



Vancouver Island Strata Owners Association

- 306 - 620 View Street, Victoria, B.C. V8W 1J6
- General Office Email: information@visoa.bc.ca
- Office Telephone: (250) 920-0688 or 1-855-38VISOA (1-855-388-4762)
- Helpline: 250-920-0222 or 1-877-33VISOA (1-877-338-4762)
- Web site: www.visoa.bc.ca

VISOA Bulletin - MAY 2014

Strata Property Act Amendments Bill - April 9, 2014

Bill 12 (the Natural Gas Development Statutes Amendment Act) has now received Royal Assent as of April 9th. The amendments to SPA (in sections 39-44 of the bill) take effect as of that date.

In general, the amendments make it easier for strata councils to carry out their responsibilities by removing regulatory barriers for strata corporations and owners, clarifying requirements and refining problematic definitions. A key focus is supporting strata corporations in maintaining their buildings and other assets.

One amendment clarifies that paying for, and accruing funds to pay for, a depreciation report is a legitimate operating fund expense, and can be approved by a majority vote. Another amendment makes it easier for strata corporations to pay for repairs recommended by their depreciation report by reducing the required approval for contingency reserve fund expenditures for such repairs from three-quarters to majority vote. Expenditures from the contingency reserve fund that are unrelated to the repair and maintenance of the common

assets—e.g., the addition of a covered walkway or swimming pool—would still require a three-quarter vote. Other minor changes help clarify the definition of purchaser and that storage locker allocations are required records.

It typically takes several days if not weeks for Queens Printer to update the online version of the SPA at www.bclaws.ca.

The complete text of Bill 12 can be found at http://www.leg.bc.ca/40th2nd/3rd_read/gov12-3.htm and on VISOA's Homepage.

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The Who-How-When-Where of Hiring a Strata Manager

By Rob Boyko, RCM



By Rob Boyko

In the November, 2013, VISOA Bulletin, we examined the topic of whether or not your strata needs or wants a strata agent or strata manager.

This is the second part of that article: the Who, How, When, and Where of hiring a strata agent, often referred to as a “property manager” or a “strata manager”.

WHO:

The strata council has the authority to hire vendors to look after the strata’s needs as they relate to the common property and common assets of the strata. This includes the right to hire a strata agent - whom I will refer to as a “strata manager” for consistency of terminology.

In the vast majority of cases, the strata manager is a person who holds a strata management license, and is employed by a licensed real estate services brokerage. In both cases the licenses are issued by the Real Estate Council of BC (RECBC), under the authority granted to it by the Real Estate Services Act (RESA).

Please note - although a strata corporation is governed by the Strata Property Act, its Regulations, and the strata’s own bylaws, a strata manager is actually “governed” by the brokerage to which he or she is employed. The strata manager and the brokerage are governed, in the sense of compliance with the RESA, by the RECBC.

That is to say that the RECBC looks only to the RESA, its related

Regulations, and the Real Estate Council’s own Rules when it comes to determining if a strata manager, or a strata management brokerage, has acted in compliance with the laws governing the licenses. The RECBC is not required to consider whether a strata manager has acted in compliance with the Strata Property Act.

There are exemptions under the RESA where a strata manager does not have to hold a license, nor does the manager have to be employed by a brokerage licensed by the Real Estate Council, however for the purposes of this article, we will be discussing the hiring of a licensed strata manager by way of hiring a licensed strata management brokerage.

SO BACK TO WHO.

The strata council does not hire a licensed strata manager to look after affairs as directed by the strata council. Rather, the strata council hires a Brokerage that is licensed by the RECBC to provide strata management services.

The Brokerage then, in turn, hires a person who holds a strata management license, to act as the Brokerage’s Agent for the strata corporation.

The strata hires the brokerage, the brokerage hires the agent. All clear? Good!

WHO IS OUR STRATA MANAGER?

The strata manager will be your main point of contact. He or she will attend your council meetings and perform other duties as directed by the strata council. But like strata corporations and

strata councils, strata managers come with a variety of different attributes. Therefore, as well as interviewing the actual person the brokerage intends to assign to help manage the strata, it is important that the strata council interview the Managing Broker – or at least the supervisor of the proposed strata manager – to determine if the brokerage itself seems like a good fit for your strata. Having a good relationship with the brokerage will help the strata council navigate any issues that may come up along the way with the performance of the strata manager. Councils change over the years. Sometimes a new council would prefer to work with a different strata manager. If the relationship between the council and the brokerage is strong, the brokerage should be able to transition the strata to another strata manager who is also employed by that brokerage.

There are aspects of managing a strata that the strata manager will not be involved in directly. For example, usually the day to day accounting of the strata’s trust accounts is done by “the accounting department” of the brokerage, rather than by the strata manager. Thus, the strata council needs the assurance of the managing broker and the strata manager that the brokerage is complying with the RESA and the RECBC Rules respecting the strata’s accounts as well as the requirements of the Strata Property Act regarding owners’ rights of access to some of the information contained in the accounts.

Continued on page 3

By interviewing the managing broker, the strata council will have the opportunity to understand the brokerage's philosophy, policies, and procedures that are in place to help the strata council and the strata manager take good care of the strata's common property and common assets (for which read: "the strata's money").

HOW IS A STRATA MANAGER HIRED?

The strata council, or sometimes a committee of owners including some strata council members, will investigate strata management companies that service stratas in your area.

Once two or three brokerages are identified, and interviews are conducted, the strata council will choose the brokerage and strata manager who best suit the strata council's view on what their strata needs.

The strata council may take one of two courses of action. They can ask the preferred brokerage for a draft "Agency Agreement"

– a draft of the contract between the strata and the brokerage that defines the terms and conditions of the work the brokerage and strata manager will do for the strata in exchange for money. Otherwise, the strata council will in some cases use their own lawyer to generate a contract that the broker can consider signing. (It is prudent, in any case, for the strata's lawyer to review any contract before council signs it.)

