

VISOA Bulletin - MAY 2015

Honourary Lifetime Members

VISOA’s bylaws state that a member can be awarded Honourary Lifetime Membership, subject to criteria approved by the general membership.

At VISOA’s AGM March 1st, the board presented criteria for awarding Honourary Lifetime Memberships

Those criteria are:

- 1) Strength of commitment to VISOA members – as evidenced by length of volunteer service.
- 2) Length of service as a board member will be taken into consideration.

Following a membership vote on these criteria, the board awarded VISOA’s first Honourary Lifetime Memberships to the following:

TONY DAVIS – Past President. Tony

served on the board from 2006 to 2013, and during that time he transformed our publications from photocopies in paper report covers to the high quality books we produce today. He also led in designing our current logo, and transforming our website. Since leaving the board he still volunteers by managing our website, and helping at most seminars.

CLEVE PATTERSON – Former Board Member. He was on the board for only two years but in that time he single-handedly doubled our business membership and created our Workshop programs. Since leaving the board he has written our three newest publications, and continues to run our Workshop programs.

ELSIE LOCKERT – Former Board Member. When Elsie stepped down from the board in 2013, we presented her the “Golden Bulldozer” award, a cheeky honourific for her strong personality, and her “we can do it” attitude. She handled membership, seminars and advertising on the board, and almost everything else she could. Since leaving the board, Elsie continues to volunteer, and is a silent partner for our Workshop group, as well as a key part of our Website team.

HARVEY WILLIAMS – Past President. While Harvey was President of the board, he led VISOA through a crucial time when the organization was on the verge of

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insolvency. He was also editor in chief for our Bulletin for many years; and as most of you know he has been the main responder for our Helpline phone line for some time. I think everyone knows Harvey. He has retired from the board, but plans to stay on the Helpline as a volunteer for the foreseeable future.

Our heartfelt thanks to each of you for your sterling service to our organization!

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VISOA PUBLICATIONS UPDATES

New Publication for Strata Councilors

Due to the popularity of VISOA's Workshop "For New Strata Councilors", workshop lead Cleve Patterson has written a new publication entitled *NEW TO COUNCIL? An Overview of the Responsibilities of Strata Councils*. This publication has been on the back burner for five years, and we thank Cleve for bringing the idea to completion.

With the assistance of Rob Boyko of Icon Property Advisors and Rod Fimrite of Firm Property Management, and the editing of David Grubb and Sandy Wagner, we are proud to add this publication to our educational materials for strata owners.

This new resource is now for sale, in either print or digital form through our website; or as a printed version at our office and at seminars. The digital version is half the cost of the print edition, and allows purchasers to save a copy to their own computer and print if desired.

Strata Guides Replaced

On February 26th, the Provincial Government launched a new website www.gov.bc.ca/strata for strata information, which is intended to replace the "Strata Property Act Instruction Guides". The Guides will no longer be updated. Many of our VISOA publications refer to the Guides, and so we have inserted a notation within each one to direct readers to the new website.

As time permits, each of VISOA's publications will be updated. Meanwhile, whenever we reference the Guides, please refer to the Strata Housing Website for current information in easy-to-read language. The Guides will be on the Strata Housing Website under "More Help and Support" until the end of 2016. VISOA will no longer sell print copies of the Guides.

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Understanding WorkSafe in your Strata Corporation

By John Grubb



The Vancouver Island Strata Owners Association approached me to write an article for the Bulletin on the obligations and responsibilities of Strata Corporations in regard to contractors working on their properties, and how WorkSafeBC's Regulation and policies apply to the Owners.

I must first state that I am no expert on WorkSafeBC Regulation or policy. The information and opinions presented here are based on many years of experience as a Facilities Maintenance Manager and Project Manager, working as an Employee, a Supervisor of other employees, and engaging with and monitoring the work of contractors on behalf of the property owner(s) as an employee, and as a 3rd Party consultant.

In each position, an understanding of WorkSafeBC's (WSBC) requirements has always been a necessary part of my work, and this article is intended to shed some light on the position and responsibilities of Strata Corporations, as the "property owner", when engaging contractors.

WSBC – Insurer & Regulator

WSBC (the Workers Compensation Board of BC now known as WorkSafeBC) operates as both a regulatory body, and as an insurer of "workers" in British Columbia. The separation of these two duties is often not clearly understood by many Stratas, and it can lead to some misplaced assumptions, the most common being – "If the contractor is registered with WSBC, everything

is fine, and we don't have to be concerned about anything else", which could not be much further from the truth.

Every contractor with one or more employees must register with WSBC (the "Insurer"), and report his payroll amounts to determine the premium for insurance coverage. Although related, that is a distinctly separate function from the concurrent position of WSBC (the "Regulator"), which is the body that develops BC's Occupational Health & Safety Regulation. This extensive document can be found online at: http://www2.worksafebc.com/publications/OHSRegulation/Home.asp?_ga=1.67568151.728669821.1351389090

It would probably be fair to describe the Regulation as the "fine print" of an Employer/Contractor's insurance policy with WSBC (the Insurer) but, because it covers virtually every type of workplace, it is a very large and often confusing document.

From a Strata Corporation's perspective, there are several significant areas that the Owners should be aware of, where an Employer (contractor) is required to address the safety of their workers. These include, but are not limited to, Fall Protection, Hazardous Materials (e.g. Asbestos, Lead), and Confined Spaces.

The Regulation's language implies that the property

"Owner" and the "Employer", are one and the same but, obviously, this is rarely the case for Strata Corporations (Strata Corporations who are Employers under the WSBC definition, are another topic entirely and, although they are certainly related, we'll leave that for another day).

The Strata's Position

The WSBC Regulation states that the Employer must make his employees aware of any known site hazards prior to them starting work. Because a contractor will not typically know of any specific hazards on a Strata property, it is incumbent on the Owners to provide that information, and advise the contractor of any requirements or specific procedures they expect the workers to adhere to, prior to commencing work.

