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



## VISOA Bulletin - MAY 2018


# Editor's Angle

*David Grubb, Co-Editor*

On being officially "appointed" co-editor of the *Bulletin*, I recognized, Latin having been inflicted on me from an early age (now mostly forgotten), that "co-" is an abbreviation of "con", signifying "with". But "con" has many secondary meanings. So am I editing with Sandy or have I been conned?

Realistically, I have been a copy editor for some years, content to check punctuation, spelling and grammar, and rephrase some sentences for clarity. But I have not dealt with finding writers and articles, layout, advertisements, lists of business members, and all the small details that go into the production. Nonetheless, it is time someone lifted the burden from Sandy's shoulders after 8 years at the job. And that was in addition to becoming President, organizing seminars and workshops, serving on several provincial committees concerned with stratas, liaising with other agencies, supervising our employees (and keeping Board members in line). We owe a huge "Bravo Zulu", as the Navy says, to Sandy for her outstanding work.

So I will give my best shot at keeping the *Bulletin* rolling off the press every quarter, with the advice and help of Sandy, Georgia Ireland who formats each edition so creatively, and the other members of the Board who add their expertise as well.

Sandy will maintain her President's Report which will concentrate on the activities of the Board and, with input from our members, represent VISOA in dealing with developments and issues in the strata community about which strata owners are concerned.

In this issue, in addition to some ever-valuable information about bylaw enforcement and common property usage (Pets & Parking! Again!), we have some solid advice from business member Cameron Carter about insurance and the replacement cost of a condominium, and the latest amendment of SPA Regulation 6.9 to accommodate specific groups of owners sharing expenses in preparation for Electric Vehicle charging stations.

Of particular interest is an announcement from the BC Law Institute Committee regarding the release of their *Consultation Paper on Governance Issues in Stratas*. It is a well written but detailed study with their recommendations of sections of the Act dealing with how stratas should rule themselves, including potential effects on the Standard Bylaws and probably individual stratas' bylaws. It is well worth all strata owners' reading and we encourage feedback to the Committee: especially the long form. (Deadline: June 15, 2018)

As ever, we are always on the look-out for articles which may be of interest to strata owners. So if you have something to share or would like to see some information about a topic, please do not hesitate to send us a note at *editor@visoa.bc.ca.*

## In this issue...


- Editor's Angle **David Grubb** ....1
- You Asked: The More Things Change... **Harvey Williams** ....3
- You Asked: Who is Responsible for Leak? **David Grubb** ....3
- The Importance of Insuring a Condominium to its Full Replacement Cost **Cameron Carter** ....7
- BCLI Seeks Your Input on Governance Issues for Strata Corporations **Kevin Zakreski** ....11
- Introducing New Business Members ....10
- Business Members Directory ....12
- But It Has Always Been My Unit's Parking Space! **David Grubb** ....15
- Pet Problems **Shawn M. Smith** ....19
- Plugging Into User Fees **Wendy Wall** ....22
- President's Report **Sandy Wagner** ....24



**BOARD OF DIRECTORS 2018**

EXECUTIVE

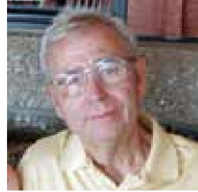
**President** - Sandy Wagner
**Vice President** - Paulette Marsollier
**Secretary** - David Grubb
**Treasurer** - Betty-Ann Rankin

DIRECTORS AT LARGE

Deborah Fraess, Lynn Klein, Wendy Wall

# The More Things Change...

*[The following "You Asked" article was written for the March, 2003, Bulletin by our veteran Helpline person, and sometime editor & president. It is reprinted here because it answers the same question the Strata Support Team still gets! And the answer has not substantially changed! Ed.]*



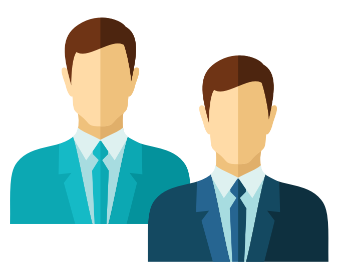
*Bulletin, March 2003*

## YOU ASKED

*Harvey Williams*

*Have a question about managing your strata corporation? Ask us. If we don't know the answer, we'll either find it for you or direct you to where you can find the answer. Questions may be rephrased to mask the identity of the questioner and to improve clarity when necessary. We do not provide legal advice and our answer should not be construed as such. However, we may, and often will, advise you that you need legal advice.*

**Q.** What happens when no one, or only one person wants to serve on the strata council?



**A.** Difficulty in finding owners willing to serve on the strata council is a perennial problem in most strata corporations. One reason for owner reluctance to serve on councils is that the motivation for purchasing a condo in the first place was to escape the burden of home management and maintenance. It often comes as an unpleasant surprise to first-time condo owners to discover that they are expected to serve on the strata council from time to time.

It may seem to them that they have only exchanged one set of problems for another even more complex set of problems. In their single family dwelling, they made all the decisions and paid all the costs. In a condominium, management decision are made collectively and the costs are shared among the owners. As a council member, they are called upon to make decision in cooperation with and on behalf of other owners. Moreover, they are apt to be criticized by fellow owners who disagree with their decisions.

The strata council is the principal means by which strata owners participate in the management of their strata property. While the *Strata Property Act* (SPA) doesn't require any particular owner to serve, it does require the election of a strata council from among owners or their designates.

The parameters of the strata council are set out in Sections 25 and 26 of the SPA which read as follows:

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

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

Although the Act leaves the size of the council to the bylaws, not having a council is not an option even though a strata corporation employs a management firm. It is also left to the bylaws to define a quorum for council meetings. Although Section 9 of the Standard Bylaws states that a council must have not less than 3 and up to 7 members, a strata corporation will adopt a different number of members on the council if there are fewer than four units in the strata corporation. In that case all owners will be on council.

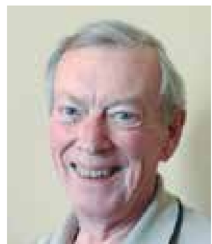
What happens when not enough owners are willing to serve on the

*Continued on page 5*


AQUAPHALT®
high performance cold mix repair material for asphalt + concrete
Finally! A Permanent, Environmentally Friendly Asphalt Patch
INDUSTRIAL PLASTICS & PAINTS
776 Cloverdale Ave at Oak St.
250-727-3545
for more info
info@goindustrial.ca

# 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.*



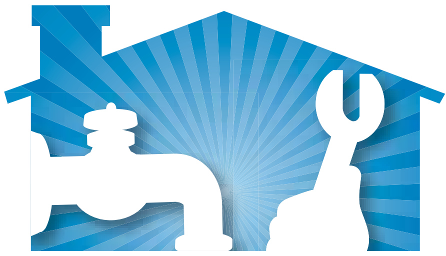
## WHO IS RESPONSIBLE FOR LEAKS?

*By David Grubb*

**Q.** An apartment owner in our building doing due diligence had a plumber in to make repairs to their bathroom drains and shower taps etc. In doing this there was some damage that has caused a leaking pipe. The plumber returned to the building to correct that damage. However, we now have a hole in my bathroom ceiling (under the original unit) and water damage to the main floor carpeted hallway. In addition, we have an owner on the main floor who is worried about possible mould in his apartment wall due to this leak.

My feeling is that the whole responsibility lies with the plumber, but he said that the fault lies with the original contractor who built the building – therefore the cost of repair belongs with the Strata Corporation.

I do not feel that the plumber's opinion that the Strata Corporation is responsible in perpetuity for building errors is correct. I thought that once a building has existed for eons, then any leaks, etc. become the responsibility of the owner, whether they be original owners or



not, having bought the faults along with all the other trappings that come with ownership in a Strata.

Anyway, should I be calling in the strata's insurance company to look at this whole mess? Should it be the strata's problem in the first place? What happens if the repairs cost less than our deductible?

**A.**

Indeed it is always prudent to let the strata's insurance company know and ask them to have an adjuster inspect the damage. If the council decides not to pursue a claim (i.e. pay from strata funds) then it will not affect the strata's standing with the insurance company.

But that, of course, doesn't answer your essential question: Who is responsible for payment? So, I will try to answer some of your concerns about how the "system" works.

Although, once in a while, inspection reveals a builder who used cheap copper, or a plumber who installed it in a particularly sloppy fashion, under most circumstances, when leaks start to happen fairly regularly in older buildings it is unlikely to be the fault of the original contractor or plumber: pipes simply wear out and a minor disturbance might be just sufficient to open up a pinhole leak or a crack.

Nor is the "fault" necessarily that of the plumber who was working in the unit to replace the fixtures. I am sure that most plumbers can tell you about occasions where they have replaced some fixtures, or did some relatively minor work, but their work was just enough to trigger such a small leak (shake the pipe, cause it to vibrate just enough) but the result might not show up for a while because it started as a slow drip (or it might be more forceful but not be noticed for a while especially if the original job didn't involve opening the wall up).

Greater Victoria's water is noted as "soft", so it is high in oxygen and carbon dioxide. It readily absorbs copper, lead, and other minerals from plumbing which wears down the pipes over time. A "high level estimate" of copper pipe life by many in the construction industry is approximately 30 years in the lower Vancouver Island area, after which time owners should consider replacing the pipes -- especially the hot water pipes in buildings which have a central hot water system with a recirculating pump that is going all the time.

