

VISOA Bulletin - MAY 2017

When All Else Fails...Call the Administrator!

By Shawn M. Smith, Cleveland Doan LLP Barristers & Solicitors



The Strata Property Act (“SPA”) contains a number of options for dealing with strata corporations and strata councils which get off track and fail to comply with or meet their obligations under the SPA. However, in some cases the situation is so bad or so unmanageable that facilitated

settlements and court orders directing compliance are simply not going to work. Due to internal discord or just plain refusal to comply with the SPA something more is needed. Section 174 of the SPA is that “something more”.

That section provides as follows:

Appointment of administrator

(1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.

(2) The court may appoint an administrator if, in the

court’s opinion, the appointment of an administrator is in the best interests of the strata corporation.

- (3) The court may
 - (a) appoint the administrator for an indefinite or set period,
 - (b) set the administrator’s remuneration,
 - (c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and
 - (d) relieve the strata corporation of some or all of its powers and duties.

(4) The remuneration and expenses of the administrator must be paid by the strata corporation.

(5) The administrator may delegate a power.

(6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.

(7) Unless the court otherwise orders, if, under

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this Act, a strata corporation must, before exercising a power or performing a duty, obtain approval by a resolution passed by a majority vote, 3/4 vote, 80% vote or unanimous vote, an administrator appointed under this section must not exercise that power or perform that duty unless that approval has been obtained.

An administrator will not be appointed on a whim and not simply because an owner doesn't trust or like what the strata council is doing. Section 174(2) permits the court to appoint an administrator where it "is in the best interests of the strata corporation" to do so. In *Lum v. Strata Plan VR519* 2001 BCSC 493 the court set out a list of factors to be considered when determining whether an administrator should be appointed. Those factors are as follows:

- (a) whether there has been established a demonstrated inability to manage the strata corporation;
- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to the affairs of the strata corporation;
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
- (d) where there is a struggle within the strata corporation among competing groups such as to impede

or prevent proper governance of the strata corporation;
(e) where only the appointment of an administrator has any reasonable prospect of bringing order to the affairs of the strata corporation.

In considering whether to make such an appointment, the court must keep in mind that "the democratic government of the strata community should not be overridden ... except where absolutely necessary". In other words, the preferable course of action is to let the owners sort it out themselves.

The cost of an administrator (some \$30,000 a year at the time) was a reason cited by the court in *Rogers v. Strata Plan No. PG 37* 2010 BCSC 591 not to renew the administrator's appointment.

Strata corporations, big and small, can be the subject of an order appointing an administrator. In *Anthony v Schnapp* 2016 BCSC 1839 the court appointed an administrator to oversee the reversal of changes made to the common property of a duplex strata corporation. The appointment was necessary because the two owners were deadlocked, thus nothing could be done by the strata corporation. In *Norenger Development (Canada) Inc. v. The Owners, Strata Plan NW 3271*, 2015 BCSC 1567 the court appointed an administrator to run a commercial strata corporation consisting of a large number of shops and business.

The appointment can be for a single purpose or it can be ongoing for several years. In *Andrews v. Leno* 2001 BCSC 963 an administrator was appointed to oversee roof repairs. In *Clarke v. Strata Plan VIS770* 2011 BCSC 240 the administrator had been acting for several years in relation to a variety of issues.

An administrator effectively replaces the strata council and relieves them of their role in managing the operations of the strata corporation (either fully or in relation to specific matters). Where there is a strata management company, the strata manager will now take instructions from the administrator with respect to the issues over which the administrator has been given control.

There are, however, limits to what an administrator can do. An administrator does not have the power to make decisions which are otherwise reserved to the owners, such as passing a 3/4 vote - *Aviawest Resort Club v. Strata Plan LMS1863* 2005 BCCA 267. Subsection

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(7) of s.174, which was added in 2009, called that into question by the use of the words “unless the court orders otherwise”. In *Norenger Development (Canada) Inc. v. The Owners, Strata Plan NW 3271* 2016 BCCA 118 the Court of Appeal held that the wording of subsection (7) was not enough to override the democratic provisions in the SPA. The powers of the administrator apply only to the powers and duties of the strata corporation, not to situations where the individual owners have a right to a say by way of a vote. (Sections 164 and 165 of the SPA as well as s.48.1 of the *Civil Resolution Tribunal Act* are a means of interfering with decisions which the owners can make. In *Clarke v. Strata Plan VIS770* 2009 BCSC 1415 the court recognized the ability of the administrator, after having tried to obtain a ¾ vote, to apply to court to approve the resolution).

A typical order appointing an administrator will contain the following terms:

- a description of the scope of the powers being given to the administrator;
- the power, at the expense of the strata corporation, to hire and employ third parties to assist them with the tasks they have been assigned;
- the length of the appointment (which is usually 1 year with the right of any party, including the administrator, to apply to extend or shorten it);
- the terms of the administrator’s remuneration (which can be upwards of \$200 hour and is borne by all the owners in proportion to their unit entitlement – even the owner(s) seeking the appointment);
- a prohibition on bringing any legal proceedings against the administrator without the leave of the court (to protect the administrator from frivolous attacks);
- the administrator be added to the strata corporation’s insurance policy.