In the case of Fall Protection, this might be presented as the

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~ Benjamin Franklin

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Strata's Roof Access Plan, which clearly identifies the fall hazard, and any other roof hazards (e.g. nesting seagulls), advises the contractor of any systems installed by the Strata to mitigate those hazards, such as Fall Protection Anchors, or bird deterrent systems (which can also be considered a hazard to workers), and lays out any procedures the Owners have in place for workers to safely access and work on the roof.

We recommend that, whether Stratas have this type of formal plan in place or not, they at least know enough about the potential hazards to inform any contractor of them, and have the contractor sign an Indemnity Form acknowledging that he has received the information, and accepts his responsibility as an Employer to abide by the WSBC Regulation as it applies to his work.

The Contractor's Position

It then becomes the Contractor's responsibility to develop a written Fall Protection Plan (see WSBC's template at http://www2.worksafebc.com/i/construction/Toolbox/pdfs/TG06-48_Written_fall_protect_plan.pdf).

In it he must develop a work procedure that addresses the site-specific hazards, and manages them in a way that meets the requirements of the Regulation. He must provide tools and equipment appropriate for the task, and ensure that his workers are supplied with Personal Protective Equipment or PPE (e.g. Fall Protection harnesses, lanyards, ropes, etc.) and that they are properly trained to use it.

Similar Work Plans are required for Confined Space Entry (which should only be identified by a qualified consultant, not the contractor), and an even more extensive requirement for documentation when the

disturbance or removal of Asbestos Containing Materials (ACM) or lead-based paint is part of the work. With very few exceptions, this work will require another contractor who specializes in the abatement of these materials.

We will also note that an asbestos (or lead paint) abatement contractor who also offers "consulting" services for materials testing and reporting, is in a conflict of interest, and should be avoided. A 3rd Party Consultant works for the Strata, and has no financial interest in doing the abatement work.

Fall Protection Systems

A Strata's recent inquiry asked questions around the installation of a Fall Protection Anchor System on the building's roof, to give a window cleaning contractor tie-off anchors to use with his own fall protection equipment (PPE). The Owners are rightly concerned because the workers have been gaining access to some 3rd storey windows from the roofs above them, but were not using any Fall Protection Equipment.

The Owners had made some inquiries of a local roofing contractor about installing some anchors on the building's roof areas, and the roofer offered to install what we can only assume are a type of temporary anchor commonly used when installing new roofing materials. While these anchors are perfectly acceptable to WSBC under appropriate conditions, they are for temporary use only, and must be removed once the (re)roofing work is completed.

It appears that the roofer intended to install these anchors as a "permanent" system, which raises several significant concerns, and highlights the fact that some contractors don't fully understand

the intent, or effects of the WSBC Regulation.

Aside from any questions around the roofing contractor's understanding of the limitations of his anchors, the Strata, by installing them for use by other contractors, would end up accepting responsibility for the anchors being in compliance with the Regulation as an approved Fall Protection System, and would be held liable should an accident occur.

Permanent Fall Protection Anchor Systems must be designed, and their installation overseen and approved, by a Professional Engineer and, as each anchor must be able to withstand a minimum force of 5,000 lbs in any direction, the installation almost always entails significant structural modifications to the building in every anchor location. In addition, the system must be inspected, tested and certified by a qualified contractor/engineer on an annual basis.

Obviously, the installation of a permanent anchor system is an expensive undertaking but the location and/or design of some buildings can be such that an anchor system is the only viable alternative to ensure that workers can gain safe access to complete their tasks. (It should be noted that, under the latest BC Building Code, the designers of new buildings must include a Fall Protection System as part of the construction, where required).

On the other hand, provided the contractor(s) can develop a Work Plan that addresses the hazard in a manner acceptable to WSBC, then there is no need to install one.

That said, in our experience, many small contractors who provide semi-skilled services such

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as window cleaning, handyman, painting, and others, have only a rudimentary understanding of their responsibilities and, even though they may be registered with WSBC, it doesn't automatically mean that they know about, understand, or follow the requirements of the OH&S Regulation. Their company's "registration" with WSBC – "The Insurer", doesn't mean they are compliant with WSBC – "The Regulator".

3rd Party Hazard Assessments

Because of this, it is, in our opinion, incumbent on the Strata Corporation, as a matter of good Risk Management practice, to complete an assessment of the hazards on the site, to set out policies that will provide some protection to the Owners from contractors who can't or don't comply with the WSBC Regulation, mostly by preventing them from even starting the work.

A Site Hazard Assessment can be completed by a 3rd Party Occupational Health & Safety Consultant, who will review all of the site's potentially hazardous conditions, assess the need for any protective measures (e.g. Fall Protection System installation), and help to develop appropriate policies

that set out the Strata's requirements for any contractors exposed to those conditions.

Safety Plans & Due Diligence

On completion of a Site Hazard Assessment, we recommend that Stratas continue to work with their Consultant to develop safety plans appropriate to the conditions. These may include the noted Roof Access Plan, or Confined Space Entry Plan and, in those buildings that have tested positive for Asbestos Containing Materials (ACM) or lead-based paint, an Exposure Control Plan.

We should add that this kind of planning has been required of building owners by WSBC for many years, but the organisation has become far more active in the enforcement of the Regulation in recent years due to the significant increase in work-related injury and death, particularly in these three areas.

Just because the Strata Corporation (the Building Owner) is not an Employer, doesn't absolve it of responsibility when hiring "registered" contractors to

complete work. We encourage the use of a basic Indemnity Form, to be signed by the contractor's authorised representative, acknowledging that they have read and understood the applicable Safety Plan, and are prepared to accept the responsibility of complying with the WSBC Regulation. We also advise a review of any form by the Strata's legal counsel prior to use.

Major Projects & the "Prime Contractor"

One other area where a Strata must be very careful is when a large capital maintenance, repair or upgrade project must be completed, and the work will require more than one contractor. For projects valued above \$100,000, it's generally better to hire a General Contractor who will then arrange for all the necessary sub-trades.


Because of the relationship with his sub-trades, the General

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Contractor also becomes the “Prime Contractor”, as defined by WSBC Regulation, which means he accepts the responsibility to ensure that, not only his own company’s workers, but all the other sub-contractor’s workers are complying with WSBC’s safe work requirements.

