VISOA
Vancouver Island Strata Owners Association

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VISOA Bulletin - MAY 2019

Editor's Angle

David Grubb, Editor

The old song may talk about the Merry Month of May with flowers and all, but as anyone who doesn't live in "Lotus Land" in BC's southwest corner might tell you, "Don't Plant Anything Until After the (official) Queen's Birthday!" Yes, the Spring is here, but back East tell that to Mother Nature while you are sandbagging or pumping the filth out of the basement in Ottawa, Montreal, or the Saint John Valley!

Like May's often unsettled weather, this edition of the Bulletin also is a bit of a potpourri (which, if the dictionary defines it correctly, we hope will smell pleasant rather than rotten)! We run the gamut from Shawn Smith's comments about renting to family members which could result in the actual owner being unable to vote, serve on council, or even have a voice about his own unit; to an interesting possibility for assigning common property parking and lockers; to having to pay your strata fees; to feelings about the housing crisis; etc. We hope the topics prove of interest in keeping your strata on the happy straight and (somewhat) narrow path, or generating a discussion about an issue.

But whether these topics do or don't suit you, others may be interested, so we are always looking for articles and opinions. If you can write an article, or if you know of any topic from anywhere else (there are all sorts of magazines and articles about condominiums and stratas from organizations around the world) which might apply to us, please send it along or at least tell us how to find it! Send the information to the editor@visoa.bc.ca .

Did you know that VISOA hosts a series of workshops throughout the year? These small group classroom style sessions offer council members, strata owners and industry professionals, a hands-on, interactive learning experience.

Throughout the day, presenters encourage participation and questions. Whether chatting over coffee at the break or sharing a relevant anecdote, inevitably we all learn through each other's real-life experiences.

VISOA has offered the following workshops in recent years: "New to Council", "Strata 101", "Best Practices for Strata Secretaries", "Best Practices for Strata Treasurers", "Working with a Strata Manager", "Strata Maintenance Plans", "Before You Buy a Condo", and "Rapid Damage

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VISOA Workshops
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Assessment Training".

What new workshops would you be interested in? Are there any subjects that you think would appeal to others? What would you find valuable to assist you in your role on council or as an interested owner?

Perhaps a workshop to plan an AGM or SGM notice package? To hold mock council and general meetings? To practice step-by-step bylaw enforcement or complete SPA forms? Planning for electric vehicle charging in your strata?

We would be happy to prepare new workshops if there is sufficient interest in a topic.

Do you have ideas of how we can reach new strata owners who have so much to learn about the Strata Property Act, documents, bylaws, governance, roles and responsibilities?

With thousands of condos, townhouses and bare land strata units under construction in our communities and even more in the planning stage, there are, no doubt, many British Columbians who might benefit from the information that VISOA can offer.

Lastly, we are always looking for new opportunities to serve our community. Within a reasonable travelling distance, we would be happy to speak at your local library, college, community centre, association or business event.

Please contact us at information@visoa.bc.ca with the subject line "Speaking Engagement" if you have an opportunity or proposal.

SEMINAR:
Human Rights in Stratas
guest speaker, Shawn Smith
Sunday, June 23 1pm
Comfort Inn, Victoria

Pre-Sales: Is What You See What You Get?

By Michael D. Carter, Cleveland Doan LLP

Every year thousands of British Columbians sign agreements to purchase new condos and townhouses before they are built. Instead of viewing the finished home the buyers often rely on display homes and floor plans provided by the developer.

Once the home is built, the buyer may be surprised to discover that the developer changed the layout or features in the new home. In these cases the developer will typically point to the wording in the purchase agreement (created by the developer) that allows the developer to alter the layout and features during construction. The wording in some agreements may only allow necessary changes, such as those required by an engineer or municipality. However, in some purchase agreements the wording allows the developer to alter the layout and features in any way the developer wants.

In one recent lawsuit *(Mitchell v. Zenterra Developments Ltd, 2019* BCPC 14) a buyer sued a developer for failing to provide a number of features shown on the floor plan and in the display home. The developer argued that, despite the display home and floor plans, the purchase agreement allowed it to remove or change certain features in its sole discretion. Taken to the extreme, the developer argued that the only contractual obligation it had was to provide a habitable space that was approximately the same size as that listed in the purchase agreement.

The court disagreed. The court said that a developer may have the right to make changes, but the changes must be reasonable.

If you intend to purchase a home that is not constructed, it is important to understand what the contract says about changes to the layout and features during construction. If specific features of the new home are important to you, then you should ensure the contract does not allow the developer to change those features without your consent.

A developer who makes unreasonable changes to your home may have breached the purchase agreement, so you should seek legal advice if you find yourself in that situation.