This contract is the "bible" that describes both the relationship between the broker, the strata manager, and the strata council, as well as describing the do's, don't's, will's, and won't's: In other words, the Agency Agreement or contract between the strata and the brokerage describes the expectations a strata council should have of its strata manager and the strata management brokerage as well as the compensation which the brokerage expects for performing each and all of these duties.

These expectations include things like: When and how are strata fees collected? When are vendors paid? Who approves invoices on behalf of the strata council? Where are the

strata's records kept? How many meetings does the strata manager attend? Who builds the agenda for a council meeting? Who writes the minutes of a council meeting or general meeting? When and how are the minutes distributed? What extra services may be provided in addition to the "basic package" (e.g. photocopying and mailing documents, attendance at legal hearings, maintenance services, supervision of owners inspecting strata documents, etc.) and what fees will be paid to the brokerage for those services? How can the contract be terminated by either party?

The list of expectations is long, and should be very specific. It is much easier to manage your strata manager with a clear contract.

Once a contract is entered into between the strata council and a brokerage, and the brokerage has appointed a licensed strata manager to look after your strata under the terms of the contract, we move onto When.

WHEN:

When is the strata manager on

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site? When are minutes sent out? When are financial statements sent to the Treasurer for review? When are vendors paid? When is our next council meeting? When is our AGM? When will we prepare a draft budget? When will our strata fees come out of our accounts? When will a bylaw enforcement letter be sent? When will our strata manager call us back? When will our strata manager return an email?

I could go on, but I think you get the picture. There are a lot of “whens” in strata land. The answers are all (or should be all) specified in the contract between the strata and the brokerage.

WHERE:

In this case, the strata council has hired a brokerage and the brokerage has designated a licensed employee to be the strata’s primary contact

(Who). The strata council has entered into a contract that defines the work to be performed by the strata manager (How). The strata council has clarified when things are supposed to happen (“When”). All that’s left is “Where”.

“Where” usually refers to the strata’s records, access to those records, and sometimes refers to where on the property the strata manager will be, under the terms of the contract.

The strata council should be certain it understands the terms of the contract with the brokerage insofar as where records are stored, how much it may cost to access those records (including archived records), and where an owner must go to examine the strata’s records.

The strata council should also clarify, by way of the contract with the brokerage, where the strata’s official mailing address is. This address is registered with the Land

Titles Office (Form X. Change of Address is Form D). It is critical that the strata council confirm the strata’s mailing address and direct the strata manager to ensure the correct mailing address is on file with Land Titles. As the “legal” address of the strata, this is where court documents are served, and where other important information is sent to the strata council’s attention. The wrong address means that the strata council may not be aware of a pending lawsuit or other important matter facing the strata corporation.

GREAT!

Now that you know who your strata manager will be, how the work is organized, when the work will be performed, and where the work will be performed, you are (hopefully) all set to have a

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productive relationship with your strata manager. A relationship that helps the strata council stay on side with the rules and regulations governing the strata, and one that helps the strata council take care of the common property and common assets of the strata.

— Rob Boyko, RCM

Rob Boyko was Director, Property Management, Southern BC, for Gateway Property Management Corporation until January, 2014, where he supervised 21 licensed property managers located throughout southern BC, including Gateway's Victoria office serving Vancouver Island. Prior to Gateway Rob was Vice President and General Manager, ColyVan Urban Properties, Ltd. He currently consults to strata brokerages, vendors who service strata corporations, and industry associations.

Rob makes his home near White Rock, BC and can be reached via email at: rob.boyko@fidu.ca.

MARK YOUR CALENDARS Seminar for Bare Land Strata Owners



In 2012 VISOA organized our first-ever seminar specifically for owners in bare land strata corporations. The seminar was held in Duncan, the topic of the day was Depreciation Reports, and the seminar was a sellout.

We are currently planning a 2014 seminar for bare land strata owners. It will be held **Saturday, October 4th, at the Juan de Fuca Rec Centre in Langford**, with guest speaker Lawyer Justin Hanson. Topic and program are still being finalized as of this writing, but if you are a bare land strata owner, mark your calendar so you don't miss it. Seating will be limited, and registration will open in Mid-September. Watch our website for updates.

A Big Thank You to all VISOA's volunteers:



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Stratas by the Numbers

By Deryk Norton, Board Member




VISOA recently received the latest numbers for strata properties in BC. This is the third time these numbers have been extracted for us from the BC Assessment database. The following table summarizes the number of strata units for each region and each year end.

	2007	2010	2013
Vancouver Island	67,175	76,165	80,886
Lower Mainland	303,404	348,783	382,795
Rest of BC	88,245	102,235	107,167
TOTAL	458,824	527,183	570,848

The data show that, in the last 3 years, strong growth in the number of strata units has continued but at a slower rate than the previous 3 years. Strata properties in 2013 were 29.1% of all taxable properties in BC, up from 27.7% in 2010. For 2013, by region and of all taxable properties, strata properties were 22.7% in Vancouver Island, 43.0% in the Lower Mainland and 15.0% in the rest of BC.

Also, strata properties represent 80% of the increase in the number of all properties since 2007. Furthermore, in the lower mainland strata properties represent 92.8% of all properties added between 2010 and 2013.


Further details of strata numbers (e.g. by individual municipality) are available from VISOA upon request.



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Civil Resolution Tribunal - Update on Implementation

By Cheryl Vickers



The Ministry of Justice continues to work on implementation of the Civil Resolution Tribunal. Given the size of the project, the anticipated launch date has been extended to Spring 2015.

Work has commenced and is ongoing to develop the front-end “Solution Explorer” that will provide information and options for informed self-resolution of disputes. A clickable prototype has been developed for limited user testing and feedback. The implementation will seek feedback from potential users and engage in more extensive user testing as this work continues.

Design work for the CRT dispute resolution platform is ongoing, and detailed analysis, validation and planning has begun. This platform will be a first of its kind integrating user interface, online negotiation, facilitation and adjudication, and tribunal case management. It will be fully designed for mobile access and allow for a blend of communication methods from online chat and email to fax and mail.

