cannot be achieved, topics dragging on, discussions migrating to tangents that are not on-topic, decisions not documented properly or communicated improperly in the minutes. Let's ponder a few of those challenges.

- Attendance: How often is a meeting held and not enough councilors show up to form a quorum? Last minute conflicts in schedules, unexpected obligations, forgotten meeting dates. What if your council had a meeting system that enabled all members to participate, regardless of where they are in the world?

- Discussion Hogs: The one individual who has a specific issue and concentrates on it to the detriment of all other topics. The discussion drags on and on, never moving towards the remainder of the business on the agenda. What if your strata council had a meeting system that ensured all the other topics would be covered and addressed by all members who wanted to provide input, yet not inhibiting the single-issue individual from fully discussing his issues and concerns?

- Minutes: The confusion in the minutes about what was decided, who said what, properly documenting all the conversation, errors in recording, delays in issuing the minutes. What if you had a meeting system that ensured the minutes were absolutely accurate, completely reflect every discussion point without confusion, are ready immediately following the meeting, and are always accurate?

There are still more meeting issues and concerns that are challenging for the chair of the meeting – the order of topics that people want to discuss,

ability to have side conversations during a meeting, ability to search for historical records quickly and accurately during the meeting itself.

So what is the way to solve all these challenges? If one considers that email is already used for so many meeting functions – delivering the agenda, distributing the minutes, etc., it is not unreasonable to also consider email as a viable and productive way to hold a council meeting. Email meetings can be one way to fix many of the problems noted above. Email is nearly universally used, and provided all members of the council have access to the internet (at home, on travel, on vacation) then one now has the capability to hold a strata council meeting and solve many of these problems.

The *Strata Property Act* has contemplated such meetings, as stated in Standard Bylaw 17(1): “At the option of the council, council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other.” A telephone conference call is one example of an electronic meeting, as is a Skype video conference. And there are now companies taking electronic meetings into a different direction: on-line meetings. Using these systems, council members and observers can attend at a time that is convenient for them, in such a way that every participant can see every comment and suggestion.

There are various options available to hold meetings online, and your council might consider this. Members can participate in a council meeting

from any location where internet access is available, at a time of day or week that is personally convenient, in a manner that every topic can be addressed, commented on, reviewed, voted on and tabulated. The online meeting tool permits the Chair to set up a meeting that will be open for a set number of days simply by publishing an agenda – permitting all participants to engage throughout that period at their convenience. The full agenda is online and circulated by email with a link to the meeting. With only a few clicks participants can enter the meeting, comment on all issues electronically, vote on all issues (in fact change their vote at any time during the meeting), review all documents, and hold side conversations to clarify issues – all from wherever they are in the world. No need to be in one place at one time; the entire council can be engaged, participate, vote and fulfill their obligations. Minutes issued are comprehensive, containing all talking points from the meeting, and are available to all owners.

Standard Bylaw 17(3) states “Owners may attend council meetings as observers”. A chair always has the option to hold a meeting in-person

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## Are you finding council meetings frustrating?

Continued from page 6

so that an observer can physically attend, however an on-line council meeting provides a full recording of the entire meeting dialogue, and can be made available to all owners. In addition, portions of the meeting can be “closed” to observers by the chair, as per Standard Bylaw 17(4) “Despite subsection (3), no observers may attend those portions of council meetings that deal with... bylaw contravention hearings; rental restriction bylaw exemption hearings; any other matters if the presence of observers would...interfere with an individual’s privacy.”

That is not to say that all Strata Council meetings should be held on-line. The *Strata Property Act* in BC

does permit electronic meetings for AGMs or SGMs. Section 49 (1) states: “A strata corporation may, by bylaw, provide for attendance at an annual or special general meeting by telephone or any other method, if the method permits all persons participating in the meeting to communicate with each other during the meeting” but considering proxy voting, an online system may not work for AGMs or SGMs. In addition, some special meetings and hearings are not appropriately conducted in an online meeting arrangement (e.g.: “in camera” meetings). The chair always determines the best format for any given meeting. But for standard monthly council meetings, an online meeting may be just perfect for Strata Corporations in BC.