There are other projects, generally below that \$100K threshold where, for a variety of reasons, the Strata may decide to engage with each trade directly. This decision should not be taken lightly because, in doing so, the Strata becomes the General Contractor and - by default - the Prime Contractor, unless other arrangements are made.

The most recent “high-profile” example of what can go wrong with this is the unfortunate death of a roofer working on former Premier Gordon Campbell’s residence. Mr. Campbell was completing an extensive renovation on his home when an employee of the roofing contractor fell to his death because, although he was wearing a Fall Protection Harness, he was not tied off to an anchor.

There were other contractors working on the site but, because Mr. Campbell had not engaged a General Contractor or other professional to oversee the project, he, as the Building Owner, became the Prime Contractor by default. WSBC fined the roofing contractor

for inadequate supervision and not following safe work practices, but found Mr. Campbell liable for the worker’s death, even though he had no knowledge of his position as Prime Contractor. As is true with our broader legal system, ignorance of the law (or Regulation) is not an acceptable excuse.

Had he arranged with one of the contractors to accept responsibility as the Prime Contractor, Mr. Campbell might have avoided liability for this tragic incident but, once again, it highlights that even the trades workers and their employers don’t always understand, or enforce their own safety procedures and standards.

Conclusion

All this speaks to the “qualifications” of the contractors that a Strata Corporation chooses to engage. It’s not only about their ability to do the work – it’s about their professionalism in accepting their obligations under the WSBC Regulation; equipping, training and supervising their employees, and appreciating their responsibility to protect their clients. Larger, well-established contracting firms generally understand this, but the one and two-man companies are often “flying under the radar”, and the Strata can quickly be drawn into the fray by WSBC, should there be an accident.

To avoid that, the Strata should have a basic understanding of the WSBC Regulation as it applies to the work their contractors are asked to do, and be able to monitor

the work and question the supervisor when a worker is ignoring the “rules”. Ultimately, the Owners can direct the work to stop if the contractor’s response is unsatisfactory, but this is a right that should be exercised with caution since, as a consequence, a Council member/owner may be seen by WSBC as a direct supervisor of the work or workers: a position that, prudence suggests, should be avoided.

Setting out the Strata’s expectations of contractors with applicable Access Plans, and asking direct questions about the contractor’s written Fall Protection Plan (for example), will go a long way to weeding out those who, by their ignorance, could place the Owners at risk. With that understanding, it also means hiring contractors who, because they fully understand their obligations, will likely cost more.

These decisions are entirely up to each Strata to make, sometimes on a case-by-case basis, but they should be made with a reasonable understanding of the rules the contractors are supposed to follow. More information can be found at <http://www.worksafebc.com/>, WorkSafeBC’s very comprehensive website.

John Grubb is a Property Maintenance Consultant and Depreciation Report Provider serving Strata Corporations and building owners on Vancouver Island. John may be reached at 250-893-3445 or through www.unityservices.ca

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Safe and Secure - Tips for Managing your Online Strata Account

By *Tori Escallier*



It happens. Electronic communication between strata members gets misfiled, misused and mistaken for spam; however, email and online communication services often save time and can be more inclusive than traditional paper correspondence. Following a few guidelines will protect members from confusion, privacy breaches, and legal woes.

There are basic best practices for all electronic correspondence and it is important to have specific procedures in place for strata councilors. Unfortunately, there is not much a council can do to ensure that folks are checking their strata account regularly, using the email “CC” (carbon copy) and “reply all” tools appropriately, and not prematurely pressing the “delete” key. We can, nevertheless, agree on how to name and access online accounts, restrict sharing of confidential information, manage files, and ensure that online storage has ample security systems in place and follow BC’s privacy laws.

When naming your account for the purpose of strata business, whether an email account or online service, ensure that you are the sole owner of the account. While emailing the_smith_family@email.com is useful for party invites and holiday wishes, it does not ensure that the appropriate person will receive strata business docs. Who checks this account? If other family members have access, it should not be used for strata council business.

Who is responsible for receiving strata business email and responding to it? Many online strata communication tools include email

notification when additions are made to bulletin boards, schedules or document storage. As with paper documents, strata email is considered to be received 4 days after it is sent and it is the recipients’ obligation to regularly check their account and respond in a timely manner.

The name of the strata council member responsible for information directed to owners should be the only name in the account address. Sharon_Smith@email.com or strata1234secretary@email.com will be the sole user of this account for strata business, and is obligated to maintain discretion and diligence regarding all emails. When communicating with fellow councilors, it is good practice to CC: your strata’s generic email address to maintain continuity of communications. eg. Strata1234@email.com. Additionally, general correspondence sent to strata owners should conform to privacy considerations, and use generic descriptions in lieu of individual names and details.

Your strata email or web storage account password should be unique and, as with all passwords, be a combination of random letters, numbers and symbols. A free-to-use online password generator is a great tool for creating a high security password. If you are required to enter answers to pre-set questions in case of a forgotten password, use information that is

not available to anyone else and is not easily guessed – this method of hacking into online accounts is frequent, and is easily avoided!

Emailed and web-stored strata business documents are considered property of the strata record, and must be filed and noted appropriately. Create a file tree in your email or online account by subject and date to allow for quick retrieval when needed. Retention timelines (see VISOA Bulletin February 2015 Document Retention Guide) apply to all online documents. Ideally, your strata’s web storage area will be administered by one individual in order to simplify the retention and deletion process.

Keep in mind that the *Personal Information Protection Act* (PIPA) protects data stored in BC. When choosing your email service provider, consider where their physical servers are located. They must comply with the privacy laws of that region. Internet storage

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Guide Dogs and Service Animals in Strata Corporations

By Sandy Wagner



On March 12, 2015 the proposed *Guide Dog and Service Dog Act* was introduced in the BC Legislature. As of the date of this article, the proposed legislation has not passed, but if it does pass, it will replace the *Guide Animal Act*.