Citizen consultation is ongoing to provide the implementation team with input from potential tribunal users and potential lay helpers of users on a variety of topics including: dispute resolution approaches, technology, the CRT concept, and proposed processes.

Citizen and stakeholder groups will be included in user testing.

While implementation of the tribunal may be slower than many would like, it is progressing. This is a very ambitious and innovative project requiring the creation of new legislation, rules, policies, processes, technologies and other infrastructures to create a first-of-its-kind tribunal. I am confident that work is heading in the right direction towards what will be an accessible, affordable, fair and effective forum for the resolution of strata disputes.

*Cheryl Vickers, Acting Chair
Civil Resolution Tribunal
April 11, 2014*

STRATA ALPHABET SOUP

BCREA – British Columbia Real Estate Association

CMHC – Canada Mortgage and Housing Corporation

CRF – Contingency Reserve Fund

CRT – Civil Resolution Tribunal

FAQ – Frequently Asked Question

FICOM – Financial Institutions Commission

HPO – Homeowner Protection Office

HRT – Human Rights Tribunal

LCP – Limited Common Property

LTSA – Land Title Survey Authority

OF – Operating Fund

OIPC – Office of the Information and Privacy Commissioner

PIPA – Personal Information Protection Act

RECBC – Real Estate Council of British Columbia

REDMA – Real Estate Development Marketing Act

RESA – Real Estate Services Act

SPA – Strata Property Act

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You Asked

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.



Answered by
David Grubb

Three Questions Related to Granting Exceptions or Exemptions to Bylaws

Q. We allow pets, but by-laws require the owner to carry the pet while inside building. We now have people wanting exceptions if they have an injury or medical problems to be allowed to let pets walk through the halls. Can council be directed to make exceptions?

Q. Our strata has a bylaw which states: Owners, tenants and occupants must not conduct any business or commercial activity from their strata lot. I can understand that the strata doesn't want all sorts of people coming back and forth on the property to do business with a resident since it involves vehicle traffic, parking in visitors spaces, noise, security, etc., but I do my business strictly by telephone, email and mail, and clients do not regularly visit me. So who would notice? However, I don't want to contravene a bylaw in an underhanded way, so why can't council make an exception?

Q. Our strata bylaw states that No owner of a strata lot located above the first floor of the building may remove existing carpeting unless it is replaced with carpeting and underlay of the same or better

quality and thickness, with the exception of the following specified areas: the floor or floor covering of the kitchen, the entrance hall and any bathroom. This bylaw is to ensure maximum reduction of noise transfer to the units below.

An owner on the second floor has asked if she could install hardwood flooring on all her hall floors (not just the entrance) and tiles under the laundry machines because these areas are not above a suite but above the car port.

I have been advised that "owners can grant an exemption to the bylaw, if they wish, at an annual or special general meeting." Can we grant an exemption to one suite in the building? How would this be done?

ANSWER

On the surface, these three questions regarding allowing for an exception or exemption each have a theme that "common sense" or "logic" should prevail provided that "conditions" could be applied in each case. We don't want to cause hardship to a resident with valid medical problems; we don't want to prevent the owner from quietly going about his business if it doesn't interfere with anyone else; and we can't see why the flooring bylaw should apply where there seems to be no one below who could be affected.

However, the Strata Property Act, for all its imperfections, was written to cover a broad base of potential problems. Hence, SPA s.26 states

clearly that the Council must enforce the bylaws:

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

Furthermore, although the owners may give direction to the Council on many matters, SPA s.27 prevents them from doing so under certain circumstances which include:

27 (1) 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.

(2) The strata corporation may not direct or restrict the council under subsection (1) if the direction or restriction,

(a) is contrary to this Act, the regulations or the bylaws,

Those two restrictive Sections are there for a purpose. If either the council – or the owners in giving direction to the council – could arbitrarily override the bylaws by making exceptions or exemptions, there would be no purpose to having the bylaws in the first place.

Many "exceptions" could be argued on some form of "logical" need or reason (temporary or otherwise). But who is to decide arbitrarily on the validity of the "logic" when others could have an equally logical reason to deny the

Continued on page 11

exception? Is it appropriate to assign that decision to the incumbent council when a different council might see it in another way?

Of special concern is that there could be the ever-present temptation for councils to arbitrarily make an exception for one person but deny it to another.

This happens more often than we would like to think, whether for good or bad reasons. It can lead only to chaos, which risks the possibility of turmoil and acrimony throughout the community.

All this points to the sage admonition of Gerry Fanaken, a noted strata property manager: "Follow the law and you won't go far wrong".

If the owners wish to allow for exceptions and exemptions they must incorporate them into the strata's bylaws if permitted (or at least not prohibited) by the Act or Regulation. That means considering very carefully under what circumstances those exceptions may be granted and the procedures under which they may be given, either by the council itself or by the owners at a general meeting.

As always, we strongly recommend consulting a lawyer who is well versed in strata property law to ensure that the wording accurately delineates the intent of the bylaw and that it is enforceable.

Once the bylaw has been registered in the Land Title Office so that it is in effect, everyone must be aware of the conditions imposed on all residents; they should expect the council to apply and enforce the bylaw; and, unless and until it is once again changed by a new amendment, they should not expect the council or the owners to be able to grant any exception or exemption which is not covered by it.

YOU ASKED - ABOUT THE NEW "FORM B"

Answered by Gloria Martins

QUESTION:

It is not clear in my mind what is covered in the \$35.00 Form B fee; there are four required attachments including the Depreciation Report. Do we charge extra for the reproduction, up to 25 cents per page, of the four required attachments? Our Depreciation Report has 143 pages, and a Summary of the Report has 16 pages. What can be charged if any or all of the attachments are in the form of USB stick or CD? Is the full Depreciation Report required or would the Summary Report be acceptable? Thank you

ANSWER:

The Form B Information Certificate that is new as of 01 January 2014 has extensive requirements, so I understand your concern. I hope that all strata corporations are aware of the recent changes. If you have not done so already, you can access a copy of the most recent Form B on VISOA's website.