Rentals to Family Members

By Shawn M. Smith, Barrister & Solicitor

Let's talk about family! In fact, it might surprise you that we are able to do so within the context of the *Strata Property Act* ("SPA"). But the SPA affords us the opportunity to do that with respect to rentals and some of the relatively unknown provisions that go along with renting to family.

Section 142(2) of the SPA allows an owner to rent a strata lot to a "family member" notwithstanding the fact that the strata corporation may have a bylaw which either limits or prohibits the rental of strata lots. However, that provision is not license to provide accommodation to siblings, cousins or even long lost relatives from the far reaches of the globe. The concepts of "family" and "family member" are defined in Regulation 8.1 of the SPA which provides as follows:

(1) For the purposes of section 142 of the Act, **"family"** and **"family member"** mean

(a) a spouse of the owner,

(b) a parent or child of the owner, or

(c) a parent or child of the spouse of the owner.

(2) In subsection (1), **"spouse of the owner"** includes an individual who has lived with the owner, for a period of at least 2 years at the relevant time, in a marriage-like relationship.

As you can see, the range of people who qualify under the exemption are narrow and the relationships linear. For example, an owner cannot rent their strata lot to a sibling or even a grandchild and be able to claim the exemption. In order to claim the exemption, an owner should be prepared to establish the nature of their relationship. One way of doing that would be for the strata corporation to require the owner to swear, under oath, a statutory declaration setting out the relationship of the tenant to them.

However, not all arrangements wherein someone resides in a strata lot amount to "renting" a strata lot. In other words, simply because the person living in the strata lot isn't an owner, doesn't make them a tenant. This issue was considered, at least in part, in *Strata Plan VR 2213 v. Duncan* 2010 BCPC 123. In that case the court had to determine whether or not persons staying in a strata lot for a short period of time (i.e. 2 weeks) were tenants. The strata corporation allowed owners to rent their strata lot. The owner in question rented his as short term furnished accommodation, which the strata corporation was fine with. However, it wanted the owner to file a Form K and pay a $75 fee every time a new person occupied the unit. In considering whether the owner must do so, the court observed that the SPA recognized two categories of people (other than owners) who might live in a strata lot; tenants and occupants. It noted that just because a person occupied a strata lot and even paid to do so did not automatically make them a tenant. In order for there to be a tenancy, there must be the hallmarks of a tenancy; longer term, exclusive occupation, etc.

The decision in *Duncan* is not necessarily definitive when it comes to the issue of whether someone is renting a strata lot or not. One must also give consideration to what constitutes "rent"; being the terms used in ss.141 – 144 of SPA. For example, the *Residential Tenancy Act* defines "rent" as : "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities…". Thus, if the person paid the strata fees in exchange for living there, they would be considered to be "renting". However, if the strata corporation is not privy to the arrangements between the parties, it can be extremely difficult to determine whether a person is an occupant or a tenant. One way of resolving the tension is define, in the bylaw itself, when someone is deemed to be renting.

Given the exemptions set out in s.142(2) and (4), why then would one care about whether a strata lot is rented to a family member? The answer to that question is found in the often overlooked provisions of section 142(3) of the SPA which provides that:

"A rental of a strata lot to a family member under this section creates an assignment of the owner's powers and duties under section 148".

Section 148 in turn provides:

148 *(1) In this section,* ***"long term lease"*** *means a lease to the same person for a set term of 3 years or more.*

(2) If a residential strata lot is leased under a long term lease, the tenant is assigned the powers and duties of the landlord under this Act, the bylaws and the rules

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for the term of the lease.

(3) Before exercising any powers of the landlord, the tenant must have given to the strata corporation written notice of the assignment referred to in subsection (2), stating the name of the tenant and the time period during which the lease is effective.

(4) The strata corporation must give a copy of the notice referred to in subsection (3) to the landlord and to the owner.

(5) The assignment does not include an assignment of the landlord's responsibility under section 131 for fines or the costs of remedying a contravention of the bylaws or rules.

(6) The tenant must not, without the owner's consent, exercise any power or right of an owner

(a) to acquire or dispose of land,

(b) to cancel or amend the strata plan, or

(c) to do anything that would affect the owner's interest in the strata lot, common property or land that is a common asset.

(7) The landlord must not deal with his or her interest in the strata lot, common property or land that is a common asset in a way that unreasonably interferes with the rights of the tenant under the lease or assignment.

In the context of a family member, the tenancy need not be 3 years or longer for the provisions of s.148 to apply. S.142(3) clearly overrides that requirement.