Getting an administrator appointed requires someone (the strata corporation, an owner, a tenant or other person having an interest in a strata lot) to apply to the Supreme Court by way of a petition for an order. The Civil Resolution Tribunal (“CRT”) does not have the authority to appoint an administrator – s. 3.6(2)(i) of the *Civil Resolution Tribunal Act* (“CRTA”). In order for the strata corporation to apply there does not need to be a ¾

vote – *Strata Plan LMS2643 v. Kwan* 2003 BCSC 293. There would simply need to be a resolution of council approved by majority vote. The application could be funded from the Contingency Reserve Fund on the basis that it is necessary to prevent significant loss or damage – s.98(3) SPA; assuming the right circumstances exist (such as the need for urgent repairs). However, most applications for the appointment of an administrator will be brought by owners.

One difficulty which those seeking the appointment of an administrator might encounter is that the appointment is often ancillary to the main relief being sought; as was the case in *Anthony* where the main issue was whether changes made to the common property by one owner were properly approved. That issue would now go before the CRT. Once an order is obtained from the CRT directing that the strata corporation do something, a petition would have to be brought seeking an order that an administrator be appointed to do the thing ordered to be done. The same process would apply to orders to carry out large scale repairs (which often is made to see an administrator appointed to ensure that is done).

The decision to apply to appoint an administrator should not be taken lightly. Careful thought must be given to the basis for seeking the appointment (can the test set out in *Lum* be met?). Thought should be given to what other options (orders under s.165 of the SPA or s.48.1 of the CRTA) can be used to achieve the same result. Lastly, thought should be given to the cost that would be imposed on all the owners, including the applicants. Legal advice with respect to these issues can help in making that decision.

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



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Is The Construction Management Approach Right For Your Strata?

By RDH Building Science

When it comes to deciding which construction approach to take for a building renewal or rehabilitation project, the traditional method is often the first that comes to mind. A general contractor is hired through a competitive bid process, with the contract being awarded to the lowest qualified bidder. Then through the bid process, the selected contractor chooses the trade contractors and suppliers they will work with, assuming the responsibility of project oversight. General contractors provide owners with a bid price of the project, including the cost of trade contractors' rates.

An alternative; however, is the construction management (CM) approach. In this scenario, a construction project manager is hired to act as the owner's representative throughout the entire construction process, offering support that ranges from coordination of the initial bidding process to on-site supervision and construction schedule management; cost control and cash flow projections through to field review and project completion and hand-off. Well known within the construction industry and suitable for all types of building enclosure rehabilitation projects, the construction management approach allows owners to know exactly what they are paying for through separate contracts with the construction manager and the trade contractors with payment based on fixed fees.

While both can be effective, different projects are better suited to different approaches, and multiple factors can impact which route an owner takes. The following are some guiding points to help determine



if the construction management approach is right for you.

You'd like to have more control over the project

Between hiring a construction manager and a general contractor, there is a major difference in control and transparency.

In the construction management approach, owners work directly with the construction manager who acts on the best interests of the owners

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throughout the entire project. The construction manager works on your behalf to competitively bid the components of the job, making recommendations on trade contractors to ensure the project team

includes only the highest quality tradespeople while also seeking out competitive pricing. By hiring trade contractors through separate contracts rather than a packaged deal under a general contractor, the construction manager has direct access to and power over all aspects of the project.

This means, if things aren't moving according to schedule or work isn't being done at the level of quality it should be, your construction manager can step in and get things back on track. In addition to support from your construction manager, a superintendent is on site at all times during the construction phase to coordinate and supervise the work of trade contractors on the behalf of the owner, providing an elevated level of oversight to ensure the work is done properly and on schedule.

The scope of your project involves more than one or two items

There is a common misconception

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that the construction management approach is only used for massive projects with complex parts, like high-rise buildings. Although such buildings are ideally suited for this approach, a 20-unit wood frame apartment in need of roofing and balcony rehabilitations can be equally suited.

A qualified construction manager can help with strata projects ranging from high-rise complexes with multiple buildings to smaller low-rise residential and commercial buildings. La Mirage, for example, was a large project involving the building enclosure rehabilitation of two high-rise towers. Both towers were successfully rehabilitated simultaneously with a superintendent on site for each building, saving time and cutting costs.

In contrast, the Lord Shaughnessy, a 4 storey strata condominium in Oak Bay, much smaller than that of the typical Lower-Mainland high-rise projects, involved the renewal of all windows, doors and guardrails,



targeted cladding replacements, and balcony membrane repairs. The building was fully occupied throughout the project and was completed successfully on time and on budget.

Both projects had very different scopes of work, but each benefited from the construction management

approach.

Remember too that the construction management approach does not require a project to undergo a full rehabilitation every time. Space, a high-rise condominium building in Vancouver needed significant enclosure repairs, but the repairs could be managed without a complete enclosure replacement. The construction manager worked closely with the owners to develop a comprehensive maintenance and renewals program to maximize the life of the existing assemblies of the tower. Because they were involved early on in the process, they were able to come up with a strategy that fit the needs and budget desired by the owners.