Regulation 4.4 (my underlining) sets out the maximum fee that you mention in your email.

Maximum fee for Information Certificate

4.4 The maximum fee that the strata corporation may charge for an Information Certificate, including required attachments referred to in section 59 of the Act, is \$35 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page.

Although the Strata Property Act does not specifically mention the cost of digital copies, I think it can be inferred that you can reasonably charge a nominal fee for a CD or a USB stick, in addition to the \$35 fee for you or somebody else to fill out the form and make the copies, up to 25 cents per page.

Remember, though: always get paid in advance for a Form B and the extra documents, in case the purchaser of it balks at the price after you have done all the work.

Give an estimate of the total price (e.g. the \$35 plus 25 cents per page), but in the case of a CD or USB stick or other electronic copy, you might offer price options. For example, 128 pages plus the \$35 would be \$67 OR a flat fee of "X" for a CD or USB stick or a flat fee of "Y" for an emailed copy.

X might be \$50 and Y might be \$40. The purchaser of the Form B then has the option of which version to purchase, so long as it is not more than the maximum set out by the SPA.

Finally, the SPA does not contemplate "rush fees" – it states "within one week". But if the requestor wants it sooner, it is entirely reasonable to charge a rush fee. Although some Vancouver stratas are charging up to \$150 for rush fees on top of the regular fees, that might be considered excessive! An extra \$35 would be more reasonable, in the opinion of VISOA's Helpline Team.

Your other question concerns the depreciation report. Section 59(3) states: *(3) The certificate must disclose all of the following in respect of the strata corporation and the strata lot for which the request is made.* This means that you should clearly indicate on the form exactly what it is that you are providing. For example, you could attach the summary with the caveat that the complete report itself is available on request and for an additional cost. You should also attach the financial summary and disclosure section, clearly indicating that you have done so. If you have developed your

Continued on page 12

own Major Asset Management Plan based on the depreciation report, you might consider attaching that as well to show what action the strata is actually planning over the next few years.

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YOU ASKED - HIRING A STRATA MANAGER

Answered by Gloria Martins

QUESTION:

Can a strata council hire a strata property manager with no notice to owners, no discussion, or input from owners?

ANSWER:

Yes, the strata council can enter into a strata management contract on behalf of the strata corporation. However, before agreeing to the strata management fee the strata council must ensure that the fee is approved as follows:

- ✓ in the annual operating budget,
- ✓ by special levy, or
- ✓ as a contingency reserve fund

expenditure until such time as this fee may be budgeted for in the annual operating budget.

Therefore, to answer your question, it is council's responsibility to enter into a contract with a strata management company; however, the management fee must first be approved by the owners.

The other caveat is that a strata management contract should be previewed by a lawyer; therefore, legal fees must also be pre-approved by the strata corporation as part of the process prior to signing a contract.

For more information on entering into a management contract, see the article written by Rob Boyko in this issue.

VISOA is pleased to welcome these new Business Members. See our website for more details on all our Business Members.

BRIDGE STRATA PLANNING LTD. offers a cost effective web-based software program to successfully organize and manage depreciation reports, financial forecasting and much more for strata corporations. With this software working for you, owners, council members, and managers can efficiently administer the ongoing day-to-day operations for a property, and accurately plan for future expenses. For more information, visit www.bridgestrataplanning.com.

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These businesses have chosen to support our member strata corporations and owners by joining VISOA's growing group of business members. We encourage all our members to return the support we receive from the business group by including these businesses in their considerations for provision of maintenance and services for their corporations.

New Regulation 6.11 for Investment of Money in the Contingency Reserve Fund

Cleveland S. Patterson, MBA, PhD

1. Introduction

Your strata has a substantial amount of money in your CRF. You want a return on the fund at least high enough to offset inflation, but you also want to invest prudently. Does the SPA provide any guidelines? Yes, and they're brand new.

The investment of these funds is governed by Section 95(2) of the SPA, which states that "the strata corporation must invest all of the money in the contingency reserve fund in one or other or a combination of the following: (a) those investments permitted by the regulations; (b) insured accounts with savings institutions in British Columbia." The regulations referred to are contained in Strata Property Regulation 6.11.

The provisions of Regulation 6.11, as written in the 2003 Act, were very complicated and difficult to interpret, even by professionals. They also permitted a very wide range of securities, including preferred shares

and common shares, which are potentially very risky and which require considerable expertise to assess. Last year, VISOA approached the BC Minister Responsible for Housing with a detailed Discussion Paper proposing a set of amendments to Regulation 6.11 which would be simple for strata treasurers and strata managers to understand and to implement, and would limit the risks which might adversely affect their investment portfolios. After broad consultation, these proposals were proclaimed but, because of legislative requirements requiring a 90 day delay after they are deposited, will not become effective until July.

2. The New Regulation 6.11

In summary, the new Regulation 6.11 permits investments in the following securities, subject to specific constraints which are discussed in detail below:

1) Chequing and savings accounts in

banks and credit unions;

2) Term deposits or Guaranteed Investment Certificates (GICs);

3) Government of Canada treasury bills;

4) Bonds, or similar securities, issued by the government of Canada, or a province, or a corporation incorporated under the laws of Canada or a province;

5) Fixed income exchange-traded funds (ETFs) containing only bonds, or similar securities.