The effect of renting a strata lot to a family member can be significant and quite unexpected. Unlike the assignment referred to in s.147 of the SPA, the assignment in this case is automatic. In other words, as soon as the owner rents the strata lot to their family member they lose a number of the rights associated with ownership, most notably the right to attend general meetings and vote. A parent who buys a strata lot to rent to their child while they attend university, or a child who rents a strata lot to their aging parent can unwittingly find themselves in a situation where they no longer have full control over their investment and no say in the management of the strata corporation.

Although s.148(3) of the SPA requires the tenant to notify the strata corporation in writing that he or she intends to exercise the rights of the owner before doing so, the owner's loss of their rights is not dependant on the tenant issuing such notice.

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The assignment is automatic and dependant only on the existence of the tenancy. In other words, if the tenant never exercises their rights under s.148 then conceivably no one can cast a vote on behalf of the strata lot.

Owners who rent to family members not only lose their powers in relation to the strata lot, but are also relieved (to some extent at least) of their obligations in relation to it as well. Given that the assignment is in relation both to the owner's powers and duties, the obligation to pay strata fees become the responsibility of the tenant. It is they who should be fined for the failure to pay; not the owner. (The owner, however, remains ultimately liable in the sense that it is their strata lot which would be sold to satisfy the arrears).

Family members who are renting a strata lot are also eligible to be elected to the strata council. S.28(1)(c) of the SPA includes "tenants who, under section 147 or 148, have been assigned a landlord's right to stand for council" as part of the list of those persons who can be elected.

What does all this mean then for strata corporations? First of all, they must pay careful attention where a family member is living in a strata lot without the owner living there. They must establish whether or not a tenancy exists. If one does, then a Form K must be submitted. Once that occurs the strata corporation must now start dealing with the tenant (except where the SPA specifically requires the strata corporation to continue dealing with the owner; such as when a fine is to be levied – s.135 SPA). The strata corporation must also ensure that the owner is not permitted to vote at a general meeting unless they have a proxy from the tenant (which proxy can only be issued once the tenant has given notice as per s.148(3) of their intention to exercise the powers of the owner). The tenant can vote only if they have given written notice of their intention to exercise the right to do so. Lastly, the strata corporation must note when the tenancy comes to an end and revert back to its normal practices.

A couple of final things to note: Where a strata lot is rented to a family member, the owner is still required under s.146 of the SPA to submit a Form K – Notice of Tenant's Responsibility. Section 142(4) provides that where a strata lot is rented to a family member it is not to be included in the count of strata lots allowed by the bylaws of the strata corporation.

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 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.

The Matter of a Mailing Address

By Gail Roberge

Perhaps in retirement I have less entertaining things to do than in my younger years but I do find myself quite intrigued by strata cases in Supreme Court and the CRT. A fresh pot of tea and a comfortable chair and I have hours of fun.

I recently read decision #2019 BCCRT 471: *Zeng v. The Owners, Strata Plan LMS 2060 et al.* Although not the main topic of the case, I found myself musing over the importance of a strata's mailing address. It strikes me that many strata corporations have not checked the Land Titles Office to see what mailing address is currently registered as their legal mailing address. The address on file may be so out of date that it is still the address of the barrister representing the original owner-developer.

Why is this important? First of all it is a legal requirement. Section 62 of the *Strata Property Act* (SPA s.62) reads: *(1) The strata corporation must ensure that the correct mailing address for the strata corporation is filed in the land title office…(3) If a strata corporation changes its mailing address, it must file a Strata Corporation Change of Mailing Address in the prescribed form in the land title office.*

Second, SPA s.63 dictates how Notice is given to a strata corporation. If notice is given by mail, it must be sent to the registered address. An owner requesting a hearing, submitting a petition, assigning powers and duties to a tenant, even requesting permission to renovate or rent will want to ensure they adhere to this section. And certainly, if legal documents are to be served on the strata corporation by mail, the legal address must be used.

MAIL MISHAPS

If mail is delivered to a legal address that is not up to date, it could be found that an owner has complied with SPA s.63 yet the mail may not have been forwarded to the strata or may not have been forwarded in a timely manner. In situations that have strict timelines such as a request under SPA s.144 for an exemption from a rental restriction bylaw due to hardship, the strata could find themselves in an unfortunate position. Under s.144, if the strata does not give a written decision within the time frame, the rental exemption is allowed.

THE ZENG CASE

The interesting twist in *Zeng*, is that the address used for the 5-plex strata corporation was the unit of an owner who violated municipal orders. In 2014 and 2015, the city sent notices of bylaw offences relating to unauthorized rooftop decks and attic alterations in two units and the strata's refusal to allow the building inspector access. Since the mail went to her unit only, were the other owners aware of the required inspection or the failure to comply?