You have a strict budget

Another major benefit of the construction management approach is the fixed fee structure it uses. Construction managers are able to make accurate cost estimates of the project during the design phase and can provide input on ways to improve value while keeping the budget in check. The owners receive formal construction cost reports and have full access to budget details so that there are fewer surprises along the way; the process is entirely transparent. As an added bonus, if the project ends up coming in below the


estimated budget, the savings are given directly back to the owner.

Your timeline is essential

Time is of the essence, and projects that go over their estimated schedules end up costing owners money. This is why planning ahead is a key part of the construction management approach. Because the construction management approach allows for early input during the design phase, potential issues that would slow construction or eat up budget can be uncovered and resolved before construction even begins. Once construction does begin, the site superintendent is present to make sure construction sticks to that plan, and that trade contractors are completing their tasks on time.

Remember that in the traditional approach, general contractors

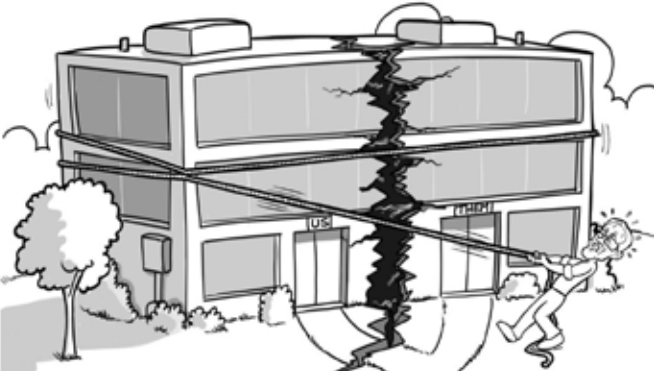
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are not brought onto the project until the design phase has been completed. Therefore, if change orders are needed, they will slow project progress and can tack on some major costs.

The Victoria Regent, a mixed-use strata condo/hotel in Victoria, was a project that had a strict timeline and schedule. The hotel needed a rehabilitation to replace windows, doors and guardrails, but wanted to stay open during construction.



The construction manager was involved early in the rehabilitation design phase and worked with the client to coordinate the order of long lead time items and develop a phasing plan that accommodated the continued use of the hotel. The

schedule was closely monitored and driven by the construction manager through 5 phases of construction, bringing the project in on time while minimizing disruption to hotel operations.

Conclusion

In conclusion, while there's no right or wrong way to approach a project, it's important to understand the different approaches available. Ultimately, it is up to the owners to decide which approach best suits their project needs and choose a team they trust to get the work done right.

RDH Building Science has 20 years of experience working on construction management projects all over British Columbia. In addition to a diverse team of experts, RDH's superintendents and project managers are seasoned professionals with many coming from backgrounds in construction and general contracting, and bringing with them a solid track record and reputation for success. RDH also provides a wide range of services to the Island strata community including design solutions, depreciation reports, condition assessments, and more. For more information, contact Chris George, Construction Project Manager, at cgeorge@rdh.com or call 250 479 1110.

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Civil Resolution Tribunal Update

By J. Garth Cambrey



It's been over eight months since the Civil Resolution Tribunal (CRT) started accepting applications for strata property dispute resolution. Here's an update on what has happened at the CRT since July 2016 and what can be expected in the near future.

How is the Solution Explorer working?

The Solution Explorer is an online system of guided pathways that allows people to get free legal information and tools to try and resolve their disputes without starting a CRT claim. We urge parties to go through the Solution Explorer before completing a CRT application. Since we opened, the Solution Explorer has been used for over 5,000 explorations and can be accessed through the CRT website. www.civilresolutionbc.ca

Approximately 70% of people using the Solution Explorer follow the owner or tenant pathway with the remaining 30% of users following the strata council pathway. We've been asking users to provide feedback on how the Solution Explorer can be improved. We continually respond to public feedback by making improvements to processes, templates and resources in the Solution Explorer. The

improvements we make are incorporated into the existing Solution Explorer every few months and we thank you for helping us to improve the Solution Explorer.

Do parties need to represent themselves in a CRT dispute?

The CRT's legislation contemplates parties being self-represented. That means the parties must act on their own behalf throughout the dispute resolution process except in special circumstances. For strata corporations, the CRT requires that a council member be the contact person as most often it is the strata council that must exercise the powers and perform the duties of the strata corporation under the requirements of the Strata Property Act, Regulations and bylaws of the strata corporation. Parties can however; request a representative act on their behalf but permission must be obtained from the CRT. Minors, persons with impaired mental capacity and insurers involved in defending or pursuing a strata dispute are permitted to be represented under the CRT rules. Otherwise, the CRT will only permit a party to be represented if a tribunal member decides this is in the interest of justice and fairness.

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What happens when people make an application for CRT dispute resolution?

When the CRT receives an application for dispute resolution, one of our Resolution Support Clerks screens it to make sure it's complete. If we need to clarify some things with the applicant we'll do that. Next, our team sends out a Dispute Notice and response form for the applicant to provide to the other parties. We've refined our processes and are generally able to issue a Dispute Notice within 24 hours of receiving an application.