One strata I am aware of always includes $9,000 in the annual operating budget in anticipation of three leaks a year. These will

*Continued on page 4*

likely be either pinhole leaks or leaks where the solder at a joint has become loose, and most often the cost of repairs for the plumber and the restoration process of air movers (dryers), wall replacement, paint, etc., come to less than or maybe very slightly over the deductible. So making a claim against the strata's insurance is not practical. And too many claims tends to increase the deductible and possibly the annual premium. The norm today seems to be $5,000 for smaller stratas but it does not take much to boost it to $10,000. And there are much larger stratas which have had problems such that they now face deductibles of $25,000, $50,000 and perhaps even $100,000. (Of course, the strata should have included in their Major Asset Management Plan, an appropriate time and cost for replacing the copper lines.)

With your particular incident, however, first, let us deal with the owner concerned about mold. Assuming that no other damage occurred to the original unit, if the areas between the walls and between floor and ceiling below have been properly dried out before re-enclosing them, there should not be any major problem. Mold can only thrive if there is no warm, dry air circulating through the area, so if it has been thoroughly dried out, the likelihood of mold developing is minimal.

Second, what you are now concerned about is whether the owner or the strata is responsible for paying for the leak repair and damage to the strata lots and the common property.

Section 155 of the Strata Property Act (SPA s.155) makes the strata corporation, and all owners, tenants or regular occupants "named insureds" on the strata's policy, and they all have the right to make the claim (through the strata corporation) to the strata's insurance company for the repairs.

In doing so, however, if the owner is found to be "responsible", the strata is entitled to sue the owner for the deductible under SPA s.158(2):

## Insurance deductible

***158*** *(1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).*

*(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.*

*(3) Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.*

There is a catch here, however, because this is only applicable if the insurance claim is actually made.

If the damage repair is less than the deductible, the SPA is silent on how the strata can recover the costs which generally has meant that the strata has to pay for the repairs.

Many stratas are now correcting this imbalance by passing a bylaw that if the repair is less than the deductible, and the owner is held responsible, then the owner is required to pay the full amount. Here is a sample of one such bylaw:

*(a) An owner will indemnify and save harmless the strata corporation from all expenses for any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or a strata lot if the owner or the tenant, occupant, contractor, agent, guest or invitee of the owner is responsible for the loss or damage to the extent that the loss is not covered by the strata corporation's insurance.*

*(b) In the event that loss or damage occurs to common property, limited common property, common assets or any strata lot that gives rise to a valid claim under the strata corporation's insurance policy the owner shall reimburse the strata corporation for the deductible portion of the insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.*

## Responsible

Many struggle with the difficulty of what "responsible" means, because it is not defined in the SPA, and thus has been the subject of several court cases and now the CRT.

The courts have specified that "responsible" does not mean "at

*Continued on page 5*

*You Asked: Who is responsible for leaks?*
*Continued from page 4*

fault" or "negligent", even though that is one of the definitions. Rather, it is to be interpreted in its other common use as "having charge of", as in "Who is responsible for (in charge of) booking the auditorium?" or "Who is responsible for (in charge of; looking after) the equipment and furniture in this room?"

That is why it is inadvisable to use words such as "at fault" or "negligent" in bylaws since it can be very difficult to prove that someone "did" do something, or "failed" to do something, and is therefore blamable, whereas, it is not so difficult to prove that, with the appropriate definition, someone was "in charge of" an, action, item or area.

The courts have determined, that if a leak occurs in a pipe which supplies water for the sole use of one strata lot -- as in the connection from the point it leaves a common supply to the end point of its use (sink, shower, bath tub, toilet, etc.) -- it is the "responsibility" of the strata lot owner. In that case, the strata can sue the owner for the deductible in an insurance case, or, if a bylaw exists, for any amount less than the deductible no matter where the damage occurs (locally, or involving common property and other strata lots).

The argument that an owner cannot predict when a pipe, covered up in a wall, will burst and therefore the owner is not responsible has not been accepted in court. The fact is that no one can predict such an event, regardless of where and when the incident may happen. The situation can be compared to a single family dwelling where an owner is completely responsible, even if they did not predict the leak either. Their house; their responsibility.

If, however, the leak occurs in a pipe which connects throughout the building to many strata lots and the common property, or even which can be shared just between two or more strata lots, it is considered to be common property as specified in the "definitions" of SPA s.1. Therefore, the strata is "responsible" for the deductible or the cost of the repair if less.

## YOU ASKED

*The More Things Change...*
*Continued from page 2*

strata council? The SPA is not explicit on this point and only a lawyer should speak with authority on the matter. But it appears to be a case in which Section 174 of the SPA could be invoked. Section 174 reads as follows:

***Appointment of administrator***

***174*** *(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 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.*

If the court were to appoint an administrator for a strata corporation, owners could, in effect, lose complete control of their property until such time as the court deemed them willing and able to assume that responsibility again. The corporation would be administered by a person selected by the court at a salary the court deemed suitable.

A council elected from among the owners of a strata corporation seems far preferable to a court-appointed administrator ruling by directive. In order to avoid such a situation, all owners should be willing to take their turn on council.

An added caution, any owner wishing to apply to the court for appointment of an administrator should first seek advice from a lawyer knowledgeable in strata property law.

*"If you fail to plan, you are planning to fail!"*
*~ Benjamin Franklin*

**So what's YOUR Plan?**

- Long Term Capital (CRF) Planning & Budgeting
- Project Planning & Management Services

**Free Consultations**
**250-893-3445**

Web: www.unityservices.ca Email: usc@shaw.ca

'Making Strata Maintenance Manageable'



**Pacific Rim Appraisals Ltd.**

One Stop Shop for Depreciation Reports and Insurance Appraisals - Covering All of British Columbia

**Vic Sweett**
ABA, RI(BC), AACI, P.APP, CRP
CERTIFIED RESERVE PLANNER
& REAL ESTATE APPRAISER

2-57 Skinner St, **Nanaimo**, B.C. V9R 5G9 (250) 754-3710
550-2950 Douglas St, **Victoria**, B.C. V8T 4N5 (250) 477-7090
305-5811 Cooney Rd, **Richmond**, B.C. V6X 3M1 (604) 248-2450

Toll Free #: 1-866-612-2600 Toll Free Fax: 1-866-612-2800

E-mail: info@pacificrimappraisals.com Website: www.pacificrimappraisals.com


## 2018 Planned Seminar Dates

**May 27 (Courtenay) Crown Isle:** Alterations to Strata Lots with Guest Speaker Shawn W. Smith of Cleveland Doan Law Corporation. (Registration open)

**June 24 (Victoria) Comfort Inn: The Big One** – Earthquake Preparedness with Guest Speakers Tanya Patterson, Emergency Program Coordinator, City of Victoria; Jessica Johnston, GetMyKit.ca; and Terry Bergen, Managing Principal, Read Jones Christofferson Ltd., Engineers. Registration opens May 29th.

**Sept. 16 (Nanaimo) Bowen Centre**: Topic and speaker TBA.

**Nov. 18 (Victoria) Comfort Inn**: Topic and speaker TBA.

## VISOA Regular Office Hours:

**Mondays 9:00 am to 1:00 pm**

**Tuesday, Wednesday, Thursday**
**9:00 am to 4:30 pm (closed for lunch 12:30-1:30)**

**Fridays 9:00 am to 1:00 pm**

1. A Practical Guide to Budgeting and Financial Reporting
2. Best Practices for BC Strata Treasurers
3. Depreciation Reports for BC Strata Corporations
4. Management of the Contingency Reserve Fund
5. New to Council
6. Sample Strata Residents Manual
7. Strata Insurance
8. *Strata Property Act*

*This collection includes all seven of VISOA's Publications on a USB, so you have them all in one spot at a savings of 10% over individual prices. As a bonus it also includes the Strata Property Act and shipping. Available at https://www.visoa.bc.ca/?post_type=product*

# The Importance of Insuring a Condominium to its Full Replacement Cost

*By Cameron Carter, BCom, RI, CRp*

There is an important reason why many Canadian provinces require condominium and strata corporations to have full replacement cost insurance on their buildings. This is to ensure owners are protected from major perils where the property is deemed a total loss. The most common cause of a total loss is fire, but other causes can include earthquakes, flooding, or if a building is condemned and deemed unsafe to live in.

The full replacement cost, also known as the Total Insurable Value, should include the building structure, all common facilities and assets, building code and bylaw upgrades, and any insurable improvements. This would not include any betterments made to individual homes by owners, so it is recommended that owners insure their renovations and updates through personal property insurance coverage.

Each Condominium Act or Strata Property Act across Canada has a similar bylaw mandating that condominium and strata corporations insure their property adequately. The codes are set up to protect home owners. Many corporations who do not comply with their provincial codes may be at significant risk of being underinsured and responsible for any shortfall in coverage.

## Canadian Provincial Codes

The BC *Strata Property Act* specifies in section 149.1 that the strata corporation must obtain and maintain property insurance for the full replacement value.

In Ontario, the *Condominium Act* states that the corporation shall obtain and maintain insurance on behalf of the owners for damage caused by major peril, including fire, lightning, smoke and more, and the insurance shall cover the total replacement cost.

In Alberta, the condo corporation is required to insure the common property and units (not including improvements made to the units by the owners) against loss resulting from destruction or damage caused by any peril, and that this insurance must be equal to the replacement cost of the condominium as described.

In Quebec, section 1073 of the Civil Code of Quebec stipulates that the syndicate has an insurable interest in the condominium and shall take out insurance against ordinary risks in an amount that is equal to the replacement cost of the condominium.

The common theme across Canada is that building owners must insure the common assets of their property to full replacement cost. The fact is that without sufficient coverage, owners may be left dealing with significant expenses, lawsuits, or in the worst-case scenario, bankruptcy.