In 2015, the City proceeded to Provincial Court against the two individuals and the strata corporation. It is unproven who pled guilty on behalf of the strata. All of this presumably occurred without the knowledge of the other owners in the strata corporation. This begs the question - did the owners hold regular council meetings?

Fast forward to 2017. Still unaware of the municipal fines or the court proceeding, the strata was surprised to receive a collections letter for $3,250 from the city. At that point, the 2 offenders no longer owned units, having sold in 2015 and 2016 respectively. The strata owners voted to charge the amount to the 2 offending strata lots, which unfortunately had new owners. One of those owners took the case to the CRT as a small claims dispute.

The Tribunal found that "the strata should have borne the $3,250 expense, to ultimately be shared among all current owners according to its bylaws and the *Strata Property Act* (SPA). I say this because as noted there is nothing in the strata's bylaws that permit a charge-back of a strata debt to specific individual strata lots, regardless of whether most of the owners decided to do so (see *Ward v. The Owners, Strata Plan VIS #1165, 2011* BCCA 512)… the strata did not have the authority under its bylaws to charge-back the $3,250 fine against only units 103 and 104. In 2017, I find the strata's only option was to pay the fine expense out of its operating budget (if there was a legal expenses budget to permit this) or allocate it as a contingency reserve fund expense to be ultimately borne by the then current owners…"

LESSONS LEARNED

Anyone can contact the Land Titles Office to check for and purchase a copy of the most recent mailing address filed for your strata corporation. If there have been no filings, the legal mailing address is as shown on the Strata Plan (Yes, even it was filed back in the 60's!)

Councils or property management companies who wish to file an updated address at the LTO, can find Form D – Strata Corporation Change of Mailing Address at the end of the Strata Property Regulations. Go to the visoa.bc.ca / Resources / Resource Links

Make a pot of tea, curl up and read this CRT decision and more at: civilresolutionbc.ca / Resources / Decisions

Thank you Gail for contributing this article. If anyone would like to submit a story idea or article, please send it to editor@visoa.bc.ca

Solving Parking & Locker Assignments

Some stratas have parking and locker spaces assigned to particular units as either part of the strata lot or as LCP to a particular lot. But many stratas do not have those spaces identified this way and they are left as common property to be dealt with by the owners and councils.

The only other way, apparently, that a council can award a parking space or locker is through SPA s.76:

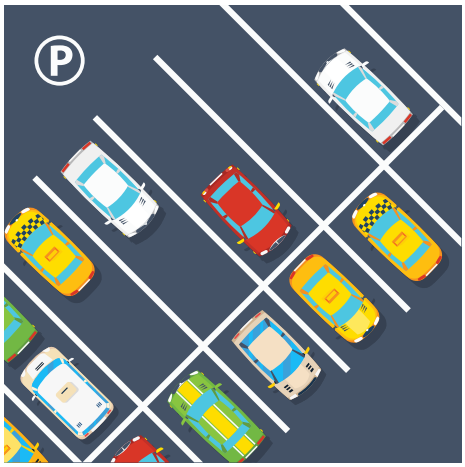
Short term exclusive use

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.

There are three problems with this. First, the assignment seems to be restricted to a particular person, not a strata lot. Second, the council can withdraw the assignment at any time whereas an LCP assignment must be withdrawn by the owners at a general meeting. Third, it can be for no more than one year at a time: renewable, true, but the annual routine can be a real irritation to councils annually to renew the parking spaces. (We won't go into real estate agents, and even some councils who mark it on Form B, and blithely inform purchasers that parking space X is theirs when, in fact, that is untrue.)

Many stratas simply ignore the problem and hope residents will be reasonable about current assignments – until they face a conflict. Without any way, apparently, to legally assign parking spaces and lockers at least semi-permanently to strata lots, the strata would

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probably lose in any type of law suit.

The answer may be found in the Civil Resolution Tribunal (CRT) case of *Hales v. The Owners, Strata Plan NW* 2924, 2018-03-22 BCCRT 91. While this case deals primarily with common property lockers under SPA s.56 "Information Certificate", and Form B "Information Certificate" from the SPA Regulation, these Sections which *Hales* cites can refer also to parking spaces, so the discussion (including some edited quotations) will talk about parking spaces using the same arguments as in *Hales*.

Because of the complexities of the arguments in *Hales*, the Adjudicator was obliged to bounce around considerably with respect to the interpretation of SPA s.76 "Short Term Exclusive Use". But ultimately his decision about s.76 was that, while a bylaw might be written carefully to include an assignment to the strata lot (in addition to a person), s.76 remains inviolate as far as having to be awarded annually (or shorter) for it to maintain its validity to either a person or a strata lot.