After the applicant gives each party a copy of the Dispute Notice, they can respond to the dispute. Once the CRT receives these responses, the dispute moves into our facilitation phase.

What happens after an application is accepted by the CRT?

As of mid-April, there have been over 325 applications submitted for strata property dispute resolution. About 40% of people have submitted their applications outside of typical working hours.

About 175 claims are in facilitation, where our facilitators are working with the parties to help them resolve their dispute by agreement. We've recently added three Senior Case Managers and five Case Managers, all of whom have extensive dispute resolution experience. We'll be adding

more facilitators to our staff in the coming months and have been able to assist parties in settling some disputes by consent.

If our facilitators are not able to assist the parties in resolving their dispute, a party can request the dispute be moved to the tribunal decision phase (adjudication) for an additional fee. Disputes can also be moved to the tribunal decision phase for a default decision if a response is not received.

In the tribunal decision phase, a tribunal member will make a binding decision that can be enforced as a court order. The CRT has settled over 20 disputes and posts all decisions on the website for the public to see: <https://www.civilresolutionbc.ca/crt-decisions/>

What's next?

We're in the process of redesigning our website to provide better information and access to our services.

Another big step will be the launch of the CRT's online portal and case management system which will allow parties to interact with each other and their assigned facilitator online. Currently, communication largely happens using email. This will involve more online functions for applicants including filing proof of notice (of Dispute Notices) and requesting extensions or directions for providing notice. It will also include online functions for respondents to file a response, make requests for extending a deadline and add a claim (counterclaim) to the dispute.

Also, we've just completed testing the Solution Explorer for small claims disputes as our jurisdiction will expand to include small claims disputes as of June 1st.

When our jurisdiction is expanded, the CRT will be mandated to resolve certain small claims disputes in addition to strata property disputes. Unlike strata property disputes, our initial monetary jurisdiction for small claims disputes will have a limit of \$5000. Small claims disputes that the CRT will be able to resolve will include claims for:

- Debt or damages
- Recovery of personal property
- Personal injury, and
- Specific performance of agreements involving personal property or services (this would include strata management agreements).

J. Garth Cambrey is the Vice Chair - Strata of the Civil Resolution Tribunal. For more information visit the CRT's website at: www.civilresolutionbc.ca or if you have questions or comments you may direct them to info@crtbc.ca



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YOU ASKED By VISOA Strata Support Team

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.

Q: When compiling a list of owners I discovered that three spouses were not registered as owners on the Title. We were approaching our AGM so I checked the SPA/Regs and found that these three could not vote on motions or hold a Strata Council position. What I could not determine was their ability to vote a proxy on behalf of the spouse who was a registered owner. Could you provide any guidance on this?

A. Of course these three spouses are permitted to attend the meeting, but, as you have discovered, are not considered eligible voters because they are not on title of the strata lot. However, they could be given a proxy in the normal manner by

the actual owner in accordance with SPA s.56:

Proxies

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

(2) A document appointing a proxy

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

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

(c) may be revoked at any time.

(3) The following persons may be proxies:

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

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

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

(4) A proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and sec-

ond motions and participate in the discussion, unless limited in the appointment document.

Subsection (3)(c)

above applies to your question about a spouse as a proxy since a spouse is included in the reference to "any other person." Therefore, a spouse who is not on title may vote as a proxy "in the place of the person appointing the proxy" as provided by part (4) above.

As to being elected to council, SPA s.28 states:

Eligibility for council

28 (1) The only persons who may be council members are the following:

(a) owners;

(b) individuals representing corporate owners;

(c) tenants who, under section 147 or 148, have been assigned a landlord's right to stand for council.

(2) Despite subsection (1), the strata corporation may, by a bylaw passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be council members.

(3) Despite this section, a strata corporation may, by bylaw, provide that no person may stand for council or continue to be on coun-



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cil with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).

This means that the strata corporation may pass a bylaw under SPA s.28(2) to allow “spouses” of owners, as a class, to be council members. Many stratas do in fact pass such a bylaw. And oth-

ers, especially those with an aging population of owners, have passed a bylaw allowing the children of owners to be elected to council. Note, however, that the bylaw cannot allow for a specific person to be allowed to be elected – it can’t allow “Mrs. Jones’ son” but can allow “adult children of owners”.

Interestingly, the SPA does not deal with the situation that a “spouse” or a “child” can be elected to council and therefore can vote on all strata matters over which the council has jurisdiction, but at an AGM or SGM that spouse or child cannot vote without first having a proxy from the owner.

Q. I heard that AirBnB and VRBO are not rentals as defined under the *Strata Property Act* or the *Residential Tenancy Act*, but are business activities akin to short-term hotel-type use. We thought we were covered against AirBnB type activities by our no rental bylaw. However, it looks like we will need another bylaw. Can you help?