The Government's news release stated:

"The proposed Act and accompanying regulations will safeguard access rights for individuals who rely on guide dogs or service dogs, while ensuring clarity and safety for businesses and other members of the public. In particular, they will:

- limit certification to dogs and no other animals,
- recognize both guide dogs for the visually impaired and service dogs for individuals with other disabilities,
- require a high training standard for certified dogs,
- provide an option for dogs to be tested by a designated third party if they were not trained at a facility that is accredited by either Assistance Dogs International or the International Guide Dog Federation,
- extend public access rights to certified dogs in training,
- extend tenancy rights to include strata properties and retired certified dogs that continue to reside with their handlers, and
- increase the existing penalties and create a new offence of falsely purporting to be a certified [service dog] team."

On reading the press release, several points caught my attention as they relate to strata owners.

First, note that certification is limited to dogs and no other animals. This is important because of abuses in other jurisdictions. Some people have claimed

such animals such as cats, ferrets, rabbits, and even a miniature horse were "emotional support animals" to try to get around "no pets" rules in their community, whether in their condo or shopping mall. We have all heard horror stories from both Canada and around the world!

Next, I noted that service dogs must be trained at one of two designated facilities to be recognized. Again, this is important to avoid abuse. Just because a doctor writes a note that says a person could benefit from an "emotional support pet" doesn't automatically mean that Mr. Jones' dog, Fifi, has been trained and certified. Documentation must be supplied. Recently, I read a news story about a family in Calgary with three dogs, one for each child, none officially certified as guide dogs. The family is

Being part of VISOA's Helpline Team, I immediately thought of the "worst case scenario".

Conceivably, if the retired dog is still living when the second guide dog also retires, could there be three dogs in a "no dogs" strata or rental property?

I asked this specific question of the Ministry of Justice and here is the reply:

"The provision respecting retired guide and service dog teams was included in response to concerns that when a certified dog retires, the handler may be forced to choose between retaining his/her home or retaining the dog with whom he/she has formed a close bond. The intent is to make the provision clear in order to minimize disputes, and consistent across the various residential scenarios.

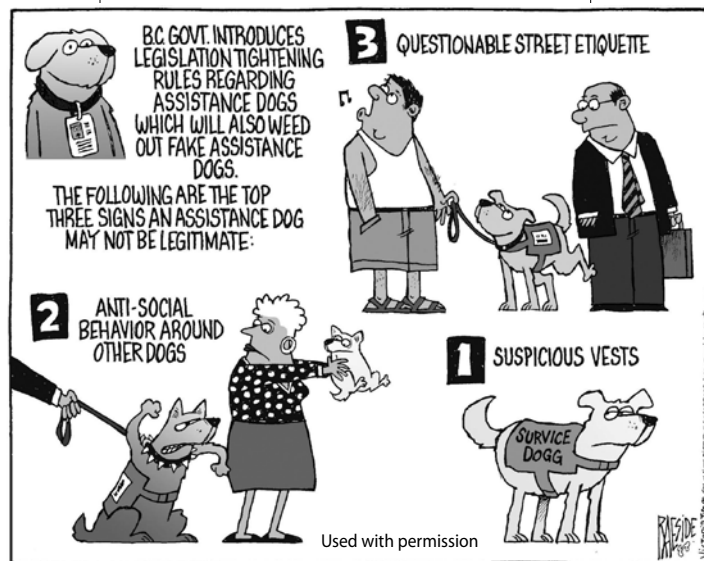
"The provisions respecting retired guide or service dog teams would only apply as long as the dog resides with its handler (i.e., a retired dog could not move to another family and retain the right to reside in a pet-free strata property).

"While the situation you describe is possible, it would seem unlikely for an individual to have two retired guide or service dogs and one active guide or service dog since age is often, though not always, a factor in these dogs retiring. Additionally,

certified dogs will have been trained to the highest standard for behaviour and safety, which will hopefully mitigate any concerns regarding their presence at strata properties."

That well-worded reply explained it all to my satisfaction.

So, assuming the *Guide Dog and Service Dog Act* passes - Strata councils, when your members request exemption from your pet restriction bylaws, your decision-making just got a little easier!



warring with their condo board.

The next two points that are important to strata councils are these: the proposed Act specifically permits certified guide dogs to reside with their owners in a strata property; and that retired guide dogs are permitted to reside with their handlers. The first is logical of course – even a "No Pets" bylaw cannot override this requirement for a certified guide dog. But the notion that retired guide dogs can continue to reside with their owners gave me pause.

The Guided Pathway Approach to Justice

An update from the CRT Implementation Website Blog

When the Civil Resolution Tribunal (CRT) begins operation, people with small claims or strata disputes will be able to use an entirely new collection of justice services.

The first step in the CRT process is called the 'Solution Explorer.' This interactive tool will be available online, 24 hours a day, 7 days a week. The Solution Explorer will be available before the full CRT. Although the start date has not been confirmed, you can keep up to date by checking <http://www.civilresolutionbc.ca> regularly, or check the VISOA website.

The Solution Explorer is just one part of the CRT's end-to-end process. The process is designed to resolve disputes in a way that is fair and accessible to the people involved.

The Solution Explorer is designed to provide a range of help and support that will empower people to either resolve disputes or at least to begin managing them, as soon as possible.

Now we'll dive a little deeper into how things work with the Solution Explorer.

In simple terms, the Solution Explorer imitates a conversation with a subject-matter expert in things relating to the jurisdiction of the CRT. Of course, this type of system can't actually replace a real expert, but it can deliver some of the benefits in a very convenient, cost-effective way in the early stages of a dispute resolution process.

The Solution Explorer is designed to help people by providing information, presenting self-help actions and identifying potential next steps.

In many of today's justice processes, much of this information might be available through a variety of sources. But it can be very difficult to find it. Even if you can find information, it can be very difficult to know what bits do or do not apply for a particular type of dispute. Many people find this prospect to be quite overwhelming.

The Solution Explorer tries to make the dispute resolution process easier by guiding people down the right stream or pathway for their disputes. It helps to find the right information and provide the right self-help options – recommended by real experts who work in these areas.