So the Adjudicator shifted his focus onto SPA s.3:

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.*

And SPA s.4's designation of the council to carry out the business of SPA s.3:

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.*

Now combine this with Form B's paragraph (m)(iii) and the text following that paragraph, noting that the **bold** in the text is Form B's emphasis (not mine, although the underline is mine):

(m) (iii) For each parking stall allocated to the strata lot that is common property, check the correct box and complete the required information.

❒ *Parking stall(s) number(s) ..... is/are allocated with strata council approval**

❒ *Parking stall(s) number(s) ..... is/are allocated with strata council approval and rented at $ ..... per month**

❒ *Parking stall(s) number(s) ..... may have been allocated by owner developer assignment*

Details:

[Provide background on the allocation of parking stalls referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

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

The Adjudicator ruled on awarding a [parking space] as it normally appears currently under SPA s.76 (short term exclusive use):

If it is pursuant to section 76 of the SPA, it must be to an owner or tenant, it cannot be for more than one year, and must be renewed annually, unless the grant [for each locker or parking space] contains automatic annual renewals. If it is pursuant to another avenue, it can be to a strata lot, and can be subject to change in the future.

That last sentence, as emphasized in Form B (shown above), is now extremely important because, as the Adjudicator indicates:

Section 76 of the SPA states that a strata corporation may give an owner or tenant permission to exclusively use common property. That section does not preclude a strata council from otherwise granting permission to a strata lot. That conceivably could be done pursuant to section 3 of the SPA, as part of the mandate to manage common property for the benefit of owners. And could be subject to change, as noted in the Form B Information Certificate. [i.e. the last sentence, which is part of a legal Form B document.]

The Adjudicator states that the context of the entire law must be taken into consideration. Thus the intent of Form B's phrase ***"…, or otherwise, and may therefore be subject to change in the future."***, in the context of both SPA s.59 (and Form B), and SPA s.76, anticipates that the disposition of some common property – in this case, parking spaces and lockers – can be made in accordance with SPA s.3 for the benefit of the entire community.

This being so, a strata can write a bylaw which declares that, "In accordance with Sections 3 and 4 of the *Strata Property Act*, all common property parking spaces and storage lockers shall be governed and regulated by the council subject to the following conditions …."

The council keeps control over the common property parking spaces and lockers and may include in the bylaw that a space is assigned to a strata lot (rather than a person) under normal circumstances and does not require annual renewal, but can be removed when necessary under certain conditions (necessity, bad management, no longer needed, etc.). In this manner, the council may assign visitors spaces, or extra spaces for the use of residents (extra vehicles, over-sized vehicles, etc. with or without a user fee), without having to worry about renewing each space once a year.

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Jason Rohrick would be pleased to work with you if you are a strata council looking for help to properly apply the Strata Property Act, Regulations, Bylaws and other relevant laws to the business of managing your strata corporation, or an individual owner. Working with a strata lawyer can take the guesswork out of correctly interpreting the law and free up your valuable time.
Ongoing occasional legal advice from a strata lawyer can be a cost-effective way for a strata corporation to reduce the risk of disputes arising, and when they do, to have processes in place to foster fair and efficient resolutions. Contact Jason at 778-432-0447 or jrohricklaw@shaw.ca

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

What Can You Ask of Your Strata Manager?

By From the Fischer & Company Law Firm (Kelowna)-
BC Strata and Condominium Law Newsletter (April, 2019)

Strata Management Licensees have a wide range of duties and delegated responsibilities. They carry a heavy burden with respect to providing their client strata corporation practical guidance and administrative support, along with competently managing the strata corporation's day to day communication, finances and operations. They are also under pressure from their brokerage to efficiently represent multiple strata properties.

A Strata Manager's responsibilities are governed by the terms of their strata management contract, the express and lawful delegation of authority they are provided, as well as the Strata Corporation's bylaws and approved resolutions. They are also bound by the provisions of the *Real Estate Services Act*, the *Strata Property Act*, privacy legislation, and various other legislative schemes.

A good Strata Manager should have a strong combination of interpersonal, organizational, time management, technical and legal knowledge and skills, along with an effective network of professional contacts.

That said, I very frequently observe council members demanding too much of their Strata Managers.