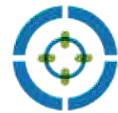
## Annual Updates to Appraisal Amount

It is equally important to obtain annual updates on the amount to be insured. The costs

*Continued on page 8*

INSURANCE APPRAISALS
We are the go-to company for insurance appraisals because of our customer service, experienced appraisers, and thorough reports.

DEPRECIATION REPORTS
Stratas value Normac because of our multidisciplinary, comprehensive, and practical approach to depreciation reports.



BUILDING SCIENCE
Our building science experts offer an array of services including warranty reviews and condition assessments.

For more information, email info@normac.ca, call us at 1.888.887.0002, or visit our website at www.normac.ca

of construction and materials are constantly fluctuating, so owners must keep an up-to-date value that reflects these changes. For example, due to a greater demand for labour and materials in 2017, construction costs increased across Canada by between 2% and 7% dependent upon location. To put these fluctuations in a historical perspective, we have observed over the past 20 years a range of annual cost changes of between -18% to +15%. Annual updates ensure that properties are sufficiently covered, but also saves the owners in insurance premiums when there is a dip in construction costs.

It is also important to maintain annual updates for phased developments throughout the construction period. Ensuring Total Insurable Value is updated upon the completion of each phase is critical to protecting the development.

## Case Studies

To emphasize the importance of an accurate and up-to-date insurance appraisal, here are two examples of properties that experienced a total loss. In the first case, the condominium was not adequately covered by their insurance. In the second example, the business had secured sufficient insurance in the amount of the total replacement cost. The outcomes were strikingly different.

## Quebec Condominium Fire

In 2008, a residential syndicate in Quebec was deemed a total loss after a fire destroyed the building. The syndicate filed a claim for the common property and the owners filed for their personal portions. For the common property, there was a $454,938 shortfall. The cost of the rebuild was not completely covered due to the syndicate's insufficient insurance coverage and the owners were responsible for the difference, at a cost of $6,119 per unit.

While many of the owners had additional insurance to cover a shortfall, two owners did not. As a result, these owners were initially deemed responsible for paying the special assessment themselves. These owners submitted a claim against the syndicate and property management, faulting them for not securing sufficient replacement cost insurance for the building. They maintained that, according to the declaration of co-ownership and section 1073 of the Civil Code of Quebec, it was the responsibility of the syndicate to provide insurance coverage for an amount equal to the building's replacement cost.

It was determined in court that the two owners were not responsible for their portion of the shortfall. Legally, it was the obligation of the syndicate to ensure the building in an amount equal to the full replacement cost, including demolition, taxes, and other professional fees. Therefore, the syndicate was found partially liable. Additionally, the property manager was also found partially liable because he had personally estimated the replacement cost too low. As it was the condo manager's decision to not obtain an appraisal, he did not ensure that the property would be adequately covered for the full replacement cost, thus not meeting the Civil Code requirements.

## Alberta Manufacturer Fire

In 2007, a massive fire destroyed one of the main buildings of a manufacturing plant in Alberta. A year prior to the fire, the owners of the plant had obtained an insurance appraisal for

*Continued on page 9*

*Continued from page 8*

the first time. Before requesting the appraisal, the company had been estimating their replacement costs, but had not been updating them on a regular basis. The insurance appraisal estimated the replacement cost to be $13,000,000 higher than the previous estimate.

Due to the updated appraisal, the client was able to completely replace their structure through their insurance. Despite this major interruption to their business, they were able to make it through the fire and rebuild and are currently thriving because their coverage was sufficient. Obtaining an insurance appraisal from a reputable provider meant the owners of the manufacturing plant were properly insured for the full replacement cost and it saved their business.

## Important Points to Remember

The examples above demonstrate the value of obtaining a proper insurance appraisal. This service can save owners millions of dollars and can help a business to continue to operate after a total loss. Furthermore, working with an experienced appraiser can save owners and boards from significant conflict and protect a condo board from being held liable for a portion of replacement costs.

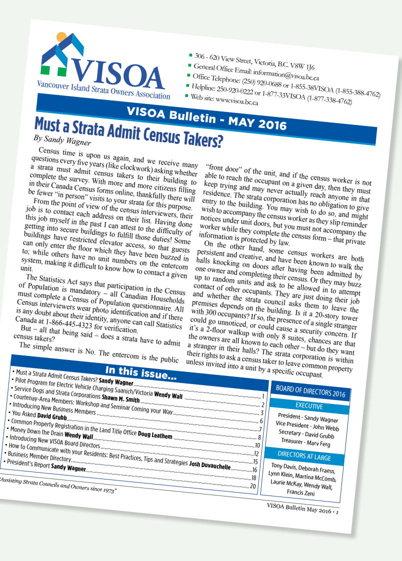
The most secure way to protect owners is to obtain an accurate replacement cost for the property annually. Only a professional insurance appraiser can effectively determine the replacement value, which must include demolition and removal expenses, current building codes and technological improvements, local bylaw requirements, construction labour and material fluctuations, and other professional costs.

These true-life case studies underline the importance of always obtaining a current insurance appraisal from a company that specializes in this profession. Disasters do happen, so make sure that your assets are properly appraised and protected.

*Cameron Carter is the founder and President of Normac. Normac is Canada's premier provider of insurance appraisals, reserve fund studies and depreciation reports, and building science services such as warranty reviews and condition assessments. Cameron has significant knowledge and experience with construction costs, demolition costs, and the effect of building codes and city bylaws on reconstruction projects. An accredited member of the Real Estate Institute of BC, and the Real Estate Institute of Canada, Cameron is also a Certified Reserve Fund Planner (CRP).*


## BULLETIN SUBSCRIPTIONS

**VISOA provides 4 information-packed bulletins each year.**



VISOA
Vancouver Island Strata Owners Association

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

VISOA Bulletin - MAY 2016

Must a Strata Admit Census Takers?

*By Sandy Wagner*

Census time is upon us again, and we receive many questions every five years (like clockwork) asking whether a strata must admit census takers to their building to complete the survey. With more and more citizens filling in their Canada Census forms online, thankfully there will be fewer "in person" visits to your strata for this purpose.

From the point of view of the census interviewers, their job is to contact each address on their list. Having done this job myself in the past I can attest to the difficulty of getting into secure buildings to fulfill those duties! Some buildings have restricted elevator access, so that guests can only enter the floor which they have been buzzed in to; while others have no unit numbers on the entercom system, making it difficult to know how to contact a given unit.

The Statistics Act says that participation in the Census of Population is mandatory – all Canadian Households must complete a Census of Population questionnaire. All Census interviewers wear photo identification and if there is any doubt about their identity, anyone can call Statistics Canada at 1-866-445-4323 for verification.

But – all that being said – does a strata have to admit census takers?

The simple answer is No. The entercom is the public "front door" of the unit, and if the census worker is not able to reach the occupant on a given day, then they must keep trying and may never actually reach anyone in that residence. The strata corporation has no obligation to give entry to the building. You may wish to do so, and might wish to accompany the census worker as they slip reminder notices under unit doors, but you must not accompany the worker while they complete the census form – that private information is protected by law.

On the other hand, some census workers are both persistent and creative, and have been known to walk the halls knocking on doors after having been admitted by one owner and completing their census. Or they may buzz up to random units and ask to be allowed in to attempt contact of other occupants. They are just doing their job and whether the strata council asks them to leave the premises depends on the building. Is it a 20-story tower with 300 occupants? If so, the presence of a single stranger could go unnoticed, or could cause a security concern. If it's a 2-floor walkup with only 8 suites, chances are that the owners are all known to each other – but do they want a stranger in their halls? The strata corporation is within their rights to ask a census taker to leave common property unless invited into a unit by a specific occupant.

In this issue...

- Must a Strata Admit Census Takers? **Sandy Wagner** ..... 1
- Pilot Program for Electric Vehicle Charging Saanich/Victoria **Wendy Wall** ..... 2
- Service Dogs and Strata Corporations **Shawn M. Smith** ..... 3
- Courtenay-Area Members: Workshop and Seminar Coming your Way ..... 6
- Introducing New Business Members ..... 7
- You Asked **David Grubb** ..... 8
- Common Property Registration in the Land Title Office **Doug Leathem** ..... 10
- Money Down the Drain **Wendy Wall** ..... 12
- Introducing New VISOA Board Directors ..... 15
- How to Communicate with your Residents: Best Practices, Tips and Strategies **Josh Duvauchelle** ..... 16
- Business Member Directory ..... 18
- President's Report **Sandy Wagner** ..... 20

BOARD OF DIRECTORS 2016

EXECUTIVE

President - Sandy Wagner
Vice President - John Webb
Secretary - David Grubb
Treasurer - Marv Ferg

DIRECTORS AT LARGE

Tony Davis, Deborah Fraess, Lynn Klein, Martina McComb, Laurie McKay, Wendy Wall, Francis Zeni

"Assisting Strata Councils and Owners since 1973"

VISOA Bulletin May 2016 • 1

- Corporate membership fees include emailed bulletins to up to 4 council members.
- Individual membership fees include emailed bulletins.
- Postal mailed bulletins are available to members for $15 annually per address.
- Non- members may subscribe to these bulletins at the following rates: **By email: $15.00 per year and by postal mail $25.00 per year**