The specific provisions are that, in addition to insured accounts with savings institutions in British Columbia, "...a strata corporation may invest money held in the contingency reserve fund, or money collected on a special levy, in one or more of the following investments" for the purposes of section 95 (2) or 108 (4) (b), as the case may be, of the Act:

1) A savings account or chequing account with a financial institution

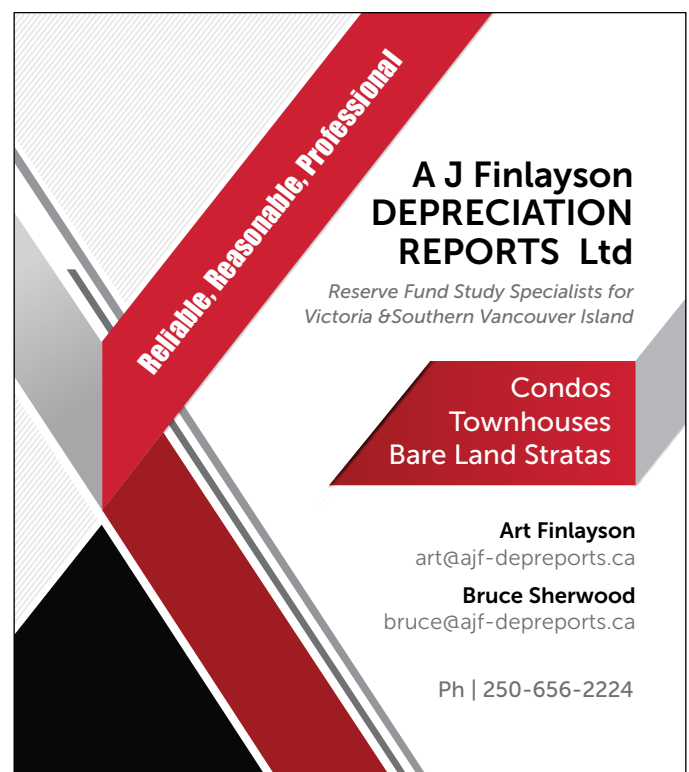
Continued on page 14



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outside of British Columbia insured by the Canada Deposit Insurance Corporation.

The Canada Deposit Insurance Corporation (CDIC) insures “deposits in savings accounts and chequing accounts held in Canadian dollars at a CDIC to a limit of \$100,000.” To find out if a financial institution is a member, and to find out more about what is covered and how the upper limit is calculated, see www.cdic.ca.

Interest rates, fees for transactions, and service vary greatly among different financial institutions, and it pays to shop around, and to negotiate. Some institutions offer special packages designed for the needs of stratas; check the Business Directory, under Financial, on www.visoa.bc.ca for further information.

2) A term deposit or guaranteed investment certificate (GIC), if the deposit or certificate is insured by CDIC or by the Credit Union Deposit Insurance Corporation

of British Columbia (CUDIC), and has a predetermined rate or predetermined rates of interest.

Non-redeemable compound term deposits and GICs pay out a cash amount at maturity which is equal to the principal amount plus compound interest. For example, a 5-year 2% GIC purchased for \$10,000 will pay \$11,041.81 at the end of the fifth year. However, it cannot be redeemed prior to maturity. Some GICs are redeemable prior to maturity, but only with a substantial interest penalty. Other GIC products, such as “step-ups” and “laddered” packages are also available and permitted by the Regulations provided that they are insured. CDIC insures GICs up to 5 years maturity, subject to the overall \$100,000 limit. CUDIC guarantees all deposits and GICs of British Columbia credit unions, without any limit on amount or maturity. For more information, see www.cudicbc.ca

The reference to predetermined rate(s) prohibits investment in “derivative” GIC products issued by many banks that have uncertain payouts linked to the future

performance of a stock index or to a variable interest rate benchmark. However, it does not preclude investment in “step-up” GICs which have rates that change over time in a predetermined manner, or redeemable GICs that have contractual redemption penalties.

3) A treasury bill issued by the government of Canada

Treasury bills, or T-bills, are short-term securities with maturities up to a year that are purchased at a discount from their face value and redeemed at face value when they mature. They are risk-free, and can be cashed in the market at any time, but generally are only available in large denominations. Currently T-bills only yield about 1%, but they may offer attractive yields at times when credit conditions are tight or inflation expectations are high.

4) Any bond, debenture or other evidence of indebtedness issued or guaranteed by the government of Canada, or a province, or issued by a corporation incorporated under the laws of Canada or a province, if, at the time of purchase:

Continued on page 15

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- i) it has a remaining term to maturity of 5 years or less**
- ii) interest and principal are payable in Canadian dollars;**
- iii) it has a rating of A or higher from DBRS Limited.**

Bonds are securities which promise a specified coupon rate of interest prior to maturity and return of principal at maturity. For example, a 4% bond, maturing on June 15, 2019, will pay \$20 every six months for five years and then pay \$1000 on the maturity date. The key feature of government-issued bonds is that they are easily bought and sold in the market prior to maturity. However, their prices vary over time with the market rate of interest on similar securities; when interest rates rise, prices fall, and vice versa. If the 4% bond, in the example, is purchased for \$1000 when issued, and held to maturity, its compound return will be very close to 4%. If it is bought at a later time, at the then current market price, and held to maturity,

it will return the “yield to maturity”, calculated when purchased, which takes into account both interest payments and the difference between the purchase price and the \$1000 return of principal. If sold prior to maturity, its return may be higher or lower than expected, depending on the course of interest rates. The sensitivity of prices to changes in market interest rates is largely determined by remaining maturity; the longer this is, the more the price will fall for a given rise in market rates, and vice versa. This is the reason that the Regulation limits the remaining term to maturity to 5 years or less.

In order to purchase bonds, it is necessary to open an on-line brokerage account which is affiliated with your bank or credit union. There is no explicit commission for trades; instead the transaction costs are incorporated in the buy and sell prices. For small retail investors, they can be significant.

Currently, the yield on 5-year bonds issued by the Government of Canada is about 1.8%, close to the average rates available from redeemable

5-year GICs. However, bond returns are more sensitive to changes in economic conditions than GICs and often offer returns, if held to maturity, which are substantially higher than those available from comparable GICs. Under these circumstances the ability to convert them to cash at any time may make them an attractive investment alternative.

In addition to requiring a separate on-line brokerage account to purchase them, bonds are more complex than GICs and should only be purchased by strata councils and strata managers that are confident that they understand the effects of varying market interest rates on market prices. For example, if a bond is purchased at a price which is higher than its \$1000 face value, and is held to maturity, it is guaranteed to realize a capital loss. If a Treasurer can't explain to Council and to owners why it might still be an excellent investment, then it probably shouldn't be included in the CRF portfolio, no matter how attractive its yield.