A. Yes, this is starting to become a serious issue with stratas. Some people purchased strata lots in downtown Victoria strictly to generate revenue through short term use such as a Bed & Breakfast operation because the area is zoned for “hotel” type activities. That is creating problems especially for apartment buildings (though townhouses are not exempt either) since the residents can’t control who is coming and going. This can lead to concerns such as damage to property, insurance implications, parking and security problems, smoking issues, noise and pet problems and possible criminal activities. Many stratas may already have a bylaw in place that could now be applied to such short term usage since the courts have determined that they constitute a business

rather than a rental: *Owners, tenants and occupants must not conduct any business or commercial activity from their strata lot which results in members of the public attending at their residence.*

However, an additional bylaw could be added so that the activity is specifically covered:

A strata lot must not be used for short-term accommodation, such as a bed-and-breakfast, lodging house, hotel, home exchange, time-share or vacation rental. Without limiting the generality of the foregoing, an owner, tenant or occupant must not enter into a license for use of all or part of a strata lot.

The first sentence is self-explanatory. The second sentence covers the situation (such as in downtown Victoria) where, because of the zoning for hotels, a person may ob-

tain a short-term accommodation business license from the City. This sentence therefore prohibits a person from doing so for a strata lot in a particular strata plan. To date, this has not been challenged in either the CRT or the courts as to its enforceability, but as long as the strata council adheres strictly by SPA s.135 in the enforcement procedures it should stand up to scrutiny.



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Loans to Strata Corporations

By David Grubb



Section 111 of the Strata Property Act authorizes a strata corporation to borrow money under specific conditions:

Strata corporations may borrow

111 (1) *The strata corporation may, after approval by a resolution passed by a 3/4 vote at an annual or special general meeting, borrow money required by it to exercise its powers and perform its duties and, subject to section 81, may secure the repayment of money borrowed by it, and the payment of interest on that money.*

(2) *Without limiting subsection (1), the strata corporation may secure the repayment of money borrowed by it, and the payment of interest, by one or more of the following:*

- (a) a mortgage of property, other than common property;*
- (b) an assignment of unpaid strata fees or special levies;*
- (c) a negotiable instrument.*

Strata corporation must not mortgage common property

81 *The strata corporation must not mortgage common property.*


For many years most banking institutions refused to even consider making loans to stratas to finance major projects because there is very little security once common property is excluded. If the strata corporation owned property such as a strata lot as an asset for a purpose such as a caretaker's suite, a lending institution might consider it for a fairly small loan because they could use it as collateral for a mortgage.

Using "a negotiable instrument" as collateral seems strange. If the strata has so much invested in, say, GICs, why would they not first cash in those "instruments" (which would presumably be part of the CRF) to fund at least part of the project?

That leaves "an assignment of unpaid strata fees or special levies". Lending institutions characteristically are nervous about these, since individual owners could renege on payments, or the strata might get into some other difficulty that could result in defaulting on the loan. Thus the lending institutions have been unwilling to accept that degree of risk.

There were some smaller companies willing to make those loans but their interest rates were considerably higher than most financial institutions and with added "administrative charges", the cost of the loans was not particularly in the best interests of the stratas. Some of these companies even put a lien on every strata lot so they could seize any one of them as payment if the strata itself defaulted in some way. (The strata

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itself can do so if an individual does not pay their assessment to a special levy, but the strata still must pay the lender.)

To find out if there has been a movement toward making loans available in recent years, we contacted two of the major banks, RBC and BMO, and three of our business members: Coast Capital Savings Credit Union; and Island Savings – a Division of First West Credit Union; and CWB Maxium Financial.

RBC indicated that they do not really involve themselves. BMO and the two credit unions do in a somewhat limited fashion, sticking close to the requirements of the SPA and their own policies. CWB Maxium Financial are very much engaged in this service.

BMO does provide the service but requires that the strata have their accounts with the bank. Their “Financing Resolutions” document makes it easy for stratas by including all the requirements for the resolution under which the strata accepts the terms of the Bank’s “Commitment Letter”. This letter, once completed and approved, covers the initial Floating interest rate, consisting of BMO’s prime rate and a percentage per annum for a specified period, after which it will be converted, at the discretion of the bank, to a “demand loan non-revolving” or a “fixed rate term loan”. The Financing Resolutions document also has the wording of the resolution required to raise a special levy in accordance with SPA s.108. In addition, if there is a caretaker’s suite owned by the strata which can be used as collateral, there is a clause in the resolution whereby the strata corporation (i.e. council) is authorized to mortgage or sell it in accordance with SPA s.82.

Acquisition and disposal of personal property by strata corporation

82 (1) *The strata corporation may acquire personal property for the use of the strata corporation.*

(2) The strata corporation may sell, lease, mortgage or otherwise dispose of personal property.

(3) The strata corporation must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting of an acquisition or disposal of personal property if the personal property has a market value of more than

(a) an amount set out in the bylaws, or

(b) \$1 000, if the bylaws are silent as to the amount.

(4) This section does not apply to the acquisition or disposal of an investment instrument referred to in section 95 (2).

BMO’s “Strata Corporation Questionnaire” which starts

the process, seems to restrict the loan only to residential stratas and we understand that they do not normally consider loaning to a strata with fewer than 20 strata lots.