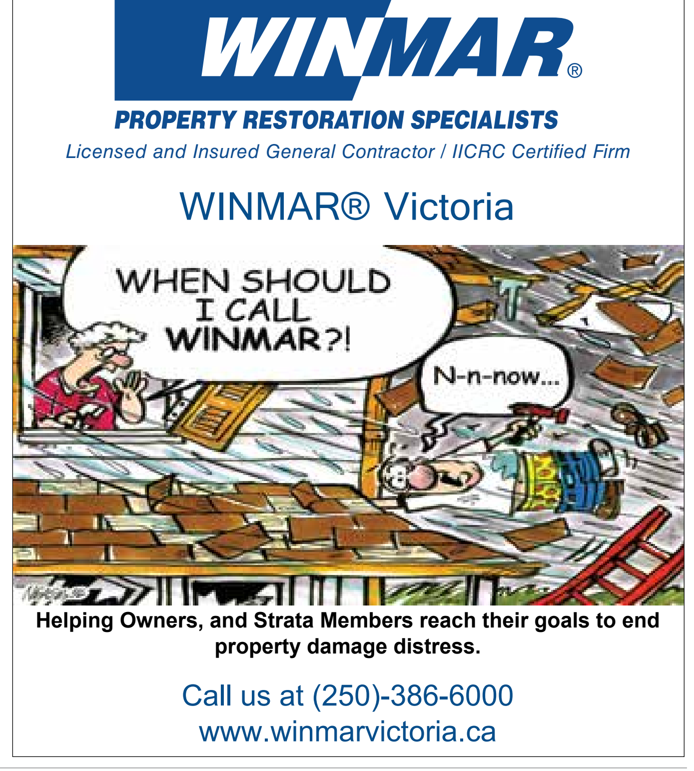


**WINMAR®**

**PROPERTY RESTORATION SPECIALISTS**

*Licensed and Insured General Contractor / IICRC Certified Firm*

WINMAR® Victoria




**Helping Owners, and Strata Members reach their goals to end property damage distress.**

Call us at (250)-386-6000
www.winmarvictoria.ca

# INTRODUCING NEW BUSINESS MEMBERS

## VISOA is pleased to welcome these new Business Members.

***See our website for more details on all our Business Members***

**ACCESS LAW GROUP** strives to show a different side of the legal profession. They are a friendly group of lawyers and paralegal staff working together to provide a high level of service in an efficient and affordable manner. Access is able to provide legal assistance and representation in order to assist strata corporations and strata lot owners with a wide variety of issues, including the resolution of disputes through mediation, arbitration, or legal proceedings, bylaw drafting and bylaw enforcement, strata council governance and management, collection of maintenance assessments and special levies, water penetration problems and advice regarding the application and interpretation of the Strata Property Act and its regulations. They can provide prompt and professional advice to strata corporations and strata lot owners and address, through one or more of the dispute resolution processes available, for the issues with which stratas are faced.

*Contact Sylvano Todesco, Lawyer at 604-689-8000 or stodesco@accesslaw.ca*


*Need help with simplified payments and cash management solutions?*

Our dedicated team of strata and property management experts are here to help. Through our years of experience we are happy to lend a hand, whether you're from a small strata, large multi-property management company or anywhere in-between. With strong expertise in the field, and a suite of specially tailored products and services, we've got you covered.

Just contact Zara or Nicole, they'd love to help.

**Zara Toor** | 604.288.3350
**zara.toor@coastcapitalsavings.com**

**Nicole Gervais** | 250.483.8710
**nicole.gervais@coastcapitalsavings.com**

**coastcapitalsavings.com/CashManagement**

*How can we help you?®*


**GETMYKIT.CA** supports communities and their residents by assisting them with emergency preparedness. They will help you create a plan and have the proper kit for you and your family. They carry 10 different kinds of Emergency Kits to best suit your family size and lifestyle to ensure maximum preparedness for every member of your family. They recommend the Deluxe Emergency Kits because they come equipped with cooking and heating elements, as well as extra comfort items.

No one is innately born with the ability to survive disasters. Do you have the equipment needed? Do you have the skills? Do you have the knowledge?

*Contact Chad McGillivary, President/Owner at 250-821-1222 or admin@getmykit.ca*

**NEW PROSPECTS DISPUTE RESOLUTION** provides mediation to manage and resolve your strata and co-op housing disputes. Founder of New Prospects Dispute Resolution, Maria Constantinescu is a mediator, trainer, facilitator, and conflict coach who uses her decades of legal and alternative dispute resolution experience to help you achieve a confidential and cost-effective solution to your housing disputes. Certified in Mediation and Conflict Resolution from the Justice Institute, Maria also holds a foreign law degree and has been a member of the Attorney General's Mediation roster since 2016. She can help you get past what's right and what's wrong … to what is possible.

*Contact Maria at 250-884-3747 or maria@newprospectsdisputeresolution.com*

---

*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 corporation.*

# BCLI Seeks Your Input on Governance Issues for Strata Corporations

*By Kevin Zakreski, Staff Lawyer, British Columbia Law Institute*

The British Columbia Law Institute wants your take on its proposals to change the law governing British Columbia's strata corporations. With the publication of its with Consultation Paper on Governance Issues for Stratas, BCLI has made 83 tentative recommendations to reform the Strata Property Act, the Strata Property Regulation, and the standard bylaws applicable to strata corporations. These tentative recommendations are open for public comment until 15 June 2018.

## ABOUT THE STRATA PROPERTY LAW PROJECT—PHASE TWO

Since 2013, BCLI has been at work on the Strata Property Law Project—Phase Two. The goal of the project is to recommend changes to the law necessary to support the next generation of strata-property legislation in British Columbia.

In carrying out the project, BCLI has the benefit of assistance from an expert project committee. The committee is made up of 13 members who are leaders in the strata-property field. Committee members are drawn from the ranks of the legal, notarial, real-estate, and strata-management professions, public officials, and owners' organizations.

The project is supported by nine funding organizations, including VISOA.

## ABOUT STRATA-CORPORATION GOVERNANCE

Governance is the method or system of an organization's management. The hallmark of good governance is found in an organization's ability to make timely, effective, and enforceable decisions. Laws on governance are intended to foster these goals.

The popular conception of decision-making in property law emphasizes the sovereignty of individual owners. It's reflected in the saying, "my home, my castle." But it's been clear since strata properties arrived on the scene that this approach wouldn't work for them. Giving every owner a veto over every decision would make it next to impossible for the collective to manage common property and to ensure harmonious living in a multi-unit building.

So strata governance has been based on the corporate model. It provides for majority rule on most decisions, with some important, far-reaching decisions calling for greater-than-majority support.

In the consultation paper, the committee doesn't take issue with this basic premise of strata governance. But it is open to question whether the act, the regulation, and standard bylaws are doing enough to support strata corporations in making effective decisions. The committee sees considerable room for improvement in selected areas, including the procedures governing meetings, the process of electing strata-council members, and the tools that strata corporations have to enforce their decisions. Its proposals are intended to fine-tune the law in these areas.

## AN OVERVIEW OF THE CONSULTATION PAPER'S TENTATIVE RECOMMENDATIONS

Strata governance is a vast, potentially never-ending topic. In the committee's view, the following areas of the law, in particular, call for reform: (1) bylaws and rules; (2) statutory definitions; (3) general meetings and strata-council meetings; (4) finances; and (5) notices and communications. Each of these areas forms a chapter in the consultation paper.

## BYLAWS AND RULES

This is the consultation paper's longest chapter, containing 38 tentative recommendations for reform. The chapter opens with a brief discussion of the current law on bylaws and rules. Then it moves into a consideration of each of the sections currently found in the Schedule of Standard Bylaws to the *Strata Property Act*. The goal of this review is to consider whether any of the bylaws should be relocated from the schedule to the main body of the act. The effect of such a move is that it would place the text of the (former) bylaw beyond the reach of amendment by the strata corporation. In the committee's view, 11 standard bylaws (or parts of a standard bylaw) should be given this treatment.

The remainder of this chapter

*Continued on page 14*

BUSINESS MEMBERS

## BUILDING SUPPLIES

**COMMERCIAL LIGHTING PRODUCTS**
Lighting Wholesale
250-385-8816 • Fax 250-385-8817
mitch.anderson@comlight.com
www.comlight.com

**INDUSTRIAL PLASTICS AND PAINT**
Building/Maintenance Products
250-727-3545 ext. 105
ron.sherring@goindustrial.ca
www.goindustrial.ca

**RETRO TECK WINDOWS**
Window and Door Manufacturing
250-381-0599
wilfred.retro@telus.net
www.retrowindow@telus.net

## DEPRECIATION REPORTS

**BELL APPRAISALS**
Replacement Cost New Insurance Reports
& Depreciation Reports
bell.appraisals.consulting@gmail.com
250-514-3486 • www.bell-appraisals.ca

**D R COELL & ASSOCIATES INC**
Depreciation Reports & Insurance Appraisals
250-388-6242
shumphreys@drcoell.com
www.drcoell.com

**MORRISON HERSHFIELD LTD**
Consulting Engineers
250-361-1215
victoria@morrisonhershfield.com
nanaimo@morrisonhershfield.com
www.morrisonhershfield.com

**NORMAC**
Insurance Appraisals, Depreciation Reports
& Building Science
1-888-887-0002 • Fax 604-224-1445
info@normac.ca • www.normac.ca

**PACIFIC RIM APPRAISALS LTD**
Depreciation Reports & Insurance Appraisals
250-477-7090 • 250-754-3710
info@pacificrimappraisals.com
www.pacificrimappraisals.com

**READ JONES CHRISTOFFERSEN LTD**
Consulting Engineers - Reserve Fund Studies
250-386-7794 • Fax 250-381-7900
tbergen@rjc.ca • www.rjc.ca