No matter how your meetings are held, it is imperative that Strata Corporations be completely

transparent and accountable in their dealings – so having comprehensive minutes available to owners is important – distributed either electronically or in hard-copy (as determined by the individual council).

Strata councils might do well to look into online meetings as an efficient, productive and simple way to take care of the challenges that often plague traditional council meetings and ensure all your strata business is properly dealt with effectively. Lorros is one example of an online meeting service.

*Ken Tanner is a representative of Strataserve Web Hosting Limited and can be reached at 604-202-9123 or ken@lorros.com. This article is published for informational purposes only. VISOA does not endorse this or any other commercial product, and Councils who purchase it should ensure that any specific usage complies with the Strata Property Act.*

## INTRODUCING NEW BUSINESS MEMBERS

VISOA’s Laurie McKay chairs the Business Members Portfolio, and has been quite busy these past few months. Laurie is pleased to introduce the following eight new Business Members:

### Coast Realty Group (Comox Valley)

Rob Phillips is an Accredited Senior Agent with Coast Realty Group (Comox Valley), an Independent Real Estate Company since 1998 providing a full range of services from single family to ICI (Industrial, Commercial, Investment). Coast Realty also provides insurance, property management and mortgage services from Ladysmith to Campbell River. Rob can be reached at 1-800-715-3999.

**Downs Construction** is a full service restoration, repair, and renovation company servicing the Greater Victoria area since 1974. Along with fire and water damage restoration, they carry out small repairs and provide emergency service 24 hours per day, 7 days per week. Contact Denise at 250-384-1390 for more information.

**Davey Tree Service** provides total yard maintenance including pruning, fertilizing,

tree removals, and will provide the services of Certified Arborists for consultation. The company provides services on Vancouver Island from the Malahat to Campbell River. They can be reached at 1-800-667-8733.

### IDB Solutions

Rick Howard, Certified Reserve Fund Planner, is bringing his years of experience in Alberta in preparing IDB Solutions’ Functional Reserve Fund Study, a step-by-step report that incorporates clear explanations, comprehensive physical and financial analyses and valuable tools for effective reserve fund strategies to B.C. and Vancouver Island. Contact Rick at rick@idbsolutions.ca

**Read Jones Christoffersen** is a national engineering firm. RJC uses the Minimum Fund Balance approach to Reserve Fund Studies, to help condo associations plan projects and budgets over a 30-year horizon to ensure a stable reserve fund and prevent depletion of the fund. This ensures sufficient contributions to meet expenditures without over-contributing to an excessively high reserve. The local office of RJC can be reached at 250-386-7794

**RS Restoration Services Ltd.**, Disaster Kleenup locally owned and operated in Victoria since 1969, specializes in disaster repair services, mainly flood, fire and wind damage, and offers an emergency line available 24 hours per day, 7 days per week by an

I.I.C.R.C. (Institute of Inspection Cleaning and Restoration Certification), employee. RS Restoration Services with offices in Victoria and Duncan, can be contacted at 250 383-0030

### Unity Services Corporation

John Grubb, a long time member of VISOA, is returning to his business Unity Services Corporation on a full-time basis. With over 30 years in facilities maintenance and management, construction and renovation industries, John offers clients insight, understanding and knowledge to assist them in making educated choices about their strata’s maintenance and depreciation needs. John can be reached at 250-893-3445 for more information.

### Wm. S. Jackson and Associates Ltd.,

Dan Wilson, President/Owner, has been providing the Vancouver Island and Sunshine Coast Region with insurance appraisals and depreciation report services for over 30 years. Fully accredited through the Appraisal Institute of Canada, Real Estate Institute of BC, Royal Institute of Chartered Surveyors and the Real Estate Institute of Canada. Phone 250-338-7323 for more information.