AS EXAMPLES:

- Expecting the Strata Manager to make important decisions which should properly be made by the strata council or voting ownership.
- Casually asking the Strata Manager to contravene the *Strata Property Act* or other binding laws, usually for the sake of expediency.
- Forcing the Strata Manager to take part in factional disputes between owners, or expecting them to take sides.
- Expecting the Strata Manager to provide legal, engineering or other advice or services for which they are not qualified or responsible - including drafting complex resolutions, bylaws and legal instruments.
- Demanding that the Strata Manager perform substantial work outside their scope of services specified in the management contract without agreement or additional compensation.
- Unreasonably requiring immediate attention to objectively non-urgent tasks.

I recommend an occasional dialog between council and management to ensure that everyone's expectations are in accord, and to make sure that the strata council is doing its part to avoid overburdening or obstructing the Strata Manager in their work. Do not dismiss your manager's concerns, recommendations or requests without careful consideration and sound advice.

One more observation: I tire of seeing Strata Managers being unfairly discredited or disregarded based on age or gender. Whether knowingly or unknowingly, some council members don't take their strata management licensee seriously if the manager doesn't visually reflect a specific and biased expectation. I don't think I'm being too presumptuous in reminding myself and others to be fair and respectful in assessment and treatment of others - even (especially) when we disagree.

Assess your Strata Manager based on their performance, capabilities and effectiveness, and if you do have a concern about how they are serving the strata corporation - don't be afraid to speak to their managing broker. In the case of serious concerns, the Real Estate Council of British Columbia can help a strata council assess whether anything is awry through their ***complaint process***. They also have an anonymous ***Tipline***. Although those resources shouldn't be used for trivial or improper purposes, they are available to be used in appropriate circumstances.

Strata Management Licensees have extensive training and re-licensing requirements. They are also increasingly in demand, so treating a good strata manager poorly may have adverse long term effects for your strata corporation.

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The Straight Goods on Strata Fees

By Elaine Browne

How often do we hear comments such as "I'm not going to pay my strata fees this month because I had no hot water for a week" or "I am withholding strata fees because I don't agree with the council's choice of gardening contractor"? We hear the rationale that "I'm a council member so I should get one month of strata fees waived", "I paid for supplies so I will subtract that from this month's strata fees", "I won't be paying the special levy because I don't agree that the repair to the perimeter drains is necessary".

No matter the excuse, there is simply no legal basis for an owner to be exempt from paying their proportionate share of strata fees or special levies.

A recent Civil Resolution Tribunal (CRT) case, *Lozjanin v. The Owners, Strata Plan BCS 3577,* 2019 BCCRT 481, summed it up nicely. The adjudicator stated:

"The owner's correspondence that one of the reasons she wanted a hearing was to request a rebate on her strata fees due to the loss of use and enjoyment of her strata lot. The strata could not have granted that remedy, nor can I, as the payment of strata fees is mandatory under section 99 of the SPA and the strata's bylaws. Strata fees cannot be waived."

In *Saigeon et al v. The Owners, Strata Plan KAS 1997,* 2018 BCCRT 636, the following question was raised "Can the strata reduce strata fees of an owner to reimburse him for a personal expense?" In this case, a vote was passed by the strata council to approve a deduction of $300 from the president's strata fees to reimburse him for the cost of a personal insurance deductible. The president's position was that the strata has the authority and jurisdiction to vote to decrease the amount of strata fees paid by an individual owner.

The adjudicator disagreed saying, "The deductible incurred by the president to obtain repairs to his vandalized truck is a personal expense. The strata has no authority to reduce strata fees of an owner to reimburse for personal expenses." She ordered that "the strata demand payment of the $300 from the president, to be paid within 2 weeks of the demand."

In *Wadler v. The Owners, Strata Plan VR 495,* 2018 BCCRT 567, an owner became frustrated with the council enforcing bylaws against her in regards to unapproved renovations of her strata lot and short term rentals. After a disagreement about access to the general storage area, "She advised that, as retaliation, she would not pay her June 2017 monthly strata fees."

In total there were 72 fees and fines related to a wide variety of issues. The owner consented to some charges but did not pay, and opposed the collection of the rest on the basis that she did not have the funds to pay due to the strata's delay of her renovation resulting in loss of income. Although the particulars of the owner's breaches of strata and municipal bylaws are interesting, the details of this case are far too lengthy to recount. Suffice to say that on the issue of strata fees, the tribunal member ordered that the owner pay the overdue amount as well as 4 overdue special levies.

The moral of this story? Every owner must pay their strata fees and special levies. If an owner has a grievance it must be addressed separately.

Thank you Elaine for contributing this article. If anyone would like to submit a story idea or article, please send it to editor@visoa.bc.ca

Letter from a VISOA member to the Minister of Municipal Affairs and Housing

To: Honourable Selina Robinson, Minister of Municipal Affairs and Housing
From: Strata Council XXXX, Victoria, BC

This refers to The BC Rental Housing Review (August, 2018) report which includes the following recommendation on page 13:

"#9 Increase the availability of currently empty strata housing by eliminating a strata corporation's ability to ban owners from renting their own strata units."