**RDH BUILDING SCIENCE INC**
Building Envelope Engineering Consultants
Victoria 250-479-1110
pfitch@rdh.com
Courtenay 250-703-4753
hgoodman@rdh.com • www.rdh.com

**UNITY SERVICES CORPORATION**
Consulting Services for Depreciation Reports
and Maintenance Planning
250-893-3445 • john@unityservices.ca
www.unityservices.ca

**Wm S. JACKSON AND ASSOCIATES LTD**
Insurance Appraisals, Depreciation Reports
250-338-7323 • 1-877-888-4316
dan-wsj@shaw.ca
www.comoxvalleyappraisers.com

## FINANCIAL

**COAST CAPITAL SAVINGS CREDIT UNION**
Strata Account Pricing Program
250-483-8710 • Fax 250-483-8716
Nicole.gervais@coastcapitalsavings.com
www.coastcapitalsavings.com

**CWB MAXIUM FINANCIAL**
Financial Services for Stratas
604-562-5403
kelly.mcfadyen@cwbmaxium.com
www.cwbmaxium.com

**ISLAND SAVINGS A DIVISION OF
FIRST WEST CREDIT UNION**
Special Accounts for Strata Corporations & Owners
250-414-4193 • Fax 250-360-1461
skasnik@islandsavings.ca • www.islandsavings.ca

## INSURANCE & RELATED SERVICES

**BFL CANADA INSURANCE SERVICES INC.**
International Insurance Brokers and Consultants
1-866-669-9602 • Fax 604-683-9316
www.BFLCanada.ca

**PALMER APPRAISALS LTD**
Insurance and Residential Appraisals
250-388-9102 • Fax 250-384-0150
admin@palmerappraisals.com
palmerappraisals.com

**SEAFIRST INSURANCE BROKERS**
Shawn Fehr & Doug Guedes
250-478-9110 or 778-678-5821
sfehr@seafirstinsurance.com
www.seafirstinsurance.com

**WAYPOINT INSURANCE**
Previously Vancouver Island Insurance Centre
Commercial Insurance Specialist
250-751-2966 • Fax 250-751-2965
bchecko@waypointinsurance.ca
www.waypointinsurance.ca

## MAINTENANCE & PROJECT CONTRACTORS

**BLAST OFF PRESSURE WASHING**
Cleaning Service
250-474-4715
blastoffvictoria@gmail.com
www.blastoffvictoria.com

**CBS MASONRY**
Masonry, Concrete, Stone, Brick, Pavers,
Flagstones
250-589-9942 • charlie@cbsmasonry.com
www.cbsmasonry.com

**CENTRA WINDOWS LTD.**
Windows, Doors, Siding, Renovations,
Multi-Family
250-412-2525 • Fax 250-412-9605
wlscott@centra.ca • www.centrawindows.com

**COBRA POWER CLEANING
AN ABNEY VENTURES LTD COMPANY**
Pressure Washing 250-585-0828
cobrajosh@gmail.com
brooke@cobrapc.ca

**COSTA VERDE CONTRACTING INC**
Landscaping and Maintenance
250-514-7391 • info@costa-verde.ca
www.costa-verde.ca

**CREATIVE BRUSHWORKS**
Painting Contractor 250-896-4266
creativebrushworks@shaw.ca

**DRI-WAY CARPET & UPHOLSTERY CARE**
Cleaning Service
250-475-2468 • nathan@dri-way.
www.dri-way.ca

**ENERHEAT RENOVATIONS**
Replacement Windows and Renovations
250-382-1224 • Fax 250-592-1377
enerheat@gmail.com • www.enerheatrenos.com

**EMPRESS PAINTING**
Commercial & Residential
250-383-5224 • Fax 250-383-0222
estimator2@empresspainting.ca
www.empresspainting.ca

# BUSINESS MEMBERS

**HOMEWISE PLUMBING & DRAINAGE LTD**
Plumbing & Drainage
250-883-7270 • office@homewise.ca
www.homewiseplumbing.ca

**ISLAND BASEMENT SYSTEMS INC.**
Air Leakage, Moisture Control Services & Consulting
250-385-2768 • 1-877-379-2768
chris@ibsg.ca • www.ibsg.ca

**MODERN PURAIR**
Furnace / Duct Cleaning & Dryer Vent Cleaning
250-208-2550
kyle.rooney@modernpurair.com
victoria.modernpurair.com

**OLIVER'S POWER VACUUM & CHIMNEY SWEEP**
Heating Systems Cleaning, Chimney Service
Toll Free 1-866-734-6056
oliverspowervac@shaw.ca
www.oliverspowervac.ca

**PRO DECK LTD**
Exterior Renovations
250-883-2261 • Fax 250-592-1622
info@prodeck.org www.prodeck.org

**STERLING FIRE & ASSOCIATES INC.**
Fire Alarm Upgrades - All Aspects
250-661-9931
sterlingfire@ymail.com
www.sterlingfire.vicbc.com

**TOP COAT PAINTING**
Commercial & Residential Painting
250-385-0478
info@topcoatpainting.ca
www.topcoatpainting.ca

**TSS CLEANING SERVICES**
Dryer Duct Cleaning Services for Vancouver Island Stratas • 1-866-447-0099
info@cleandryerducts.com
www.cleandryerducts.com

**VICTORIA DRAIN SERVICES LTD.**
Drainage & Plumbing
250-818-1609 • Fax: 250-388-6484
info@victoriadrains.com • www.victoriadrains.com

**WE PAINT**
Paint Contractor • 250-888-5385
wepaintinc@yahoo.ca • www.wepaintinc.com

## PROPERTY MANAGEMENT

**BAYVIEW STRATA SERVICES**
Strata & Property Management
250-586-1100 • Fax 250-586-1102
terry@thekerrgroup.ca • www.thekerrgroup.ca

**GATEWAY PROPERTY MANAGEMENT CORP.**
Property Management
250-412-0713 • Fax 250-412-0729
nenns@gatewaypm.com • www.gatewaypm.com

**GRACE POINT STRATA MANAGEMENT INC.**
Strata Management Services • 250-802-5124
tom@GPstrata.com • www.GPstrata.com

**OAKWOOD PROPERTY MANAGEMENT LTD.**
Manager for Stratas, Co-ops & Rentals
250-704-4391 • Fax 250-704-4440
carol@oakwoodproperties.ca
www.oakwoodproperties.ca

**RICHMOND PROPERTY GROUP LTD.**
Strata Management
250-388-9920 • 250-388-9945
jmckay@richmondproperty.ca
www.richmondproperty.ca

## STRATA COUNCIL RESOURCES

**ADEDIA STRATA WEBSITE DESIGN**
Websites Developed and Customized to Meet Strata Needs • 250-514-2208
sales@eStrata.ca • www.eStrata.ca

**GETMYKIT.CA** NEW
Emergency Preparedness
250-821-1222 • admin@getmykit.ca
getmykit.ca

**HYTEC WATER MANAGEMENT LTD.**
Water Management and Water Treatment
604-628-2421 • Fax 866-690-5854
info@hytecwater.com • www.hytecwater.com

**NEW PROSPECTS DISPUTE RESOLUTION** NEW
Mediation & Conflict Resolution
250-884-3747 maria@newprospectsdisputeresolution.com
www.newprospectsdisputeresolution.com

**PROSHOP MUSIC CENTRE SOUND & LIGHTING**
Sound Systems for General Meeting's
250-361-1711
jpproshopmusic@yahoo.ca
www.proshopmusic.com

**STRATACOMMONS**
Strata Software Development
Courtney, BC • 250-871-4537
jlhooton@stratacommons.ca

**STRATAPRESS**
Online Communication Tools & Document Archiving for Strata Corporations
250-588-2469
info@stratapress.com • www.stratapress.com

**WINMAR VICTORIA**
Property Restoration Specialists
250-386-6000 • Fax 250-386-6002
victoria@winmar.ca • www. winmar.ca

## LEGAL SERVICES

**ACCESS LAW GROUP**

Law Group
604-689-8000 • Fax 604-689-8835
stodesco@accesslaw.ca
www.accesslaw.ca

**SHAWN M. SMITH, STRATA LAWYER**
Partner at Cleveland Doan LLP
604-536-5002 • Fax 604-536-7002
shawn@clevelanddoan.com
www.clevelanddoan.com

## REAL ESTATE

**BC APPRAISAL INSTITUTE OF CANADA**
Leading Real Property Valuation Association
604-284-5515 • Fax 604-284-5514
info@appraisal.bc.ca
www.appraisal.bc.ca/britishcolumbia

For more information regarding Business Memberships please contact us at 1-877-338-4762 or businessmembers@visoa.bc.ca

*(Please note that VISOA does not guarantee or warranty the goods, services, or products of our business members).*

examines the tools strata corporations have under the act to enforce their bylaws. The committee considers—but ultimately doesn't tentatively recommend—expanding the reach of the strata corporation's lien to encompass defaults in the payment of fines. The committee also looks at and doesn't endorse the creation of a new statutory penalty or offence provision applicable to a contravention of a bylaw or rule.