*Laurie McKay may be reached at businessmembers@visoa.bc.ca*

# You Asked – Do family rentals trump age bylaws?

*Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. VISOA's Helpline Team will share Helpline questions that they think will be of general interest to readers. 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.*

*This question is answered by David Grubb.*

## Question

Our strata has an age 45+ Bylaw. I am not sure if I am reading the Act correctly or not – it seems to state that if there is a bylaw which prohibits rentals and an Age Restriction bylaw which is less than 55 years, the age bylaw does not apply when renting to a family member. We have a prospective purchaser with a 25 year-old family member residing with them. They are trying to take advantage of this loophole. Their lawyer is quite confident that there is nothing that we can do to stop them from purchasing and renting to that family member, because even though we have changed the age limit to 45+, the age of renters does not apply.

## Answer

You have identified SPA s. 142 (2) which states: “A bylaw referred to in section 141 (2) does not apply to prevent the rental of a strata lot to a member of the owner’s family.”

All this does is state that a rental

to a “family member” is not to be considered as a “rental” when considering the number of “regular” rentals which may be permitted under section 141 (2) (which for your strata is 0). There is no reference to age in either of these sections.

Next you cite the Table (see table below) excerpted from Guide 16 of the government publication “Instruction Guides – Strata Property Act.”

For the prospective purchasers, this is a nice try at an “end run” but they should have been counselled to examine the actual legislation and not rely on the Guide, which very clearly states that “Readers cannot rely on the guides for legal advice” and that the reader should “Please consult the Act and Regulations and court judgements to determine the complete and precise requirements of the legislation.”

Had they done so, they would have discovered that Guide 16 is out of date. (The Instruction Guides are being revised currently by the BC Government’s Housing Policy Branch, Office of Housing and Construction Standards, who are aware of this.)

Section 41(2) of the Human Rights Code (HRC) states:

41 (2) Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation.

SPA Section 123 (1.1) was an amendment introduced under the *Strata Property Amendment Act* of 2009, primarily because of the significant protest of strata owners that they could apply an age restriction bylaw to themselves but the HRC prevented them from applying it to tenants since

the latter were governed under the *Residential Tenancy Act* which took precedence over the SPA and would only allow the 55+ restriction.

123 (1.1) “Without limiting a strata corporation’s power to pass any other bylaws, a strata corporation may pass a bylaw that restricts the age of persons who may reside in a strata lot.”

Because of that SPA amendment, the *Residential Tenancy Act* is now subject to the SPA which therefore takes precedence as one of those Acts which “permits” a strata corporation to make “a distinction on the basis of age” as stipulated by the HRC s.41(2).

As you have already noted, a Rental Restriction bylaw cannot apply to “family rentals” (SPA s.142) or “hardship rentals” (SPA s.144).

Nevertheless, an Age Restriction bylaw now applies to all “occupants”, be they owners, adult children of owners, spouses, roommates, or either of those “renter” exceptions permitted by the SPA.

The prospective buyers cannot reinterpret either the Act or your bylaws to their own ends. Nor can the council grant an exemption to the bylaws or change them without a positive 3/4 vote of the owners at an AGM or SGM.

One final point, however, is that while there is an age restriction on who may live in a strata lot, there can be no restriction on who may own a strata lot. So, in your case, a person who is (say) 25 years old can own the unit but will be restricted to allowing only their “family member renters” who are 45+ to live there.

## OUT OF DATE Table: How Age Restriction Bylaws Affect Tenants and Owners in Buildings

Person	Age Restriction for an Age Less than 55 (for example, no one under the age of 19 or no one under the age of 45)	Age Restriction for Age 55 and Over
Owner	Age restriction applies	Age restriction applies
Tenant	Age restriction does not apply	Age restriction applies



# You Asked – Why redo depreciation reports?

Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. VISOA's Helpline Team will share Helpline questions that they think will be of general interest to readers. 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.

This question is answered by David Grubb.

## Question

I understand the initial Depreciation Report must be done before December, 2013. However, why must it be redone every three years? We follow a regular maintenance program and understand costs do increase but to have someone tell us we will need a new roof in so many years, when we have just paid for this information 3 years prior seems like another unnecessary expense imposed on us by the government for the benefit of some costly "qualified persons". At this point could the next report be put off (by the annual 3/4 vote) until such time as the owners feel it would be beneficial to have another one done?

## Answer

One can sympathize with your point of view, and it is commendable that you have a regular maintenance plan in place. Too many stratas don't and then get upset when the roof leaks badly or the foundations crack and crumble because of poor drainage!