The credit quality of most
Continued on page 16

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easily-traded bonds is rated by the Dominion Bond Rating Service (DBRS), as well as by other rating agencies, in order to give investors assurance that they will not incur capital losses due to deterioration in the financial strength of the issuer. Investment grade bonds are rated on a scale ranging from AAA for “Highest credit quality” to BBB for “Adequate credit quality”. The A rating required by the Regulation is termed “Good credit quality”. For more details, and to find the rating of any bond issue, see www.dbrs.com.

For bonds issued by Canada or a province, credit quality is not currently a concern. However, in the case of bonds issued by corporations, financial strength varies greatly and a rating indicating good credit quality is essential. Even if the DBRS rating reported on www.dbrs.com doesn't change, market prices will reflect investors' perceptions of deteriorating financial prospects, particularly in a poor economic climate.

Generally, A-rated 5-year corporate bonds offer higher returns than bonds issued by Canada or the provinces, or comparable GICs, but are more difficult to find and to purchase, and are more risky. Again, they should only be purchased by strata councils and strata managers that are confident that they understand the risks.

5) A fixed income exchange-traded fund (ETF) traded on an exchange in Canada, if, at the time of purchase:

- i) the fund's portfolio does not contain securities other than bonds, debentures, and other evidence of indebtedness;**
- ii) the holdings in the portfolio are denominated in Canadian dollars;**
- iii) the average remaining term to maturity of the holdings in the**

fund is 5 years or less;
iv) 98% or more of the value of the holdings in the fund's portfolio have a rating of BBB or higher as reported by the issuer of the fund.

ETFs are portfolios of securities that trade on a stock exchange in the same way as any corporate share, and are purchased in the same manner through an on-line broker. They are similar to mutual funds, which also permit investment in a whole portfolio, but, unlike mutual funds, they trade continually during the day, are generally much more transparent in the information they provide, and carry much smaller management fees. Most are not actively managed in the way that many mutual funds are, but simply track some index.

An example of a fixed income ETF that meets the criteria set out is the Short Term Corporate Bond Index ETF issued by Bank of Montreal, traded on the TSX under the ticker ZCS. It is described at <http://www.etfs.bmo.com/bmo-etfs/>. It contains 198 bonds, all rated BBB or higher, with a “weighted average term” of 2.93 years. The management fee is only 0.12% and this is largely offset by the fact that the issuer is able to purchase bonds more cheaply than an individual retail investor can. The weighted average yield to maturity of the bonds in the portfolio is 1.95%. This yield, not the reported “weighted average current yield” of 3.47%, is the best indicator of likely future returns because it takes into account expected changes in value as bonds in the portfolio approach maturity.

Several characteristics are noteworthy. First is that the portfolio is well diversified over many companies, which reduces risk. This is why bonds with BBB ratings are permitted, whereas an A rating is required when individual bonds are purchased for the CRF. The inclusion of higher risk bonds makes it possible to achieve higher potential returns. This degree of

diversification cannot be achieved by non-institutional investors.

Secondly, when you buy an individual bond and hold it to maturity, you can be confident that you will receive the principal amount of \$1000. However, although the individual bonds in the ETF portfolio all mature at some point, the ETF itself does not. At any point in time, what you receive from sale of an ETF is its market value, which fluctuates from day to day. In short, a fixed-income ETF offers cheap risk-reducing diversification, and potentially higher returns than investment in individual bonds, but at the cost of some degree of uncertainty regarding the price at which you can convert to cash when needed.

3. Combining Permitted Investments into a CRF Portfolio

The new Regulation permits five kinds of investment but offers no advice as how they should be combined in the CRF portfolio, and no prescriptions as to how the portfolio should be managed by the strata council or strata manager. These issues are beyond the scope of this brief summary of the new Regulation, but guidance can be found VISOA's publication, *Management of the Contingency Reserve Fund*, available for sale at www.visoa.bc.ca.

The new provisions in Regulation 6.11 are a welcome improvement over the old ones and will make it much easier for strata councils to achieve reasonable returns, at least matching inflation rates, while maintaining needed liquidity and avoiding imprudent risks.

Cleveland Patterson is an Emeritus Professor of Finance and a past member of VISOA's Board of Directors. He is the author of VISOA's publications, Management of the Contingency Reserve Fund and Best Practices for BC Strata Treasurers.

When buying a condo “buyer beware”... When selling a condo “seller beware”

By Paulette Marsollier - Sotheby's International Realty Canada



Condominium living can be a great experience if you understand what you are buying or selling.

When buying it is your responsibility to understand what you are buying and to understand the large package of the corporation's documents that come with the buying process. Conversely, in selling, it is your responsibility as a seller to provide all of the relative corporation's documents and to understand clearly your responsibility to disclose. Nondisclosure is not taken lightly in a lawyer's hands and often can cost the seller the loss of a sale and/or perhaps damages.

When hiring a realtor to represent either your purchase or sale, it is most important to interview them.

Request a resume or proof of their strata knowledge.

Can they read a Strata Plan?

Have they been educated in the purchase and resale of condominiums? Where have they been educated? What professional organizations have they worked with or volunteered with to further understand the condo world? How broad is their knowledge?

Do they understand whether your parking space is leased, owned, assigned or LCP? Are pets allowed? Is there a Contingency Reserve Fund? Does this condominium corporation prefer to special assess for capital expenditures or operating shortfalls? Are the owners up to date with their strata fees? Can you put up a satellite dish?

Do they generally understand

Depreciation Reports, Form B, Form F, Special Assessments and your corporation's documents? All of that feeds into the selling value or what a purchaser may pay.

Does your realtor understand the distinct difference between a building strata, bare land strata and conventional strata? All operate under the Strata Act but are very different from each other.

Each condominium project is different therefore a different approach must be applied to each one regarding buying or selling as no two corporations operate exactly the same.