Finally, the committee does propose a new statutory provision aimed at bylaws that adopt the rule in *Clayton's Case*. Under the rule set out in this case, when someone pays money to a creditor the law presumes that the money goes first to discharge the oldest part of the debt. The rule is often summarized as providing "first in, first out." Its significance for strata corporations has to do primarily with fines, strata fees, and the scope of the strata corporation's statutory lien. Say a person owes money to a strata corporation on account of a fine. The fine might remain outstanding while the person disputes its validity. Under the act, the strata corporation can't rely on its lien to enforce a fine. But on the first of the next month, strata fees come due, which the person pays in full. Some strata corporations, relying on the rule in *Clayton's Case*, will allocate this payment first to the outstanding fine (the older part of the debt) and then the remainder to strata fees. So the person will now appear to be in default of paying strata fees, a debt that is within reach of the strata corporation's lien. But this also appears to defy the expectations of the person making the payment. The committee proposes to stamp out this practice.

## STATUTORY DEFINITIONS

This short chapter examines the addition of specific statutory definitions to the Strata Property Act, as a way to clarify important concepts or to aid a strata corporation in the administration of its obligations under the act. In the committee's view, the terms continuing contravention and rent should be defined in the legislation. The committee also considered, but didn't endorse, proposed definitions of strata manager, residential strata lot, and nonresidential strata lot.

## GENERAL MEETINGS AND STRATA-COUNCIL MEETINGS

The chapter on general meetings and strata-council meetings is another lengthy chapter, containing 21 tentative recommendations. It focusses on the following subjects: (1) proxies; (2) conduct of meetings; (3) quorum; (4) voting; (5) strata-council elections; and (6) agenda and meeting minutes.

The committee is particularly interested in comments on proxies, which have proved to be a fraught issue in strata-corporation governance. On this topic, the committee has proposed taking a measured approach to combat abuse of the proxy system. The committee tentatively recommends that a mandatory, standard form of proxy appointment come into use in British Columbia. This mandatory form will help to clarify the nature and scope of the relationship between the eligible voter in the strata corporation and that person's proxy. The committee also gives extended consideration to limiting the number of proxy appointments that one person may hold for a general meeting, ultimately deciding not to propose a limit. In the committee's view, it would be difficult to formulate a clear limit that would respect the democratic process and work for all kinds of strata corporations in British Columbia.

The chapter also contains a wide range of tentative recommendations on meeting procedures and voting. The committee proposes clarifying that election to the strata council entails commanding a majority of the ballots cast, a measure it intends to clarify the election process and enhance the accountability of strata councils. The committee also proposes a clear rule that quorum for a general meeting must only be present at the start of the meeting, alleviating some uncertainty on this point. It proposes establishing statutory criteria for council members modelled on the provisions of the new Societies Act, again as a means to enhance the accountability of strata councils. Finally, the committee proposes clarifying the order of agenda items for annual and special general meetings, as a way to enhance the effectiveness of general meetings.

## FINANCES

While this chapter doesn't present a comprehensive survey of all the financial issues that affect a strata corporation, it does examine some fundamental issues and make 13 tentative recommendations

*Continued on page 18*

# But It Has Always Been My Unit's Parking Space!

*By David Grubb*

Recently the CRT passed judgement on a dispute over the assignment of common property storage lockers to individuals. (See *Hales Owners, Strata Plan NW 2924*, 2018 BCCRT 91) In reading it, one of the issues struck me as being, in parts, equally applicable to common property parking spaces which can often be more contentious.

There are three ways a strata can deal with common property: leave it as common property (gardens, roads, hallways,etc.); designate specific parts as Limited Common Property under SPA s.73 and s.74; and permit the "short term exclusive use" of a specific part of the common property, if applied for under SPA s.76, for no more than a year, but subject to renewal.

I will not deal with the common property in general nor with LCP, since they are not issues here. I will concentrate on the legal vagueness of the assignment of parking spaces and storage lockers as specific parts of the common property.

Lacking any other method for assigning parking spaces and storage lockers but trying to ensure a means of having some sort of order, conscientious stratas will annually confer the "exclusive use" of those common areas to specific strata lots in accordance with SPA s.76 which states:

**Short term exclusive use**

***76** (1) Subject to section 71, the strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property.*

*(2) A permission or privilege under subsection (1) may be given for a period of not more than one year, and may be made subject to conditions.*

*(3) The strata corporation may renew the permission or privilege and on renewal may change the period or conditions.*

*(4) The permission or privilege given under subsection (1) may be cancelled by the strata corporation giving the owner or tenant reasonable notice of the cancellation.*

However, there are a great many stratas which do not do so. It may be that the owners are not aware of the requirement, or because they have assumed that the designation of parking and lockers has always

*Continued on page 16*

been that way and no one has had any complaints for years. Others may point out that if these designations show up on the Form B Information Certificate as assigned to the strata lot, they are legally binding on the strata and the buyer/owner as of the time it was signed by the council members, and are therefore permanent assignments.

In fact, anyone who challenged the enforceability of the owners' acceptance of either assumption could cause chaos.

So owners should not be so complacent. Quite obviously "ignorance of the law is no excuse" when it comes to assuming that designation from historical custom is legal. It isn't.

On Form B, except for designations as being part of, or LCP for, a strata lot, the issue of confirming the assignment of common property parking spaces and storage lockers to a strata lot on Form B seems to contravene the SPA.

The only way to designate parking spaces or storage lockers is through SPA s.76 which assigns the "exclusive use" to an "owner" or "tenant", *not* to the "strata lot". So when the current person stops using a storage locker or parking space, the assignment ceases automatically, making it possible for the council to reassign the parking space or storage locker to another resident before the new resident could apply for either of them because the buyer is not yet the owner.

That means that it would make it illegal for the strata council to fill in any parts on Form B except the second "checkbox" under sections (m)(i) and (n)(i). The following is a composite since they are otherwise identical in wording :

(m) Are there any [parking stall(s)] [storage locker(s)] allocated to the strata lot?

& ☒ no ☐ yes

(n) (i) *If no, complete the following by checking the correct box.*

☐ No [parking stall] [storage locker] is available

☒ No [parking stall] [storage locker] is allocated to the strata lot but parking stall(s) within common property might be available.

So aside from the issue of a new owner and Form B, the problem remains especially for stratas which have too few parking spaces, forcing people to park on the street, or stratas which have parking spaces, some of which are better located – such as a covered space, or one closer to the entrance – and therefore more desirable. Some stratas maintain a waiting list.

Moreover, there is an important by-product even if the assignment of the parking spaces and storage lockers is faithfully renewed each year: they must be properly noted in the council minutes as being assigned for the use of the actual person, not the strata lot. If the strata lot is a rental unit, that could also frustrate landlord owners, their agents and the tenants when a new rental contract is to be signed, since very often the rental contract will contain a statement of which parking space and storage locker may be used. Every time one tenant moves out and another moves in there would have to be a new application to council. If the strata lot has a high turnover there may be considerable frustration.

Quite obviously there have been unanticipated consequences by not providing some other section in the SPA to deal with common property which is in between LCP and Exclusive Use, to allow governance of the issues such as "Long Term Exclusive Use" of parking spaces and lockers which would still allow the strata council some flexibility for their proper management.

This is where the judgment of the CRT *Hales Owners* case seems to point to another avenue whereby the strata can actually assign a parking space or a storage locker to a *strata lot*.

Sub-sections (m)(iii) and (n)(iii) of Form B (condensed here) cover the two instances of common property being allocated by the strata council:

☐ *[Parking stall(s)] [Storage locker] number(s) .......... is/are allocated with strata council approval**

☐ *[Parking stall(s)] [Storage locker] number(s) .......... is/are allocated with strata council approval and rented at $ .......... per month**

Critically, after both (m) and (n), a notice * is written under these choices in bold (underline is mine):

***Note: The allocation of a [parking stall] [storage locker] that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, <u>or otherwise, and may therefore be subject to change in the future.</u>**

It is the "or otherwise" and "subject to change" which are of significance.

The Tribunal Member in *Hales Owners* pointed out that the council is required by the Act under SPA s.4 to exercise the powers and perform the duties of the strata corporation as detailed in SPA s.3:

*Continued on page 17*

*Continued from page 16*

**Responsibilities of strata corporation**

*3 Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.*

**Strata corporation functions through council**

*4 The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.*

Under this mandate, therefore the strata council has the authority to manage the allocation of common property parking spaces and storage lockers for the benefit of the owners including their assignment to either an owner or tenant, or to a "strata lot", for such periods of time and under such conditions as is deemed fitting.

This being the case, a bylaw could be created which would specify the details, for example:

**Parking and Storage Lockers**

(1) Pursuant to Sections 3 and 4 of the *Strata Property Act* all parking spaces and storage lockers in the strata plan, other than those which are a strata lot, part of a strata lot or designated as LCP, are common property, and are therefore the responsibility of the Strata Council to manage, subject to the conditions hereunder.

(2) ONE (1) parking space and one storage locker must be allocated for the use of each strata lot at no charge but such assignment must be at the discretion of the Strata Council. Council must not normally change the allocation of any parking space or storage locker without the consent of the owner of the assigned strata lot, except where there is a legal or extraordinary requirement to do so.

(3) Owners and tenants cannot rent out any LCP or assigned parking spaces or storage lockers to anyone.

(4) Those who own, or have designated LCP, parking spaces or storage lockers are not entitled to an allocation under Section (2) of this bylaw.

It may be more convenient to deal with storage lockers in a separate bylaw since they seldom pose as many difficulties as parking spaces and there may be additional clauses about parking such as not permitting RVs to be parked anywhere on the property and restrictions regarding the use of visitors parking spaces. But that would be a separate issue.