In some cases, these guided pathways will identify potential solutions to common problems or disputes.



Safe and Secure - Tips for Managing your Online Strata Account

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services should be BC-based as well, and will be able to confirm this by email or phone.

Internet communication and document storage systems enable easily navigated filing, inclusivity regardless of member location, and can increase strata efficiency. Use care and forethought in managing strata accounts and your online strata business will be as safe as your personal business at home.

Tori Escallier is CEO of Bridge Strata Planning, a provider of strata planning and management software. She can be reached at tori@BridgeSP.com.

Some disputes can be settled or at least better managed if only these possibilities could be explored at an early stage. The Solution Explorer's guided pathways are designed to make this happen.

People using the Solution Explorer will still have to make their own decisions about what to do or how to act, but the Solution Explorer's guided pathways are meant to provide support and structure for this decision process.

We're also building processes to accommodate people who want to use the CRT, but are unable or unwilling to use the online Solution Explorer. Access to justice is a critical part of the CRT, so these other entryways must be available. However, people who do use the internet, or who have a trusted friend or family member to help them get online will be able to benefit from the guided pathways and a new way to navigate the justice system.

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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.

This month's questions are answered by Gloria Martins and David Grubb

CAN STRATA FEE INCREASES BE PASSED ON TO TENANTS?

By Gloria Martins

Q:

The Residential Tenancy Regulation states that the maximum increase this year is 2.5%. But what happens if a strata allows rentals, and the AGM votes for a 10% increase in strata fees. Can the strata lot owner pass that 10% increase on to a tenant, or is the owner held to the regulation of 2.5% ?

A:

The strata cannot interfere with the contract between the owner and the tenant under SPA s.141, and that contract is subject to the *Residential Tenancy Act*. So it is the owner who must bear the cost increase and would not be able to pass it on to the tenant (unless it is in the contract or the tenant otherwise agrees in writing).

HOW TO ELECT A STRATA COUNCIL?

By David Grubb



Q:

How is a council election handled, if the current council submits a resolution at an AGM that they be re-elected as a group?

If this is done, do nominations from the floor still have to be accepted or will the resolution be the final vote?

A:

First, SPA s.25 and (if you retain it) Standard Bylaw 10, apply:

Election of council

25 At each annual general meeting the eligible voters who are present in person or by proxy at the meeting must elect a council.

Council members' terms

10 (1) The term of office of a council member ends at the end of the annual general meeting at which the new council is elected.

(2) A person whose term as council member is ending is eligible for reelection.

The SPA is silent on how such an election must take place except that election of council members requires a "vote" and is therefore subject to SPA s.50:

Voting at annual or special general meetings

50 (1) At an annual or special general meeting, matters are decided by majority vote unless a different voting threshold is required or permitted by the Act or the regulations.

With only such vague direction, and given that it can be difficult to find owners who will volunteer to be on council (for a variety of excuses), there is ever the temptation to simply (re)elect the slate of last year's council who are "eligible for reelection".

Thus, if no more than the maximum allowable number of council members stand for nomination, a Resolution which proposes that the owners elect those nominees as a single slate "by acclaim" would, in a technical sense, be permissible since everyone on the slate would therefore be considered to have received the "majority" vote generally required by SPA s.50.

However, strata owners should exercise great caution in accepting this practice as the "norm".

This would be especially true if the current council proposes a specific resolution that apparently does not allow for nominations from the floor – even with a full slate of 7 nominees – because such a resolution could be seen as a ploy just to get themselves re-elected exclusively.

It can be contended that it is the essence of democracy to require that nominations from the floor be called for, since it offers the opportunity both for others to "step up to the plate" as well as for the owners to make choices.

It is noted that *Robert's Rules of Order* specifies that if there is a Nominating Committee, which presents a list of nominees at the meeting, there also must be a call by the Chair for further nominees from the floor. However, unless the strata's bylaws expressly require the application of *Robert's Rules* (or another such reference work), this can serve only as a guideline.

Not allowing for such nominations can have some serious

Continued on page 13

repercussions, especially if it becomes an automatic practice in some way over time, because:

(1) Electing (i.e. by acclaim) only those presented on a list of nominees (especially if they are the same council members as last year) invites a dictatorial council *carte blanche* to maintain absolute control over who is acceptable as council members and prevent anyone who may have new ideas, or who disagrees with the policies of the current council, from participating in council debates and influencing the decisions.

(2) As a consequence of (1), there could arise the perception that there is very little opportunity for the owners to remove or counter a person from last year's council who may be considered by some to be overbearing, inefficient or even incompetent and to be able to elect other people whom they think will do a good job.

(3) Even if there were nominations from the floor but there were no more than the allowable maximum willing to stand, a particular individual who was considered by some to be unacceptable (perhaps someone who was seen as autocratic or who paid no attention to the law unless it suited them), and would not otherwise receive sufficient votes as an individual, could also be automatically elected.

All of these potential repercussions – whether real or merely perceived – can create much unwanted and unnecessary strife amongst the owners.

You might want to (with proper legal advice) put in place a bylaw, which specifies how council

elections will be conducted after considering the following ideas:

(1) Hold a proper election (preferably by secret ballot) and require each candidate to receive the majority vote in accordance with SPA s.50

(2) If there is a concern of not having enough candidates meet a “majority” vote requirement, then the bylaw could specify a different threshold (40%? 35%?) in accordance with SPA s.50.

(3) Even with the lower threshold, the owners have a choice to ensure that an unwanted individual is not elected through failure to receive a sufficient percentage.

(4) This may result in fewer than even the maximum permitted under the bylaws, but it would be a real reflection of which nominees have the confidence of the majority of the owners.

(5) If there are more than the maximum number of nominees (e.g. 9 out of a maximum 7) who achieve the threshold requirements, then those with the lowest number of votes will be declared not elected. (“First-Past-The-Post” is an acceptable method for the three higher levels of government.)

I suggest this is the most transparent method and could possibly wake some owners up to the need to

participate in the governance of their corporation.