Is your strata sectioned? Do you have one or possibly three corporations within your strata? That has to be understood to determine who is paying which costs and what you as the buyer or seller have responsibility for.

Does your realtor understand that each time they list or sell a condo they are selling a portion of the common property, the Contingency Reserve Fund, a portion of the roof and so on? Hence the need for their understanding of your corporation's documents to carve your unit out of the corporation and correctly determine the value based on the financial health of the project.

These references are only some of the issues that must be handled in a purchase or sale or negotiation which means \$\$\$ plus or minus.

When buying, your realtor is responsible for gathering all applicable disclosure documents for your review. A realtor is responsible for the negotiation on your behalf.

A realtor acts as an agent of the

brokerage and a facilitator of the sale. They do not interpret the strata documents, they are not and cannot act as tax consultants, engineers or strata corporation specialists, etc. But, they must be knowledgeable in the binding contracts that they prepare on your behalf.

Having a professional 3rd party review and approve the documents when buying is a crucial step in protecting yourself. Look for a good strata lawyer that is currently performing this service locally.

When selling you should have a knowledgeable realtor with a clear understanding of your project to legally and correctly market your unit for sale. Protect yourself; be certain that you know what you are buying before you remove the conditions on your offer to purchase.

When selling disclose, disclose, disclose. Your realtor should definitely be aware of critical elements of your strata corporation that must be disclosed to a buyer.

You will note that much has been said about your corporation but not your unit. Your unit's value is based on the rate of success of your corporation, therefore the reasons for a realtor to have a broad understanding of the strata real estate is extremely important.

Paulette is Senior Vice President of Sales, Sotheby's International Realty Canada and a former VISOA Board Member. She may be reached at pmarsollier@sothebysrealty.ca or 250-888-3297

Do you know what Air Bed & Breakfast is and how it might impact your community?

By Donna DiMaggio Berger, Esq.



The concept of house swapping has been around for quite some time. You may be eyeing that scenic villa in Greece and the villa's owners might just want to come down to your place on the beach in South Florida. I've been tempted to look into this for a while but haven't yet done it.

There is a relatively new concept in housing, however, that doesn't require swapping an entire residence and it is gaining traction quickly as a way for people to earn a little extra money by renting out a room or rooms in their home, condominium or cooperative unit. This concept is called Air Bed & Breakfast.

This is not to be confused with another online service, Couchsurfing, in which hosts allow travelers to crash on their couches for free. This service is more often used by college students and only the most intrepid tourists.

If you haven't yet heard of Air Bed & Breakfast, it might be closer to becoming a reality in your community than you know. This San Francisco-based company was created in 2008 as a way to connect people in need of a place to sleep with spare beds in people's homes. Typically, the service grew out of the housing needs usually associated with special

events like the Olympics, Super Bowl or mega conferences where hotel rates are exorbitantly high and room availability very low. Through the use of Air Bed and Breakfast, folks can post the availability of a bed or beds in their home on the site and for travelers who are willing to forego the amenities and security that a traditional hotel offers, it might just be a match made in heaven.

A recent search of the airbnb.com site showed several beds listed in the Greater Victoria area with the nightly rate starting at approximately \$70.00. So what, if anything, does this mean for your strata corporation? Well, it may mean that some of the beds in your community may some day find their way onto the airbnb website. The possibility of this happening is likely to increase if your city or a nearby city hosts a very significant event. From an owner's perspective, this might be a nice way to supplement one's income and pay one's bills. From a strata council's perspective, Air Bed & Breakfast creates a security nightmare as well as enforcement problems. Given the very short-term nature of the occupancy, proving the violation is ongoing can be very problematic.

The concept of a virtual bed and breakfast service only underscores the larger topic of how involved a strata's council should be in

terms of monitoring the people who occupy members' homes. Security and nuisance issues are the two reasons that will be used most frequently to support vigilant monitoring. Freedom, privacy and economic benefit will be the reasons used to support a "hands-off" approach to occupancy.

Battles over occupancy can be some of the most vexing and expensive lessons in a shared ownership community. Many, but certainly not all, strata bylaws specify that only an entire unit or home may be rented and not just rooms. If your bylaws restrict rentals but not an arrangement that is really a quasi-hotel night stay, you might want to consider an amendment to clarify exactly the type of use your community wishes to permit and the types it wishes to restrict.

Donna DiMaggio Berger, Esq. is a Shareholder at the community association law firm of Becker & Poliakoff, and has counseled condominium, cooperative, timeshare, mobile home and homeowner associations throughout Florida since 1992. She may be reached at dberger@bplegal.com.

More of Donna's thoughts can be found at her blog www.condoandhoalawblog.com Reprinted with permission.

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YOUR PAGE

Letters to VISOA



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Please include your name, strata number and telephone number.

Letters and emails may be published on-line.



Our Membership team forwarded this response to a renewal reminder, one of many such letters we get expressing thanks to Harvey Williams and the other members of our Helpline Team – David and Gloria.

Thanks Harvey!

Hello VISOA Membership Committee,

Thank you for the reminder of membership renewal, our Strata is

in a transition period right now and we are hoping to once again become Corporate Members of VISOA.

With the tremendous help of Harvey Williams, VISOA was instrumental in our Strata freeing itself from a very bad contract with a local property management company. While under this contract, I had always maintained an individual membership. As of last month, we are newly self-managed. In our first meeting in the coming weeks, VISOA membership will be the top of our agenda.

I have thanked Harvey countless times, but I wanted to take this opportunity to thank VISOA for all their support and vast knowledge that they have shared with our very new Strata. We are indebted to you, and look forward to that wonderful support as we enter self-management.

Thank you again, and as soon as the motion is passed, I will send in our renewal form immediately.

*Mr. R.F.
Victoria*

Privacy Matters

By Sandy Wagner



Does your strata have a privacy officer, and privacy policy?

Are you aware that you should? According to the Office of the Information and Privacy Commissioner, all BC strata corporations should have both. Previous VISOA Bulletin articles and seminars have talked about this need, but it is apparent that not all stratas have done so.