Even so one should recognize that most "Qualified Persons" (we'll call them companies since most will be) don't want to do just an initial report and walk away. A reputable company will want to establish a relationship with the strata so that once the initial report is done, with the owners' co-operation, they will monitor your strata over each ensuing three year period. On the re-inspection date, there will

*Continued on page 10*

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## You Asked - Why redo depreciation reports?

Continued from page 9

be much less they will need to inspect in as great detail, physically, compared to the first time. Also they will already have all the “paperwork” details (bylaws, strata plans, etc.) which they took time to gather for the initial report. This cuts down on time spent in entering the data.

That means that although the first report might cost you \$7,000, the second report in three years will undoubtedly be less expensive because the company does not have to start from the beginning. Therefore the next report will simply be an update to ensure that, despite a solid maintenance program (as shown by accurate record keeping), critical areas are re-examined to see if something has changed more significantly than was anticipated (e.g. unnoticed damage because of winter storms which penetrated the building envelope in unusual spots).

More importantly, the company will be able to recalculate what the strata may have to pay for future repairs and replacements as a result of the rise in the cost of living as offset by interest rates. That gives the

owners a much better picture of their situation and may give them a different perspective on their options as to what may have become more important.

You might find that the roof replacement you were planning for might now be more expensive by the time you had intended to do the work because of oil prices rising dramatically. That will make the materials much more expensive (practically all roofing material is petroleum based), and might result in the owners deciding either to raise the contribution to the CRF or perhaps do the job sooner rather than later, depending on the current state of the roof.

To keep the Depreciation Report current is certainly not an “unnecessary expense” when you consider its significance to owners and potential buyers who want to ensure that their investment in a multi-million dollar corporation is maintained and even enhanced.

For owners (and their councils), there can be no hiding behind the attitude of “Don’t Ask – Don’t Tell”. Everyone will be well aware of the condition of the common property and what it is going to take to pay for major repairs and replacements. Whatever they might decide to do about them and how to pay for them is up to those owners, but they cannot claim ignorance.

In addition, it has been made abundantly clear in the last Bulletin and the seminars we have been holding, as well as in many newspaper articles, if you do

not have a current Depreciation Report, buyers, mortgage companies and insurance companies are very likely to be leery of your strata. An out-of-date Depreciation Report (which must be attached to Form B now) may make buyers hesitate in making a purchase offer since, without the information, they won’t know what special levies for so-called “emergencies” are lurking in the near future and banks may be reluctant to make mortgages available for the same reason. Also insurance companies could well increase the strata’s premiums and deductibles to cover such unknown risks.

In turn, that could affect the value of a strata lot and therefore the strata as a whole. If an owner has to sell his unit at below market value because potential purchasers avoid buying a “pig in a poke” without a considerable reduction to compensate for risk, everyone else’s unit could be similarly devalued.

Conversely, by keeping the Report and your maintenance program current, prospective purchasers will be willing to pay a better price - so the value of your strata will be kept up, and your insurance company could possibly keep your premiums and deductibles relatively low because there is less risk of systems being compromised.

Rather than perceiving a report every three years as an unnecessary expense, and electing to put off another report until it occurs to someone that it might be a good idea, owners should recognize it as an essential tool in maintaining the value of their investment in a multi-million dollar corporation.

### CORRECTION – February 2012

The author of one of our February 2012 articles, Shawn Smith, noticed he had made an error in his article. On page 5, middle column, the middle paragraph says:

Strata corporations with five or more strata lots may opt out of the requirements of s.94 of the SPA by way of a 3/4 vote at an annual or special general meeting. Such a vote must occur within 1 year (before or after) the date on which a report is required to be prepared.

**The underlined sentence should read:**

“Such a vote must occur within 1 year before the date on which a report is required to be prepared.” (instead of “before or after”).