It is regrettable that the SPA omits any direction about the conduct of elections and leaves so many people who are essentially “amateurs” to try to figure it all out by themselves often with unfortunate results.

It is also disappointing that (like members in many other societies) so many owners are unwilling to participate in the governance of their multimillion dollar corporation, preferring to let “those guys” do all the work and then complain when “those guys” make difficult decisions for the benefit of the corporation which they don't like.

As ever, it is our recommendation that you consult a lawyer who specializes in strata law to be sure that any actions you might take conform to the SPA.

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Gambling with Deferred Maintenance - Food for Thought

By David Albrice



“Sooner or later everyone sits down to a banquet of consequences”
- Robert Louis Stevenson

We may think we can outsmart consequences, we may try creative tricks to avoid consequences, but we can only do this for so long. Sometimes we get “lucky” and we can defer things for a few years, even decades. Eventually, though, we will lose.

So what are these different types of consequences of failure that so many of us are willing to gamble?

1. Physical Consequences

The first group of consequences relate directly to the tangible, ‘hard’ things that we can touch, smell, hear and feel with our senses. Here are a few:

- Increased **DOWN TIME** and disruptions with essential services, such as elevators, space heating and space cooling equipment, etcetera.
- Greater **NUISANCE** from noise, vibrations, smells, etc. that affect the quiet use and peaceful enjoyment of the property.
- Increased **OUTAGES** associated with power supply, water supply, gas, and other utilities.
- Reduced **RELIABILITY** of systems and assets, particularly critical assets.
- Collateral **DAMAGE** to finishes and substrates from water ingress and water escape conditions.
- **UNSIGHTLINESS** that detracts from the exterior and interior aesthetic appearance of the building.
- Accelerated **DETERIORATION** of some assets requiring earlier renewal.
- Potential for waste and ground **CONTAMINATION**.

These consequences make our

banquet feel like a table filled with plates of rotting food. Think of eating from a table with wobbly legs and the wine glasses are toppling over.



2. Financial Consequences

The second group of consequences hit our pocket book hard, they drain our wallets and they mess with our balance sheet. Here are some examples:

- Increased **COSTS** due to lack of planning, reactive/crisis management, accumulation of deferred maintenance, unnecessary repairs, greater project scopes, etc.
- Greater financial **HARDSHIP** through special assessments, demand loans, etc.
- Diminished **MARKETABILITY** of the suites due to stigmatization, etc.
- Greater risk of **BUSINESS INTERRUPTIONS** due to unreliable assets.
- Lower **RESALE VALUE** of the property.
- **INEFFICIENCIES** in the use of energy, coordination of people and other resources
- Missed opportunities for leveraging **ECONOMIES OF EFFICIENCY**, such as economies of scale and economies of agglomeration.
- Increased **CONTINGENCY ALLOWANCES** for substrate repairs.
- Accelerated **DEPRECIATION** of asset value.

These consequences make our banquet feel like a table filled with plates of scraps and leftovers. Think of being overcharged for a lousy meal.

3. Legal Consequences

The third group of consequences tie us up, they remove our freedoms. Here are some examples:

- Potential for **FINES** and penalties due to non-compliant conditions.
- Potential **ACCIDENTS** and injuries to owners, guests and invitees due to unsafe slip, trip and fall conditions.
- Potential **HEALTH** issues due to exposures to mould and other toxins.
- Increased insurance **DEDUCTIBLES** due to failure to mitigate.
- Increased **RISK** exposure to individual owners and the organization from failure to do the necessary due diligence.
- Jeopardizing of **WARRANTIES** due to failure to meet duty of care.
- **LITIGATION** resulting from actions taken against the owners.

These consequences make our banquet feel like a table filled with food that must be eaten with handcuffs behind our back. Think of a meal on a plane with blunt, plastic utensils and no elbow room.

4. Political Consequences

Our final group of consequences relate to the people and their emotions. Here are some examples:

- Increased **STRESS** and frustration of individual owners / guests / customers due to unresolved business and limited peace of mind.
- Potential for **CONFLICT** between owners due to unresolved issues, greater time at general meetings, etc.
- Residents/businesses may have to **VACATE** the premises during

Continued on page 16

YOUR PAGE

Letters to VISOA



Dear VISOA,

Once again, to the entire team at VISOA—to the people who staff the office, all the Helpline volunteers, and to the board of directors—thank you for all the work you do. You’ve helped our strata a great deal in the five years since we’ve been members, and your regular seminars have kept us up-to-date on many important and timely issues.

Over the years I’ve had the opportunity to sit in a LOT of meetings and workshops, and bar none, VISOA meetings are some of the best run and most informative. I’d like to acknowledge the excellence of your technical staff and volunteers too—I appreciate the sound system, roving mikes and projector/slides.

Thank you again for working so assiduously on our behalf—as the president of a strata, I can only imagine the hours you dedicate.

Warm regards,
Janis La Couvée
President, VIS Strata 48-Market Court

President’s reply

Dear Janis,

Thank you for the very kind letter you sent after VISOA’s March Seminar. I shared it with the entire board and I’m publicly thanking our volunteers, here in the Bulletin. We all enjoy what we do - in fact “passionate” is a word that sometimes comes to mind - and so we all appreciate it when a member takes the time to write.

Thanks again,
Sandy Wagner

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Write us at: 306 - 620 View Street, Victoria BC V8W 1J6. Please include your name, strata number and telephone number. Letters and emails may be published on-line.

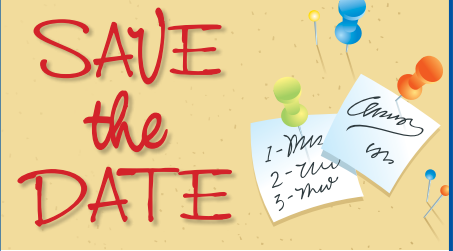
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CROWN ISLE RESORT
Topic: Strata Bylaws
Speaker: Lawyer Justin Hanson

JUNE 28 – VICTORIA
COMFORT INN
Topic: Strata Bylaws
Speaker: Lawyer Justin Hanson

SEPT 20 – NANAIMO
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- Diminished REPUTATION of the owners, the facility and the staff.
- UNMOTIVATED staff due to frustration and burnout from inefficient work environment.