Recently, VISOA representatives met with BC's Privacy Commissioner Elizabeth Denham and members of her staff to discuss problems that BC stratas have with implementing and following the OIPC guidelines. We spoke of the frequent complaints brought to the attention of VISOA's Helpline: stratas refusing to supply owners with information to which they are entitled, citing "privacy laws" as the reason.

The Strata Property Act s35 lists many specific records a strata corporation must collect and retain; and s36 requires the release of those records to authorized persons, upon request. Note there is nothing in the SPA about these records being "private", nor anything

to state a reason must be given for the request. The confusion comes because the Personal Information Protection Act (PIPA) defines personal information and outlines the ways in which personal information is protected in BC. But – and many strata councils forget this – the PIPA specifically states that disclosure of personal information may be authorized by other legislation. That means that s36 of the SPA authorizes disclosure under the PIPA.

When VISOA members contact our Helpline with questions about privacy and the release of personal information, we give the list of records authorized by SPA s35/36 and in many cases, quoting the SPA is sufficient to answer the question. But we hear too often that stratas will still not release the records, even when confronted with the SPA. Two common examples of this are a list of strata lot owners, or a list of strata lots owing money to the strata corporation. Many stratas feel that names and money are just too "private" to share, although the SPA says the strata must do so.

When privacy legislation is cited as the reason that information cannot be shared, a strata owner (and any citizen) can contact the OIPC for help with their concern. The OIPC website includes an online form that can be filled in, but for

all practical purposes a simple phone call to their office at 250-387-5629 will usually confirm whether the records may (or must) be released. The front-line staff handle the same questions frequently, and can give ready answers. If a formal complaint needs to be set in motion, the staff can help. The OIPC's approach is remedial – in other words, they will try to help organizations to be compliant with the law, rather than punish them, and generally no damages are awarded.

VISOA and the OIPC staff agreed that the 28-page *Privacy Guidelines for Strata Corporations and Strata Agents* published in 2011 contain so much information that stratas may be overwhelmed and confused, judging by the large number of complaints and questions that both of us receive.

The OIPC plans to research and publish a set of "Frequently Asked Questions" for BC stratas to augment their Guidelines, and VISOA members can help. Send your privacy-related questions to editor@visoa.bc.ca and we will publish one or two in each Bulletin, along with the answer from the Office of the Information and Privacy Commissioner. With your participation, this should be a win-win for everyone!

President's Report



Sandy Wagner

At VISOA's AGM held in late February, attending members re-elected those board members standing for re-election, and elected three new and two returning Board members. Your board now stands at its full complement of 11; and at the first board meeting of the new term I was re-elected as President. The full list of Board members is on the front page of this Bulletin, and more details on the board and their duties are on our website.

As I write this column, it is National Volunteer Week, and VISOA has existed for over forty years as an all-volunteer organization. Thank you to all our volunteers, whose names are listed elsewhere in this Bulletin.

April saw updates to the Strata Property Act, detailed on page 1, and to the SPA Regulations, explained beginning on page 13. The updates to the SPA are well-warranted, and will have huge impact in my opinion. Stratas are now explicitly permitted to pay for the cost of obtaining a Depreciation Report through their annual budget, as many stratas tried to authorize this as a CRF expense, which as we all know, requires a $\frac{3}{4}$ vote. The other important change is this: the CRF cost of repair for items recommended in the Depreciation Report can now be authorized by a simple majority vote instead of the usual $\frac{3}{4}$ vote.

We at VISOA are pleased that these changes have been made, as it will eliminate the possibility of a small group of short-sighted

owners blocking these necessary expenditures

In this issue of the Bulletin you will see a new column "Privacy Matters" which we hope to feature in every issue, with your help. As explained in the first column, we recently met with the Office of the Information and Privacy Commissioner. They will be updating their strata information with some FAQ's, and we plan to print your privacy-related questions and answers. Send your questions to me at the email address below, and we will choose some of the most frequent questions to be answered in each column.

This issue also includes part two of an article from Rob Boyko on the subject of choosing a Property Manager, and it is also the topic of one of our "You Asked" questions. Although the majority of VISOA's members are self-managed strata corporations, the matter of property managers comes up very often at the Helpline. We have been communicating with the Real Estate Council of BC (responsible for licensing and oversight of strata managers) and plan to include in our next Bulletin some details on the licensing course that strata managers must take, along with some information on their optional upgrade courses. We also plan to share some statistics on strata managers who have been disciplined by the RECBC for misconduct. The Helpline rarely hears "kudos" about property managers, as its purpose is to assist with your problems – so our perception may be a bit skewed. If you have stories to share about your strata manager – good or bad – we'd love to hear from you, to include your stories in our next issue. (We'll disguise some details to protect privacy). Contact me at the email address below, or my co-editor David may be reached at our Helpline.

Last issue we ran a short article

entitled "VISOA vs the Strata Managers" which highlighted my personal thoughts along with VISOA policy on strata managers. To reiterate, we are not against strata managers, although that is the perception of some. We are against poorly-trained strata managers who don't know the SPA and give incorrect advice to strata councils who are counting on them. We are whole-heartedly in favour of well-trained professional strata managers who work with the strata's councilors to assist them in legally fulfilling their duties. In our next issue we intend to give you examples of both.

One of the benefits of your VISOA membership is free attendance at our seminars. We have been very fortunate thus far to have many excellent speakers volunteer their time for your education and enjoyment at these seminars, and we do intend to continue our high standards.

If there is a particular topic or speaker you would like to see at one of our seminars, please contact our Seminar team at seminars@visoa.bc.ca with your ideas, and we'll see what can be arranged.

Finally, we are looking to increase our presence on social media such as Facebook and Twitter. Our Social Media team could use some volunteers to help – if you have a few minutes a day to send out a tweet or post on our behalf, let us know and we'll show you how easy it is to connect.

Sandy Wagner

VISOA President and Bulletin Editor
editor@visoa.bc.ca

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