Our Strata Council members have reviewed this recommendation and we are providing the following comments that outline our reasons for opposing it.

1. Wrong Policy Option

There are recent existing policy measures that address the problem of empty homes, specifically:

• Empty Homes Tax (City of Vancouver)
• Speculation and Vacancy Tax (Capital Regional District, Metro Vancouver, Kelowna, Nanaimo, Fraser Valley)

These existing policy tools incentivize the owner to rent or sell (depending on the strata's bylaws) without penalizing the overall strata or changing the nature of the strata community. We suggest that it would be wise to wait a few years to see how these major policies change owner behaviour before considering a step to eliminate the ability of Strata Corporations to ban owners from renting their strata units.

2. Spirit of the Law

This proposal goes against the long-standing principle of allowing Strata Corporations to determine the structure and nature of their community, including:

• allowing age restricted buildings (even though this is against human rights)
• allowing strata to self-determine smoking bylaws (even though both cannabis and tobacco are legal)

3. Renters are Uninvolved not "Hazardous"

The comment in the report is "Allowing Strata Corporations to ban rentals assumes that renters are hazardous" (pg. 13)

It's not that renters are "hazardous" - many of us have renters/boarders in our units (see number 5 below) - it's that they are unengaged in the responsibilities of communal ownership as they are categorically not owners. Our strata is self-managed, with people serving on the strata council, assisting in clean up and repairs and yearly maintenance. Renters would be less likely to assist with clean up and repairs and cannot serve on council. Our past experience with rented strata units has seen a decrease in absentee owner involvement and care as well. Strata Corporations have also had to deal with the frustration caused by absentee owners who attend AGMs and oppose fee increases/special assessments required to undertake maintenance projects scheduled in our Depreciation Reports. (A fee increase/special assessment can reduce the net profit absentee owners realise from renting their units.)

4. Would not change vacancy

Strata's that have rental bylaws have the highest occupancy rates (ref: Tony Gioventu, CHOA; and members of VISOA). Clearly, stratas with rental bylaws are a preferred choice for people looking for a home (not an investment property).

Our existing bylaw "Owner occupied" means that the unit must be the principal residence of the owner or close family members. This means that all our units ARE occupied, and not bought as a speculative investment. Removing this restriction would not fulfill your goal to increase available housing.

5. We already rent

We are doing our part to help the housing crisis - many of us have suites or rooms in our units that we rent out, helping to increase infill density.

6. Making Life Less Affordable

We are a self-run strata: removing the rental restriction would severely decrease the number of people willing to participate in the strata (renters and absentee owners less likely to serve given our past experience) and could require us to move to a professional management company, thus increasing our strata fees, and making housing LESS affordable.

The majority of us are young families or retirees - the very people the NDP government claims to want to make life more affordable.

7. Didn't Talk to Strata Owners

You state in your report you talked with "renters, landlords, non-profit housing providers and advocates" but did not speak with strata owners, councils or associations [except for the Condominium Homeowners Association] - a clear oversight - to recommend a change of this magnitude without reaching out to this wide owner group.

Based on these comments, we ask that you reject and do not implement Recommendation #9 in The ***BC Rental Housing Review*** report.

Thank you for your attention to this matter,

J. B., Chairperson, Strata Corporation XXXX, Victoria, BC

From Water-Waster to Water-Wise

By Wendy Wall

(This article was written from the point of view of a Victoria resident, but owners and councils in other areas should search out local authorities and businesses to provided them with the appropriate information.)

Living in a 1970's building, I have accepted certain inefficiencies such as our original hydronic heating system. However it is still difficult to watch expenses creep up over the years. At our last AGM we saw that our water/sewer bill skyrocketed from $37,800 in 2017 to $44,800 in 2018. Sure the water rate increased but a closer look revealed an 11% increase in consumption. I had hoped that that was an anomaly but a recent conversation with our treasurer revealed that our consumption has increased again… a whopping 30% over this time last year. At this rate, our year- end expenditures will likely exceed $60,000.

So why is our building suddenly using more water? According to the Capital Regional District (CRD), the most likely culprits of leaks are toilets, faucets, showerheads, service lines and sprinkler systems.

TOILETS: High volume water leaks often come from toilets. They are hard to detect and are usually caused by a worn or misaligned part. A toilet that continues to run after flushing could be wasting 20 – 40 litres per hour - that's 175,000 to 350,000 litres per year. Based on our water/sewer rates that equals a cost of $800 to $1,600 per year. If even 10% (9) of the toilets in my building have this issue, that could be costing us $7,200 to $14,400 per year.