These types of consequences make our banquet feel like a table surrounded by angry people who get indigestion from the meal. Think of a dysfunctional family get together.

Consequences of failure come in different degrees:

- 1 "Catastrophic" consequences (such as loss of life and injury to persons)
- 2 "Critical" consequences (such as significant damage to the building and components)
- 3 "Marginal" consequences (such as a temporary outage)
- 4 "Negligible" consequences (such as unsightliness that can be corrected later)

David is a certified professional reserve analyst, and a specialist in building maintenance and planning.

Find David on Twitter @DavidAlbrice

Land Title Filings for Self-Managed Strata Corporations

By Doug Leathem, Real Property Advisor, Dye & Durham Corporation

Since the enactment of B.C.'s *Condominium Act* over 30 years ago (now the *Strata Property Act*), strata corporations have found it necessary to file a variety of documents at the Land Title Office. Such documents include: Form I Amendment to Bylaws, Form G Certificate of Lien (default in payment), Form H Acknowledgement of Payment, as well as the required documentation for dealing with amendments to Common Property and Limited Common Property.

Prior to 2004, Land Title Offices in B.C. only allowed the filing of paper documents at the office having the specific jurisdiction for that area. All applications were filed either by attending in person, by mail, or through the use of a land title agent. Documents were received by a cashier, stamped with a unique filing number, fees were paid, and a copy was returned to the

applicant.

In 2004 B.C.'s Land Title and Survey Authority ("LTSA") implemented an Electronic Filing System ("EFS"). EFS was optional at the time it was introduced, and initially was introduced to include standard conveyancing documents such as Transfers and Mortgages. Acceptance of EFS by all user groups was by no means immediate, and in 2010 the *Land Title Act* was amended to empower the Director of Land Titles to require that documents be filed electronically rather than in hardcopy format. On July 1, 2011 a multi-phase program began, which by 2014 has completely changed the way different user groups, including strata corporations, file documents with the LTSA.

One of the most substantive changes to filing requirements, is the necessity for all documents

Continued on page 17

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to be in a specific Adobe Acrobat format (form templates as provided by LTSA), and affixed with a digital signature. Although digital signatures are included in the Adobe Acrobat application, the LTSA will only allow the use of a digital signature issued by Juricert Services Inc., which is administered by the Law Society of B.C., and issued only to lawyers, and members of the Society of Notaries Public of B.C.

Filing of documents and applications under the *Strata Property Act* was included in phase two of mandatory electronic filing, as of May 7, 2012. The effect of this was that strata corporations with more than seven strata lots could no longer file their own documents at the Land Title Office on paper. Although strata corporations with seven or fewer strata lots continue to be able to file paper documents, strata corporations with more than seven lots must now employ professional assistance. Registry agent companies like Dye & Durham Corporation can assist with

the digital signature requirement and subsequent electronic filing through a simple and cost effective service, which includes the use of independent notary or lawyer electronic signature services.

With electronic filing, forms prescribed by the *Strata Property Act* remain largely unchanged. Self-managed strata corporations continue to complete the lien and bylaw forms, and sign them as required under the Act. The original form is then provided to a professional for their inspection and affixation of digital signature, which has been duly issued by Juricert Services Inc. (It should be noted that the professional does not comment on the contents of the accompanying document itself, such as a bylaw amendment.)

Once digitally signed, the application is uploaded through the LTSA's EFS website. Payment of fees is made automatically at that time, and a unique ("CA") prefixed number is given to the document, which is noted on the title as a pending application. Next,

a numbered copy of the document may be downloaded and printed. The LTSA then examines the application and if acceptable, fully registers it against title.

Strata corporations who utilize a management company see little or no change. However, self-managed strata corporations with more than seven strata lots now bear the added expense and time requirement to seek third-party assistance for their document filing. Fortunately, there are many lawyers and Notary Publics throughout B.C. who are well-versed in the process. As well, larger registry agent companies like Dye & Durham Corporation are able to facilitate this process efficiently and cost-effectively.

Dye & Durham is a wholly-owned Canadian company that has been in operation since 1874 providing legal support services, including real property registry assistance. For more information or assistance, kindly contact Doug Leathem, Real Property Advisor, at 778-312-0209 (1-800-661-1811), or landsearch@dyledurhambc.com.



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ICON Property Advisors is a fully-licensed strata management firm specializing in providing accounting services and strata council support for self-managed stratas. ICON works with strata corporations across BC and Rob Boyko, ICON's Director of Property Management, has been supporting VISOA since 2013 by volunteering as an author, speaker, and workshop leader at VISOA events. ICON's low monthly fees include fantastic tools including a dedicated website for each strata with SPA-compliant strata records management, online invoice approval tools, and online task management tools for the strata council. Please see their website for more information: www.iconpa.ca

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 consideration for provision of services for their corporations.

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What is keeping people from serving on their community association boards?

By Donna DiMaggio Berger, Esq.



(Editor's note: although this is a Florida-based article, the reasons why owners do not run for condo board in Florida are very familiar to BC strata owners!)

I just returned from a weekend in Gainesville where I met a pleasant, intelligent woman who was lamenting the uninformed state of her current board of directors. Lucy described a litany of abuses, mostly stemming from her board's unwillingness to read the governing documents and enforce them uniformly. When I asked her why she and her neighbors did not consider electing a new board or running for the board themselves, I got the answer I always get:

"No one wants to run for the board!"

That answer is hardly surprising but what is really behind the sentiment? What is keeping far too many people from serving on their community association boards?

• **Time Constraints:** People often cite their jobs, families and outside interests as reasons for not wanting to fill a director seat in their community. Board service does take time and the commitment varies depending upon the community type and location. Even many retired people who traditionally made up the majority demographic for volunteer directors are no longer as willing to commit precious spare time to the endeavor of community service. Sometimes all it takes is holding the regular board meetings on the same night as one's favorite TV series to make board service an impossibility.