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# User fees under the *Strata Property Act*

By Shawn M. Smith

The recent decision of the British Columbia Supreme Court in *The Owners, Strata Plan LMS3883 v. De Vuyst 2011 BCSC 1252* dealt with the often overlooked issue of user fees. The decision itself dealt primarily with whether or not the court should allow an appeal from the decision of an arbitrator that the move-in fees charged by the strata corporation were unreasonable. In the end the court declined to grant leave to appeal because no question of law existed. However, the decision gives some insight into an issue that has not been the subject of much, if any, jurisprudence.

Besides strata fees, strata corporations routinely charge owners additional sums for a number of different things; move-in/move-out fees, rental of common property parking stalls, use of the common room, laundry, extra fobs and keys. The authority to do so arises under s.110 of the *Strata Property Act* (the “SPA”) which provides as follows:

A strata corporation must not impose user fees for the use of common property or common assets by owners, tenants or occupants, or their visitors, other than as set out in the regulations.

Regulation 6.9 of the SPA sets the conditions under which such fees can be charged. It provides as follows:

“For the purposes of section 110 of the Act, a strata corporation may impose user fees for the use of common property or common assets only if all of the following requirements are met:

- (a) the amount of the fee is reasonable;
- (b) the fee is set out
  - (i) in a bylaw, or
  - (ii) in a rule and the rule has been ratified under section 125 (6) of the Act.”

It is interesting to note that before the fee can be charged it must be approved by the owners either through passing a bylaw or ratifying a rule. It appears that the strata council cannot simply set the fee by passing a rule.

In *De Vuyst* the strata corporation

charged a non-refundable fee (ostensibly to defray the costs of installing the elevator pads and inspecting the common areas for damage) each time some one moved in or moved out of a strata lot. The arbitrator considered that the question of whether a fee was reasonable had to be assessed objectively. It had also to take into account prevailing market conditions (i.e. what other buildings charge) and the actual costs incurred by the strata corporation in providing the services to which the fees relate. In the end the arbitrator held that a \$200 move-in fee was unreasonable.

What can be taken from this case is the fact that user fees cannot be viewed as a means of adding extra money to the strata corporation’s coffers. While that may happen, come the end of the day, there must be some sort of correlation between the amount charged and the costs to the strata corporation. If not, the fees will not be reasonable. (One exception to this might be the rental of parking spaces. The market value of a parking space – particularly in a city’s down town core – may tend to permit a higher charge than is relative to the cost of providing the space).

It is also important to remember that all fees (even those for use of the common room) must be set out in the Rules. Failing that, they cannot be collected.

Strata corporations must also keep in mind that charging excessively high user fees could make them subject to taxation under the Income Tax Act. Strata corporations are exempt from tax on the basis that they are organized for a purpose other than making a profit, that they are operated on that same basis

and that their members do not receive a personal benefit in terms of receiving any part of the income earned. In an Interpretation Bulletin issued in 2009 the Canada Revenue Agency made the following statement:

“In order to meet the requirement of operating exclusively for any other purpose except profit, a condominium corporation can only offer services for which the fees charged are approximately equal to the amount the condominium corporation expects to incur to provide such services. A condominium corporation cannot intentionally charge fees in excess of costs; to do so is operating with a profit purpose.”

This further enforces the need to correlate user fees to the actual cost of providing the service and not view them as a revenue source.

The moral of the story is that user fees should not be a figure randomly plucked from the air. Thought and analysis must be given to the amount being charged.

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



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# Electronic Filing of SPA Plans and Documents Now Required

By David Grubb and Deryk Norton

The Director of Land Titles (the “Director”) of the Land Title and Survey Authority (the “LTSA”) has announced the requirement for certain documents and plans to be submitted electronically to the land title office in phases. Effective May 7, 2012, if your strata corporation has more than 7 strata lots, you will no longer be able to manually file documents such as strata bylaw changes or LCP designations in the land title office but will have to submit your documents electronically (with limited exceptions).

This new E-filing requirement is part of a major shift toward electronic filing that started over a year ago and will apply to most land title documents in the future. To file electronically, the current SPA forms will still be used and completed in paper form. The original signed form and any supporting documents must be scanned and attached to an electronic filing form, then signed and filed electronically by a “subscriber”.