To date, there is no explanation of whether they would include mixed-use stratas so one wonders how they handle the “non-residential” (normally “commercial”) part of such a strata. Moreover, we did not inquire of any of the other financial companies as to whether they have similar restrictions or how they might handle a major renovation of something like a strata’s dock. Nor did we touch on making loans to legal sections of a strata.

Coast Capital Savings seems even more reluctant and tends to recommend clients to BMO. Their representative wrote that they:

...will not finance to a strata on an unsecured nature. The only option for lending to a strata is on a secured basis, thus using a caretaker suite or cash (or a combination thereof). The cash pledged cannot be restricted funds. The Strata must be able to have sufficient cash flow to service the debt, and if they need to request an increase in strata fees to accommodate the new loan payments, this must be done by a meeting of the owners with a minimum 3/4 vote in favor of the increase.

This is essentially in conformity with SPA s.111(2)(b).

Island Savings tends to be even more restrictive in requiring that the strata have a property management company. But they also seem to have an alternative option to make special loan terms for individual owners. Their representative wrote:

...strata lending is a bit riskier mainly due to lack of security. We would prefer the Strata has a common asset we could take as security like a caretaker’s suite or guest suite. Ideally the Strata would have a relationship with Island Savings (Operating account and/or Contingency Reserve fund) prior to looking into the lending. The Strata would need to be managed by a professional strata management company (not just run by the strata council). It is usually more cost effective for individuals to get their own loans [...] due to the fees and interest rate being higher on lending for Stratas than personal lending. In the past, Island Savings has worked with Stratas, that did not meet the lending requirements, to set up a special lending program for the individual owners to borrow the funds.

Finally, there is CWB Maxium Financial. With a branch in Vancouver, this national company has been in the business of condominium (strata) loans since 2002. Their documentation

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is similar to the BMO's, but in greater detail. It is interesting to note that at present their interest rate is not based on a "prime rate" like a bank. Rather, the "Discussion Paper" they present to prospective clients states their Interest rate will be based on the yield of a similar term Government of Canada Bond plus XXX basis points. One supposes that since the government has announced that it will cease issuing CSB and CSP bonds as of November 2017, CWB Maxium will change the basis of their interest rates to something else.

There does not appear to be a restriction on the number of units, nor whether the strata is self-managed or has a property manager, except that if the strata changes their current management style or switches to another manager, they must have the explicit permission of CWB Maxium. Our impression is that the representatives of the BC branch are well versed in the Strata Property Act and that there is a large amount of flexibility to try to meet the needs of stratas.

Regardless of which financial institution a strata corporation obtains a loan from, owners must always keep in mind that the loan is going to cost them more than it would if they each took out personal loans. These institutions are taking greater risks because they cannot attach a mortgage to the common property so the interest rates will be higher, and the administrative costs will also add to the debt.

Also, as any lender would, they are going to examine the strata's current finances in great detail (and probably other

aspects of the strata's administration such as the last three or four years' financial statements, depreciation reports, minutes of AGMs and SGMs, etc.). Loans should be the last resort but, where a project is in the hundreds of thousands or millions of dollars and would put a considerable strain on the strata's finances there may be no other choice. But if a strata shows that it has not been prudent with its operating fund or in developing a healthy CRF, based on a major asset management plan, such that it places an undue strain on the strata's ability to handle other essential maintenance and repair projects, then the financial institution may not be interested in taking the risk.

Nevertheless, the door to obtaining loans is slowly opening to stratas when they appear to have no choice, and may ease owners' distress where some individuals could be faced with having to sell because of extreme financial hardship.

If readers are aware of other financial institutions who have different criteria for making loans to strata corporations, you are invited to pass the information to the editor@visoa.bc.ca.

Finally, it can never be emphasized too much that before committing to taking out a loan from any financial institution, strata corporations should always consult a lawyer who specializes in strata law and preferably, in this case, an independent financial professional, so that the owners are fully aware of both the ramifications in doing so and the alternatives.



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Time Limits, Limitation Periods and Change-Over Amnesia

By Paul G. Mendes, Partner, and Rob Mallett, Associate: Lesperance Mendes Lawyers



Paul G. Mendes



Robert A. Mallett

The ancient Greeks had a word for everything. According to the helpful folks at Wikipedia, *amnesia* is the Greek word for “forgetfulness”. In modern usage, it has come to mean the memory loss that sometimes follows a traumatic event.

The amnesia I am talking about, of course, is the kind that appears after a change of council following an Annual General Meeting, or a change in the strata management company.

I like to call this “Change-Over Amnesia,” and one particular way in which this amnesia manifests itself is through forgotten time limits and limitation periods.

We all know that there are time limits for everything. Those acid washed jeans you have been eyeing on Amazon? The time limit on that fashion expired in the 1980s. Everything has a time limit too, except perhaps an apology.

The rule is no different in a strata or condo corporation. Everything has a time limit and somehow the council or executive must remember all those time limits.

Some time limits never change, and are in easy to find places like the *Strata Property Act* (the SPA), the SPA Regulation and the registered bylaws. Most of the time limits that apply to stratas, however, are not easy to find. They may reside in warranties, air space parcel agreements, elevator contracts, and strata management agreements.