• **Fear:** Let's be honest; the press associated with being a condominium or HOA director has not been all

pretty. Some would-be directors may fear being seen as the proverbial "condo commando" or may fear that covenant enforcement and delinquent assessment collection will prove confrontational. Some potential candidates for board service also may fear the legal liability associated with the role even with the safeguards of Directors' & Officers coverage in place.

• **Philosophy:** Some people who are willing to live in a shared ownership community still have a profound distrust and distaste for board service. For these folks, they are just as happy to allow someone else to handle the distasteful job of being the "enforcer".

• **Ineligibility:** Most of us agree that it is a good idea to set some ground rules about who can serve in a fiduciary position as a community association director. These parameters in Florida have evolved over the years to exclude convicted felons whose civil rights have not been restored, delinquent owners and co-owners. Although the pool of eligible candidates has been narrowed over the years, it is still not narrow enough for some people who would like to see seasonal residents added to the list of folks who cannot serve on the board.

• **Hostile Environment:** Most people do not enjoy being uncomfortable or upset and they tend to avoid situations where those feelings might occur.

Dysfunctional communities who are most in need of a change in leadership are the ones least likely to secure the best candidates for directors since the messy politics has poisoned the pool. It takes a tenacious soul ready to jump into shark-infested waters to make a real change.

The foregoing are some of the most common reasons why people avoid board service like the plague. Even if your community is generally a peaceful one, the thought on most directors' and candidates' minds is that the job is a thankless one and it would be better if someone else had time to do it!

Donna DiMaggio Berger, Esq. is a shareholder at Becker & Poliakoff Legal and Business Strategists and can be reached at dberger@bplegal.com. More of Donna's thoughts can be found at her blog www.CommunityAssociationLawBlog.com. Reprinted with permission.

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President's Report



Sandy Wagner

First - mea culpa – we goofed!

In the Answer to our first “You Asked” article of the February Bulletin, it was pointed out to us that there were some phrases which were either inaccurate or could be misconstrued to the detriment of the Real Estate Council of BC (RECBC) and its “Rules” governing strata property managers.

For these errors we extended our sincere apology to RECBC. As a result, in consultation with their Deputy Executive Officer, Larry Buttress, we have changed those parts of the text which were problematic. In the online version of the Bulletin, the colour version has the changes marked in red, and the black & white version has the changes underlined.

For the benefit of our print version subscribers, the corrections are as follows:

The first paragraph on page 10 beginning, “In the past...” now more specifically reads, “Before the requirement for strata managers to be licensed (on January 1, 2006)...”

Also on page 10 – the first sentence of the last paragraph beginning, “Many, including VISOA, objected to this practice – allowed under RECBC Rules – for some time...” is corrected to read, “Many, including VISOA objected to this practice – common before regulation and licensing of strata managers – for some time...”

Finally, on page 11 – the last sentence before the italicized quote at the bottom of the first column has

been replaced. It originally began: “In 2012, as a result of the pressure concerning...” and has been replaced with the much simpler and more accurate “The RECBC rules are quite clear and they state:”

Sometimes a few words misplaced can completely change the meaning of a phrase and we appreciate it when we are apprised of such situations as they arise since we do aim for accuracy in our Bulletin.

Now – how’s this for a segue - a few misplaced words can also change the meaning of your strata bylaws. A simple “and” when you mean “or” can erupt into problems with bylaw enforcement. In our May and June seminars, Lawyer Justin Hanson will enlighten us all on the complicated matter of strata bylaws – Illegal or unenforceable bylaws; when you need to hire a lawyer to write your bylaws; best practices for bylaw enforcement; and varying levels of fines for infractions. Justin has agreed to speak on this topic twice: May 24 in Courtenay, and again June 28 in Victoria. We don’t usually repeat seminars, but for the benefit of our members at opposite ends of Vancouver Island, you can choose to attend the location closest to you.

Remember that members can attend all our seminars at no charge, so long as they register in advance. Watch our website (or your mailbox) for details on registering for either of these seminars. We are so lucky to have excellent guest speakers such as Justin who give their time “gratis” for the benefit of our members.

At our March Annual General Meeting, we paid tribute to four former board members by bestowing Honourary Lifetime Membership status. Details are on the first page, but it bears repeating their names here: Tony Davis, Cleve Patterson, Elsie Lockert, and Harvey Williams. Thanks to each of you for your service!

Also at our AGM, we elected a new board member – Lynda

Turner-Bailey is a first-time strata owner who found out about VISOA as she was educating herself about how to contribute to her strata. Through our website she learned of an opening on our board, and we think she will be a great asset. As a retired High School Principal she recognizes the great outcomes of assisting people, and she is eager to take on the role of our Membership Chair. Welcome Lynda!

This issue of the Bulletin has articles by several guest writers, and I’d like to thank them here:

Donna DiMaggio Berger is a Florida condo lawyer whose blogs I follow, and when I see an article I think you’ll enjoy I check for permission to reprint it for you. This issue features a short article on the reasons why owners don’t want to volunteer for council.

Doug Leathem is a Real Property Advisor with Dye and Durham, and has written on electronic Land Title filings for self-managed strata corporations. This relatively new procedure is explained clearly in his article.

Tori Escallier is CEO of Bridge Strata Planning, and has a short article on tips for secure strata email accounts.

Long-time Business Member **John Grubb** has written an insightful piece on understanding how WorkSafe BC’s regulations and policies apply to stratas.

David Albrice is a specialist in building maintenance and planning with RDH Building Engineering Ltd, and his articles always have straight-forward language to enlighten us on our maintenance responsibilities. (And memorable cartoons!)

Speaking of cartoons, I was already planning an article on the proposed *Guide Dog and Service Dog Act* when I spotted Adrian Raeside’s cartoon on that subject in the Times Colonist newspaper. I emailed him for permission to use cartoon to illustrate my article, and he agreed.

We’ve tried to include more photos and drawings in our Bulletin, and as always, if you have any comments about this Bulletin or suggestions for future editions, please email me at president@visoa.bc.ca

Sandy Wagner
VISOA Board President