The only persons eligible to apply to be “subscribers” are Lawyers, Notaries, and Land Surveyors. A lawyer or notary is an

approved subscriber for most electronic forms and applications. A land surveyor is authorized to be the subscriber to certain electronic forms and applications that relate to the filing of a plan.

What are the implications for strata owners? With only Lawyers and Notaries being given the “electronic signature” to use for filing documents, any strata corporation (over 7 units) accustomed to filing its documents directly with Land Titles will no longer be able to do so and must pay a lawyer or notary to do it, in addition to the regular filing fee. This will drive up such transaction costs.

When VISOA learned of this new requirement, we spoke at length to a representative of the local LTSA office to understand the rationale for this enforced cost increase. Their logic is, since many stratas do not have ready access to a local LTSA office, they were already used to having a lawyer or notary file documents on their behalf so there wasn’t going to be much of a change. (There are LTSA offices only in New Westminster, Kamloops, and Victoria). The fact

that 50% of the residential accommodation in both Greater Victoria and Greater Vancouver consists of stratas many of whom might prefer to do their own document registration, and save paying someone else additionally for the service, did not seem to hold any importance.

The new requirements for electronic filing are part of the major overhaul of the LTSA and every business and “corporation” will have to file electronically in the near future. We were told that such businesses and corporations would simply treat this as the “cost of doing business” which they would recover in their billing of their customers. We pointed out that a strata corporation was not such a “business” which was selling a product or service to others: that the owners are both the

corporation and the customer, and that they cannot pass costs “downstream” to anyone else to recoup the “cost of doing business”.

On the surface, many “stakeholders” were consulted in implementing this new policy – however on reviewing the list of those consulted, which appears on the LTSA website, the majority are in the legal profession, the banking industry, and the government. It appears that no one consulted the “end users” – strata owners – about this significant policy change. Certainly VISOA was not consulted, and as their name does not appear on the list of consultants, nor apparently was CHOA.

We do not have factual information to confirm what a lawyer or notary might charge for electronic filing of a strata’s documents. Preliminary inquiries suggest that for a current LTSA filing fee of approximately \$25 a lawyer or notary might be charging an extra \$25. Whatever it might be, it will have to be included in your strata’s budget item relating to legal expenses.

## A LAST REMINDER

While speaking to LTSA staff, we were reminded that the LTSA does not require a lawyer or notary to review a strata’s documents to ensure that they are enforceable and do not contravene the SPA (and any other Act which might be involved). Such consultation would be an entirely different matter between the strata and the lawyer or notary.

They seem to assume that a strata would automatically be dealing with a lawyer on any matter which requires filing at the LTSA and that the actual filing was merely a matter to be included in the entire service of the lawyer or notary.

As far as the LTSA seems to be concerned, a lawyer or notary is only required to ensure that the appropriate covering LTSA/SPA Form is completed properly prior to filing since the Electronic file becomes the “official” document of the strata corporation at the LTSA. The LTSA seldom checks documents such as bylaws, although they do review other “larger” documents such as all the technical details of an actual strata plan, etc. We know from calls to our helpline that some stratas assume that, just because a bylaw change is “filed”, it is legal and enforceable. This is not the case.

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# Banking and investing for strata corporations

By C.A. Prentice, Ph.D., Associate Professor, Emeritus, University of Calgary

The *Strata Property Act* (SPA) says very little with respect to control of the financial assets (cash and investments) other than:

1 The Contingency Reserve Fund and the Special Levy Fund can be invested or held in

a) Insured accounts with savings institutions in British Columbia

b) Those investments permitted by Strata Property Regulation 6.11

2 The Contingency Reserve Fund and the Special Levy Fund must

a) Be accounted for separately from other monies held by the Strata Corporation and from each other.

b) Include any interest or income earned on the Contingency Reserve Fund or the Special Levy Fund

And it makes no statement as to how the cash and investments for the Operating Fund should be handled.

The SPA identifies specific duties of strata council including, among

others, the following with respect to the finances of the strata:

- Paying strata corporation bills;
- Directing investments and expenditures;
- Collecting strata fees and other money owed to the strata corporation

The SPA also identifies the role of the strata council is to:

- Act as the managing body for the strata corporation;
- Make daily decisions that enable the strata corporation to operate smoothly.