Then there are the time limits you don’t even know about. The time limit that “tick tocks” its way to expiry while the council remains blissfully ignorant of it: the dreaded legal limitation period.

All lawsuits must be filed in court before the limitation period expires. Once a limitation period passes on a legal claim, the plaintiff can no longer sue. The plaintiff’s “cause of action”, it is whispered in the corridors of Canada’s law firms, has “expired”.

For strata corporations, an expired limitation period can mean the loss of the right to collect unpaid debts like fines and strata fees, or to sue the builder for breach of warranty or negligence. A missed limitation period can, in some cases, represent a loss of a significant amount of money affecting all owners.

Generally speaking, all claims in BC are now subject to a two-year limitation period. Although limitation periods can be postponed in some circumstances, and claims arising before June 1, 2013, may be subject to a longer limitation period, *you should never make a decision about limitation periods without obtaining legal advice*. If something distracts you right now and you cannot make it to the end of this article, perhaps you will mark the previous sentence as your “take away”. Otherwise, bear with me to the end.

Due to change-over amnesia, stratas must develop simple ways to track time limits and limitation periods that concern the strata. Keeping records that contain time limits and limitation periods, such as warranties, contracts, and legal opinions is not enough. The time limits and limitation periods must be recorded somewhere that is accessible to all council members and managers. Maybe (gasp!) this

information should be recorded somewhere that is accessible to all owners.

Here are some suggestions that may help the strata keep track of time limits and limitation periods in the face of “change over amnesia”:

Use a single, shared but secure web-based email and calendaring system for all strata business.

Although no system is 100% secure, some of the free services offered by Google, Microsoft and other major tech companies will do the job and do not require any specific kind of device or expertise. All council business should be conducted on an official email account and not personal or work email accounts.

Similarly, council deadlines, time limits and limitation periods should be recorded on a single common group calendar accessible to all council members and the strata manager. If you are concerned about people deleting important information, look at ways to limit that risk by adjusting the security settings on the account.

It is a recipe for missed time limits and limitation periods if you keep track of those deadlines in multiple places such as individual council members’ calendars.

Change passwords on all official strata email accounts every time there is a change of council or management.

They say the only secure password is one you cannot remember. I know it sounds crazy, but it’s true. For official council business accounts, every user should have a unique password, rather than a common password for all accounts. There are plenty of good and inexpensive password management apps on the market that will assist with this.

Anyone who uses the Internet

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without a password manager, or who uses the same password for more than one account has only themselves to blame when their account is finally hacked. If you are too cheap to spring for a password manager, at least consider using a case-sensitive password with at least one punctuation mark and one number. If you are not sure how to do that, ask your grandchild.

Ideally one person (preferably the manager) should be in charge of administering the passwords to make sure they are changed following an election or change of management.

Consider secure cloud-based storage for important records that contain information about time limits and deadlines. Examples would include warranty certificates, contracts, legal opinions, proof of loss notices, etc. Online cloud storage services like Google Drive, Microsoft's OneDrive, Dropbox and many others are available for free, with enhanced security and more storage available for a modest

additional subscription charge. Some management companies also offer similar services. You may also want to look at services that store your data on servers located in Canada.

The same rules that apply to council passwords should apply to cloud-based storage as well: no common passwords and the passwords should be changed every time there is an election or change of management.

The tools mentioned above are generally secure and do not pose a particular privacy concern as long as strong passwords are maintained and changed on a regular basis. In fact, keeping this information in a single online location reduces the risks posed by keeping it on particular computers or personal email accounts, which can be viewed by non-council members, hacked, changed, lost or destroyed.

A strong record-keeping system can save a strata significant legal expenses and may even help avoid unnecessary or unwarranted litigation. A lawyer who is assessing the strength of a

strata's potential claim against a party will find it much easier to determine the strata's chance of success if it is clear how strong the defendants' time limit or limitation period defenses may be. To quote from Jerry Maguire, "Help me help you".

If you have any other suggestions on how to fight "change-over amnesia" or if you have any other feedback on our other strata alerts or our website, please let me know.

WHAT WE DO: Lesperance Mendes has been representing strata corporations and owners in the Courts of British Columbia since 1997. To find out more about our strata law practice, or to arrange a presentation to your strata, your management company or your organization, please contact Paul G. Mendes at pgm@lmlaw.ca or by phone at 604-685-4894.

THIS ARTICLE IS NOT LEGAL ADVICE: This article provides general information and should not be relied on without independent legal advice.

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Our Depreciation Report Says We Need New Windows – Now What?

By Warren Scott

Mandatory depreciation reports have changed the way strata corporations manage building upgrades, including windows. The lifespans of building features, including exterior cladding, decks, windows, patio doors are clearly laid out. These reports provide an excellent planning tool for strata councils to use and abide by, and can be very helpful to prospective buyers of strata units.

One of the most important aspects of the building envelope is the windows, and if your strata has windows that are past their “best-before” date, planning for their replacement can be a daunting task for strata councils as the expenditure to upgrade them can be significant.