Creating such bylaws would seem to be a circuitous route to take to allow a strata to assign parking spaces and lockers on a more permanent basis to a strata lot rather than a specific owner or tenant. But it would provide a means whereby the council can maintain control of the use of those areas while being relieved of the easily overlooked chore of remembering to reassign them annually to each owner or tenant under SPA s.76. Moreover, the Tribunal Member would not have even suggested this route if it contravened the SPA, and it will suffice until an new designation such as "Long Term Exclusive Use" is added to the Act.

**Small Business & Strata Bookkeeping Services & Administration**

- Over 20 years experience • Computerized Accounting
- Spreadsheets & Word Processing • Produce Financial Statements
- Year End Budgeting • Assessment Formulation
- Contingency Forecast Report Assistance
- Consulting & Applicable Functions when required

**Barbara Zimmer**
**Attention to Detail • Dedicated • Analytical**
**250-727-9743**
**E-mail bzes3056@telus.net**

*Continued from page 14*

concerning them. The committee largely confirms that the existing framework for a strata corporation's operating fund, budgets, and financial statements should remain as is. The committee does tentatively recommend updating a number of regulatory provisions concerning the maximum amounts of fines and fees.

The chapter concludes with an examination of a pressing issue for collection of money owing to the strata corporation—the application of a two-year limitation period to strata-corporation claims. The committee tentatively recommends creating a special limitation period for claims that may be the subject of the strata corporation's lien under section 116 of the act, which would be set at four years. In the committee's view, this extension of the limitation period would be justified because these debts to the strata corporation differ fundamentally from other kinds of debts, such as those that may result in a typical lending transaction.

## NOTICES AND COMMUNICATIONS

This brief chapter examines a handful of anomalous notice provisions and periods and recommends some updates in light of practice issues.

## HOW TO HAVE YOUR SAY

You can download a copy of the consultation paper from <https://www.bcli.org>. While you're at that site, you can click a link to a survey BCLI has set up featuring all 83 tentative recommendations. Or, if you prefer to work through the tentative recommendations over an extended time, you can download a response booklet and send it when complete to <strata@bcli.org>. Finally, if you prefer a more focussed experience, a summary consultation paper featuring three highlighted proposals is also available for download.

The committee will take submissions it has received before 15 June 2018 into account in formulating its final recommendations on governance issues for stratas.

Let us finance your next strata repair project

We make it easy for property managers and strata councils to obtain financing for repair and maintenance projects

Tell us about your next project.

# Pet Problems

*By Shawn M. Smith, Cleveland Doan LLP*

Two recent Civil Resolution Tribunal ("CRT") decisions act as a reminder of some of the hard to navigate issues faced by strata corporations when it comes to pet bylaws.

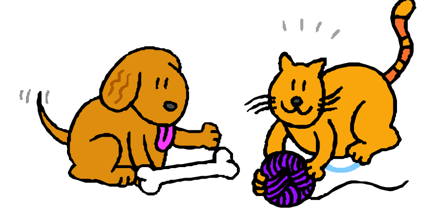
In *Maslek et al v. The Owners, Strata Plan LMS 2778*, 2018 BCCRT 106 the owners acquired four pet ferrets. At the time they did, the bylaws allowed owners to keep 1 dog or 1 cat or any other pet(s) approved in writing by the strata council. The owners never requested permission to keep the ferrets. The strata corporation eventually found out that the owners had them and, of course, took the position that the owners were in breach of the bylaws by not having received permission for their ferrets. The owners apologized for their mistake and immediately sought permission to keep the ferrets. The strata council denied their request, stating that it could not approve the ferrets. The bylaws were then amended to prohibit all pets except cats and dogs.

The issue before the CRT was whether the owners could keep their ferrets notwithstanding their breach of the bylaws. In the end, the CRT ruled they could because:

1. The ferrets were acquired before the change in the pet bylaw was passed and were thus exempt under s.123(1) of the *Strata Property Act* (SPA) from the provisions of the new bylaw prohibiting all pets except dogs and cats;

2. The strata corporation was incorrect in its view that it could not approve the ferrets. The bylaw in effect at the time the ferrets were acquired allowed the council to decide whether or not to allow a particular animal as a pet. The strata council could have allowed the ferrets if it wanted to.

3. It was significantly unfair under s.164 of the SPA for the strata council to deny permission to keep the ferrets.



In reaching its decision the CRT made the following observations:

*21 I find that the owners' expectation that the strata council would allow them to keep their ferrets was objectively reasonable. They apologized in writing, explained their request, and offered a compromise solution such as payment of extra fees. Because the strata council did not provide any explanation for why the owners' request was denied (other than the incorrect assertion that they could not grant permission), I cannot find that their decision to deny the owners' request was made on reasonable grounds. There appear to have been no grounds for the decision, other than an inaccurate interpretation of the January 2002 pet bylaw. There is no suggestion in the evidence or submissions that the ferrets caused damage, odour, or noise. While it is possible that other residents objected to them, there is no evidence or submissions before me to support that conclusion.*

This decision illustrates the danger of bylaws which grant the strata council discretion to allow or disallow certain things. Many strata councils view bylaws of this nature as a blanket prohibition against a particular thing with the ability to allow an exception on the odd occasion they might be inclined to allow an exception. Based on the decision in *Maslek*, that is clearly not the case. Discretionary bylaws require a reason to justify a refusal to give permission. If a reason cannot be articulated then there is no basis to refuse permission.

This decision, like other CRT decisions such as *Doig et al v. The Own-*

*Continued on page 20*

*ers, Strata Plan VR 1712*, 2017 BCCRT 36, emphasizes the need for the strata council to record its reasons at the time of its decision. It also emphasizes that decisions cannot be based on conjecture and speculation. There must be something verifiable to support them.

Another interesting aspect of the decision is that despite a failure to comply with the bylaw and seek permission before acquiring the pets, the owners were found to have a reasonable expectation under s.164 of the SPA that their request would be objectively assessed and determined without reference to their failure to comply with the bylaws. In other words, denial of the request as a form of punishment was not an appropriate response. (A slightly different decision was reached in *Getzlaf v. The Owners, Strata Plan VR 159*, 2015 BCSC 452 where the court cited a failure to comply with the bylaws as one of the grounds on which it could deny relief under s.164).

The decision in *N.K. v. The Owners, Strata Plan LMS YYYY*, 2018 BCCRT 108 dealt with whether or not the strata corporation was required to grant an exemption on medical grounds to its bylaw restricting pets. The strata corporation had a bylaw that restricted the weight of dogs to 25 kg. NK bought the dog and then asked his landlord, the owner of the strata lot, whether it was alright to have a dog. The owner asked the strata manager if there were any restrictions on dogs. The strata manager mistakenly said there were no restrictions. Based on that, the owner told NK he could keep the dog. NK apparently acquired the dog because he suffered from depression. When confronted with the fact that the dog violated the bylaws he claimed the dog was necessary for his ability to cope with his depression and asked for an exemption from the bylaw. He even obtained a letter from his doctor stating that the dog had a positive impact on NK's emotional state, and that since NK has had the dog, he had shown significant improvement and stability.

In considering whether NK should keep the dog, the CRT decided that the strata corporation was not bound by the erroneous information provided by the strata manager. This was because NK had acquired the dog before the strata manager was asked about the bylaws. More importantly, the CRT held that the tenant had signed a Form K acknowledging receipt of the bylaws. He was thus deemed to have known of the weight limitation.

The bigger issue facing the strata corporation was whether it was obligated under s.8 of the *Human Rights Code* to accommodate NK's disability (being his depression) and allow him to keep the oversized dog. At paragraph 39 of its decision, the CRT identified the two issues that it must

*Continued on page 21*

consider in that regard: First, whether living with his dog was a necessary accommodation for NK's depression (being his disability). Second, whether the strata was reasonably justified in refusing that accommodation (i.e. not allowing him to keep the oversized dog).

With respect to the first issue, it is necessary for an owner requesting to keep a pet for medical reasons to prove there is a nexus between their disability and the need for the pet – *Judd v. Strata Plan LMS 737, 2010 BCHRT 276*. In other words, is it absolutely essential to the treatment of the owner's condition that they have the pet? In most cases that question can only be answered through a medical report which provides a treatment recommendation beyond simply that it would nice or beneficial to have a pet.

The test adopted in Judd was relaxed somewhat is *BH obo CH v. Creekside Estates Strata KAS1707* and another, 2016 BCHRT 100 where the Tribunal held that "in the case of a person who requires a pet for reasons related to addiction, a complainant must show that not having a pet could put the individual at significant risk of a relapse."

This same analytical framework was applied by the CRT to NK's situation. The CRT accepted that NK had formed a positive bond with the dog but held that was not enough to warrant an accommodation. It reached the following conclusion in that regard:

41. Further, and more significantly, there is no evidence before me as to why the tenant must keep this particular oversized dog in the strata lot or why he could not form a similar bond with another pet that complied with the strata's bylaws. In other words, I have no evidence before me that the tenant could not obtain beneficial pet therapy by having a pet in the strata that complies with the strata's bylaws. I find that keeping a dog that exceeds 25 pounds in the strata is not necessary to accommodate the tenant's disability.

Just as in *Judd*, the medical evidence didn't identify a nexus between the requested accommodation and the disability. There was nothing to support NK's argument that he needed that *particular pet*.

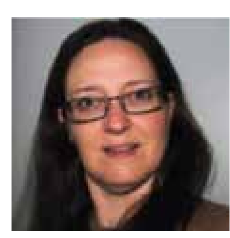
What was most surprising about the decision in *NK* was the finding that the concerns of a large number of owners, expressed through a petition, about the dog were enough to form a reasonable justification to refuse the accommodation. The CRT held that "keeping a dog that clearly violates a mandatory bylaw that pets must not exceed 25 pounds… would cause the strata undue hardship". That decision sets the bar fairly low with respect to what undue hardship is. It essentially allows the will of the owners to override the duty to accommodate – something which the *Human Rights Tribunal* has not found in its decisions. Strata corporations are routinely required to relax their bylaws to accommodate owners under the *Code*. The CRT seems to be setting a new standard for undue hardship – one that is fairly easy to meet.