It also states that the strata council can hire a strata manager to perform some of the functions of strata council. However, the strata council is still ultimately responsible for ensuring that its obligations under the Act are fulfilled.

While the SPA gives general indications as to how a strata council should handle its finances, it is not specific and leaves it up to the individual strata council as to how it should carry

out its duties, within the requirements of the SPA.

The purpose of this paper is to provide more specific direction and suggestions as to managing the financial funds the strata council is responsible for.

## RESPONSIBILITY FOR FINANCIAL ASSETS

The strata council bears the responsibility for all strata assets and, therefore, they should be maintained in the strata's name and control. When financial assets are maintained by a Strata Property Manager in trust for the strata, they are not under the control of the strata council. The Strata Property Manager is governed by the regulations of the Real Estate Council and can often make transfers and/or payments from the trust fund(s) without the prior approval of the strata council and/or without the

*Continued on page 14*

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## Banking and investing for strata corporations

Continued from page 13

cheques or transfers being approved by strata council members' signatures on the appropriate documents, e.g. cheques or transfer forms.

In my opinion this is not adequate control. Only if the bank accounts or investment certificates are in the name of the strata corporation, such that they cannot be moved or paid out without the approval of the strata council and the signature of at least two of the strata council members, does the strata and the strata council have adequate control of their financial resources.

### OPERATING FUNDS

Operating Funds are those monies received monthly to cover the operating expenses of the strata. Most of the funds will be spent within the month received or within a few weeks or months of being received. These monies should be maintained in a chequing account in an approved institution in British Columbia.

In general, the need for these funds is such that they are not held for a sufficient time period to justify placing them in any type of approved investment certificates. If the strata employs a Strata Property Manager, the Manager can be designated the duty of making deposits to the account and writing cheques on the account. BUT, it should be the

responsibility of the strata council to

- approve all payments and transfers from the account, and
- have, as a minimum, two council members responsible for signing all cheques and transfers.

In addition, the council should ensure, by reference to the bank statement, that all deposits have been made. A bank reconciliation statement showing the end of period bank balance and the outstanding cheques should then compare, exactly, to the balance sheet bank balance.

### CONTINGENCY RESERVE FUNDS (CRF) AND SPECIAL LEVY FUNDS (SLF)

Contingency Reserve Funds and Special Levy Funds must be held in separate accounts from the Operating Funds. These accounts may be chequing accounts, savings accounts, or investment certificates such as term deposits or certificates of deposit. In general chequing accounts will incur bank charges while savings accounts and investment certificates will all earn interest.

I would recommend against holding any CRF or SLF in a chequing account. I would also recommend against holding a significant amount of funds in savings accounts. The amount to be held in the savings accounts should be no more than that which would be required to be expended in the next three months. Any funds that will not be required for at least

three months should be invested in term deposits or certificate of deposits.

The term of the investment certificates should be determined by

- the likely need of the funds in the period to be invested,
- the interest rate available, which will relate to the term of the investment certificate, and
- the ability and cost to cash the certificates early if the funds are required earlier than anticipated.

It is sometimes suggested that a separate chequing account should be used when making payments from the CRF or the SLF. This requires the opening of a chequing account and additional bank charges. This does make a clear separation of expenditures of these funds from the operating funds. However, I would suggest an easier way to handle them is to transfer any funds needed to be paid out in the following month(s) to the operating chequing account and then issue cheques on this account to cover the expenditures.

Reporting of these expenditures can easily be handled in the monthly statement of receipts and disbursements and the balance sheet statement, clearly identifying the costs and assets of the three funds and providing better information to council and the strata owners with respect to the total expenses of a strata in the reporting period. How to handle this reporting will be discussed in a future article.

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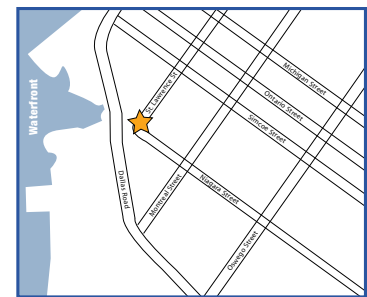
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