Here is an outline of seven steps that will guide you through a process to make the right decision at the right time for your strata:

Step 1 - Find out approximate costs – get a budget quote:

- Most window contractors will offer budget quotes to strata councils at no charge; knowing this initial budget is vital for your strata council’s financial planning.

Step 2 – Identify your time-frame to upgrade:

- Questions to ask when planning:
- How much money (if any) can be made available for windows from the contingency reserve fund (CRF)?
- How much can be set aside from strata fees?
- Will a Special Levy be needed?
- Is financing some portion of the job an option to consider? If so, perhaps your contractor can connect you to banks and organizations who finance building envelope and window upgrades directly to strata corporations.

Step 3 – Define scopes of work:

- Determine the installation details. Understanding the building’s exposure and existing condition is critical at this point. Incorporating the right flashings and membranes is key to enhancing the long-term performance of the building envelope.

- Assessing the condition of the interfacing components is also important. Designing details that allow for the future integration of other sidings and trims is just as important as the original window replacement.

- Will the project be phased or done all at once using some combination of CRF, special levies, or financing? In many cases it can be more cost effective and less intrusive in the long run to do all the windows at once.

- Your contractor can help by providing budgets for subsets of windows, e.g. separate windows and sliding patio doors, or one face of the building(s).

- Schedule information meetings for the strata council to review proposed in-

stallation methods and understand the technology that is incorporated into windows. Take advantage of all potential upgrades that will add to increased comfort and reduced maintenance.

Step 4 – Raise money for the project. Step 5 – Get fixed price quotes:

- Choose companies who are reputable and have been in business 20+ years.
- Choose companies that have a proven track record with multi-family window projects.

- Choose companies that use their own employees to install the windows and not subcontractors.

- Choose companies that will provide a warranty for window installation and labour for at least 10 years. A comprehensive warranty is vital for common property; your strata corporation will have these windows for the next 30+ years.

Step 6 - Strata council selects a contractor:

- Choose a contractor who knows how to work on buildings that are occupied. These contractors will know how to keep your homes clean and will accommodate your schedule and livelihood.

Step 7 – Pass a vote to upgrade windows:

- If the strata chooses to fund the project that is identified in the depreciation report using funds from the CRF, then only a majority vote is needed. A $\frac{3}{4}$ vote is not required.

- If the strata must raise some or all of the funds with a special levy or a loan, either one of them requires a $\frac{3}{4}$ vote.

- Once a vote is passed, a contract can be signed and the work will commence!

By following these guidelines for navigating the window replacement process, your strata will be able to make informed decisions, build consensus among members, and enjoy a smooth and well planned renovation.

Centra Windows is available to help your strata through this process. Contact Centra at info@centra.ca. This article does not replace the advice of a Lawyer or Property Manager.



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President's Report



Thank you to all VISOA members who attended our AGM at the end of February. You passed the budget, which includes an allowance for developing a marketing plan and for advertising expenditures with a view to increasing our membership so that we can avoid raising membership fees.

We are proud that we can keep our fees as low as they are and still offer the many member services that we know you appreciate.

Also included in the budget was a “donation” line item. This isn't a new budget item, but it now has its own line. This is the 5th and final year of the BC Law Institute's Strata Property Law (Phase Two) Reform Project, and VISOA has been a funder for all five years. The committee will shortly finalize and release its report on sections, types, phases, and other complex stratas. The report will go to government in the next few months, with recommendations for legislative change. You can check the BCLI website or our own website for updates. The next project for the committee to tackle is – governance matters; definitions; insurance; and standard bylaws.

At our AGM you re-elected all board members who were standing for election; and elected Betty-Ann Rankin who was appointed to the board in the fall of last year. The board can appoint up to three more members according to our bylaws, and so before our first board meeting following the AGM, we unanimously appointed Paulette Marsollier, whose name you may recognize as a past board member. Welcome back, Paulette! You can see the full list of your board on page one.

At that first meeting, just like in your first strata council meeting of the year, your board elected officers. I'm honoured to have been elected as your president again; and John and David were elected vice-president and secretary, respectively. Betty-Ann was elected treasurer.

The new board is enthusiastic and passionate about

strata assistance and education; and full of plans for the year. We each take part in one or more “working groups” and I'd like to share those groups with you:

- Bulletin: *Sandy, David, Betty-Ann*
- Government and External Stakeholder Relations: *John, Lynn*
- Marketing and Advertising: *Wendy, Lynn, Sandy*
- Membership: *Paulette, Wendy, and volunteers Pat and Ray*
- Outreach (Up-Island): *Deborah*
- Publications: *John, David, Lynn, Wendy*
- Seminars: *Sandy and all directors and volunteers*
- Social Media: *Wendy, Lynn*
- Strata Support Team: *David, Betty-Ann, and volunteer Gloria*
- Volunteer Coordinator: *Deborah*
- Website: *John, Sandy, and volunteers Tony and Elsie*
- Workshops and Public Education: *Sandy, Wendy, Deborah*

If you would like to volunteer with us, we'd love to have you! Contact me anytime at president@visoa.bc.ca

Sandy Wagner, VISOA President

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The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.

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