These two cases illustrate not only how complex these situations can be but that there are different areas for concern for the strata corporation and the owners when it comes to pet bylaws. For strata councils, it is knowing and understanding their bylaws and how to properly apply them. For owners, it is that when seeking exemptions under the *Code*, it is to be prepared to establish a nexus between the pet and their disability. In both cases, proper advice early on can save a lot of time and effort.

*This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for 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.*

# Plugging into User Fees

*By Wendy Wall*



VISOA members often express their wishes that the Strata Property Act and Regulations be amended to meet the changing needs of strata corporations and owners. So, I dance a little jig every time the legislation or regulations undergo even the smallest of tweaks if I think it is an improvement that will benefit the strata community.

On March 7, 2018, the Lieutenant Governor announced a change to **Regulation 6.9 *User fees for the use of common property or common assets*** by adding a new section (2). The complete regulation now reads:

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

(a) the amount of the fee is reasonable;

(b) the fee is set out

(i) in a bylaw, or

(ii) in a rule and the rule has been ratified under section 125 (6) of the Act.

(2) A user fee imposed by a Strata corporation may be a fixed amount or an amount based on a reasonable determination, including, but not limited to, the following:

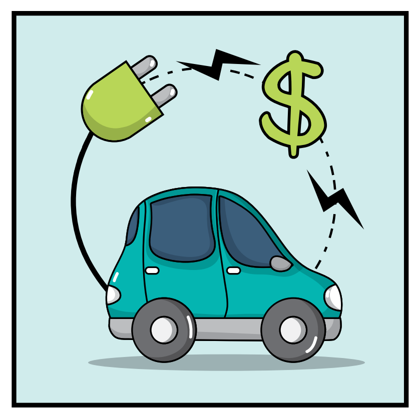
(a) the user's rate of consumption;

(b) the recovery of operating or maintenance costs by the strata corporation;

(c) the number of users;

(d) the duration of use.

**What is a User Fee?** Common user fees could be the selling price for building keys and fobs, the cost to operate common area laundry machines or a fee for use of recreation facilities. Other examples of user fees could include rental of a clubhouse room, guest suite or parking stall. As Mike Mangan explains in



*The Condominium Manual: Except as set out in the regulations, a strata corporation must not impose user fees for the use of common property or common assets by owners, tenants, occupants, or their visitors. The regulations provide that user fees may be imposed for the use of common property or common assets if the fee is reasonable and is set out in a bylaw or in a rule that has been ratified at a general meeting.*

**So what's the big deal?** After January 1, 2002 and prior to March 7, 2018, the regulation contained section (1) only and was generally interpreted to mean that a user fee was a flat fee. One issue that surfaced in the last few years has been a perceived unfairness to Electric Vehicle charging in stratas. If the regulation only permitted a flat monthly fee for charging, the cost was the same for a driver charging their vehicle once a month or every day.

**How does the new regulation effect EV charging in stratas?** Now under the updated Regulation 6.9, a strata corporation has more flexibility in the way they wish to calculate a user fee. You might find the Electric Vehicle drivers living in your strata doing that little jig. For example, instead of a monthly flat fee for each driver, the strata could have a meter measuring the electricity used that month for charging, calculate that cost, add in any overhead such as a monthly fee from a service provider and split the total for that month by the *"number of users"*. If the charging equipment has a data collection feature, the monthly cost to the strata could be split by the percentage of use. This is particularly attractive if some EV drivers are often out of town and not using the charging equipment every month.

Similarly the data could be used to calculate the monthly fee based on the "duration of use" such as an hourly rate. However, EV drivers would point out that different electric vehicles charge at different rates, drawing different amounts of power per hour.

**Can a strata charge by the kWh?** Section (2)(a) opens the door to billing based on the *"user's rate of consumption"*. If the charging equipment has a data collection feature, a monthly report could be generated showing the actual us-

*Continued on page 23*

*Continued from page 22*

age of each driver. *However* it is important to know that currently, BC Hydro and the BC Utilities Commission do not permit a strata corporation to "resell" electricity. So technically speaking, the strata cannot currently charge a user an amount per kWh. But this restriction may change. The BC Utilities Commission currently has an inquiry underway: *Regulation of Electric Vehicle Charging Service ~ Project No.1598941*. Some EV drivers and strata corporations have suggested that there be a *Class Exemption for BC Hydro customers which are registered Strata Corporations to Resell Electricity for the purposes of Electric Vehicle Charging*. An exemption of this nature would then allow strata corporations to make full use of Regulation 6.9(2)(a) by permitting calculation of user fees by the kWh. A strata could combine that actual consumption with a formula to charge for overhead expenses such as service or management fees, if any.

Stratas may also wish to clarify the definition of an electric vehicle to include other types of "vehicles" such as electric bicycles, motorcycles, mopeds, scooters, mobility scooters and powered wheelchairs as some strata corporations have experienced perceived unfairness when residents wish to charge these types of vehicles using common electricity.

**Remember to update** your Rules before charging user fees. This may require a change to your Bylaws as well. You may wish to consult a strata lawyer for assistance.

Shawn Fehr, BA, CAIB, CIP, provides expert advice whether you're insuring a duplex or a 500-unit strata complex. Call him today for a competitive quote! **250-478-9110** or e-mail sfehr@seafirstinsurance.com

*SeaFirst Insurance Brokers have been providing our clients with the finest in general insurance services on the Island for over 40 years.*

**YOUR FIRE SAFETY IS OUR SPECIALTY**

**A practical fire alarm upgrade process that works for your budget & your building.**

- **Fire Alarm Upgrades** (including Pre-engineering, Budgeting, & Project Development/Administration)
- **Fire Safety Plans & Evacuation graphics**
- **Fire Safety & Code Consulting**

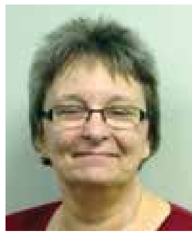
**Independent advice & assistance for your fire safety needs.**

**Don Nicholas** ~ Development **250-661-9930**

**Kat Nicholas** ~ Administration **250-661-9931**

**sterlingfire@ymail.com** **www.sterlingfireassoc.com**

# President's Report



As you can see by the Director's list on the first page, I have been elected President of your Board again. It has been my privilege to serve and I am proud to do so again.

At our AGM in late February, all those Board members eligible for re-election were elected by those in attendance. We said goodbye to John Webb as he retired from the board, and we have not filled his vacant slot. His shoes will be filled by Paulette Marsollier who agreed to serve as Vice President and lead our website working group (in addition to her previous role as membership chair); and by Wendy Wall who now leads the publications team along with continuing as social media lead. Your Board can appoint up to 4 more directors during the year. If you are interested in volunteering for this, let's talk.

We also say goodbye to our Office Administrator, Evelyn, who has been with us for five years and is now retiring. Evelyn essentially created the job from the start, and has been a great strength to the Board and all our members. We are sad to say goodbye! By the time you read this, Evelyn will be busy training her replacement, Tammi, but I know she'd like to hear from any of you she's helped over the years.

Housing has been in the news so much lately, particularly rental housing (or should I say the lack of rental housing?) Strata owners have been vocal in their thoughts on rentals in stratas – and the views are quite entrenched with few able to see the other side. On the one hand are the strata communities who see "absentee owners" as not contributing their share of volunteer equity; the other side says "my home, my castle, my choice to rent it out". The majority of stratas built since 2010 have all the strata lots marked by the developer as being rentable until a specific date some of which have been set at 50 years or more into the future. The strata corporation cannot amend these fixed dates by bylaw to restrict or prohibit rentals, should they want to, without the consent of the developer who is the only one who can alter the Rental Disclosure Statement. What are your thoughts?

Another facet of the rental housing shortage is the provincial government's proposed extra tax on "non-owner-occupied" housing in many parts of the province – also known as the "speculator tax". We have heard from many of you that your "empty" condo apartment is empty so that it's there for you to enjoy as a vacation home. You have no need or intent to rent it out and are not hanging on to it as an investment vehicle. If you have strong thoughts on this, I encourage you to write to your MLA or to the Honorable Selina Robinson, Minister of Municipal Affairs and Housing.

I also encourage you to read and comment on the BC Law Institute's (BCLI) consultation paper on recommended amendments to the Strata Property Act. The consultation is open until Mid-June, and I know that a good many of you have already commented. This is your chance to influence future legislation. See the article on page 11 and the link on VISOA's home page for more details. I'm counting on you to let the BCLI's Strata Law Reform Project Committee members know whether we've got it right. I say "we" as I am part of that committee – I am your voice, representing the views of strata councils and owners.

We are currently planning our fall workshop series and if you have ideas or suggestions for new full-day workshops, please email me. Our most popular and almost always sold out sessions are: Best Practices for Treasurers; Best Practices for Strata Secretaries; For New Strata Councilors; and Strata Maintenance Planning. We'd love to add more to our series and I hope to hear from you. As always, you can contact me at president@visoa.bc.ca

**~ DISCLAIMER ~**

*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.*

Bulletin formatted for publication by Georgia Ireland

• Business Cards • Newsletters
• Brochures & More

www.georgiasdesignstudio.ca