The CRD suggests this simple technique to check for a toilet leak using a dye tablet or food colouring. Carefully remove the toilet tank lid. Place a dye tablet or some food colouring in the tank. Wait about 15 minutes without flushing. After 15 minutes check the water in your toilet bowl. If the water is coloured, you've got a leak. To get a free dye tablet, call CRD Water Conservation at 250.474.9684. Or better yet, ask for enough tablets to test every toilet in your building!

FAUCETS AND SHOWERHEADS: Leaking faucets and showerheads are also big water wasters, but they are easier to detect than toilet leaks. Worn washers or seats are the most likely cause of leaks in these fixtures. Repairing leaky faucets is usually a straightforward and inexpensive job, but worthwhile, as a little drip can waste lots of water and dollars. The CRD website can teach you how to install a tap aerator or shower fixture or fix a leaking faucet.

PIPES: A leaking service line or pipe in your building can add up to serious water waste. A small hole in a pipe (1.5mm) wastes 280,000 litres of water in a three-month period. That is enough water to do about 900 loads of laundry.

IRRIGATION SYSTEM: The average garden hose delivers 27 litres of water per minute, so a split in the hose or a poor coupling could be wasting large amounts of water. Make sure the outdoor faucet is turned off after each use - even small drips add up to big waste.

A leak in your in-ground system is less noticeable than in a hose, and can waste even greater amounts of water. If you think your in-ground system may have a leak, check for wet patches in your lawn that do not dry. Contact your irrigation contractor for a system check-up.

RESOURCES: Go to: www.crd.bc.ca/education/water-conservation/at-home for Leak Detection information, a Water calculator, Fact Sheets, tips and CRD workshop schedules. For more information about CRD programs or for water efficiency materials such as a "Leak Kit", or "WaterWise Irrigation Manual", contact the Water Conservation Information Line at 250.474.9684.

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.

HANDLING COMPLAINTS

By David Grubb

Q. We are seeing complications from some of our stratas, as well as in some CRT adjudicators' comments, that someone who has a complaint made against them has not been offered any more than a statement that the strata will fine them $100 for an infraction of a bylaw that happened on [such and such a date], and (maybe) that commencing on [Date] for the infraction, or if it is repeated, etc. and the fine will repeated every week for as long as they continue. Somewhat garbled information which doesn't help anyone. (Well, "Everyone" knows what I mean….!)

So it may be timely to remind owners of their rights and responsibilities about dealing with complaints in a proper fashion.

A. Regardless of who initiates a complaint to a council member or the council (and especially by a council member, who will then recuse him/herself), and whether it is written or verbal, that complaint is now between the council and the "accused". The complainant takes no further part except, if required, as a witness. Even so, the council must take action because of SPA s.26:

Council exercises powers and performs duties of strata corporation

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.*

It is not a duty that any council wishes to face since it can pit neighbour against neighbour which is often distressing and distasteful, especially in smaller stratas. For that reason, the council must deal with the complaint as accurately as they understand the law requires. So, from the start the council must be recognized by all as an independent and impartial body which represents "All the Owners of the Strata Plan". They are no longer the neighbours next door – they are judges presiding on behalf of everyone.

So in dealing with any complaint, the council has the options listed in SPA s.129:

Enforcement options

129 *(1) To enforce a bylaw or rule the strata corporation may do one or more of the following:*

(a) impose a fine under section 130;

(b) remedy a contravention under section 133;

(c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

Often councils will tell the "accused" and inform him he has "x" days to explain the incident or cease doing it and if he doesn't he will be fined $100 for the misdemeanour!

Wrong!

Justice requires that the "accused" party be advised of the contravention and be given a reasonable opportunity to defend himself either in writing or by a hearing, or both. Although not stipulated, two weeks has been defined elsewhere in the Act as being "reasonable" (bearing in mind that "two weeks" by the *Interpretation Act* really means 18 calendar days, not 14).

Moreover, if a person applies for a hearing under SPA s.34.1, there can be additional days applied, and the response time could be shortened, if requested in writing:

Request for council hearing

34.1 *(1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.*

(2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.

(3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

(Note where SPA s.135(2) states "as soon as feasible", it is probable that SPA s.34.1(3) will probably take precedence.)

In order for both a council and anyone who is accused, all stratas are strongly advised, in any complaint case, to follow the instructions in SPA s.135.

Complaint, right to answer and notice of decision

135 (1) The strata corporation must not

(a) impose a fine against a person,

Continued on page 18

(b) require a person to pay the costs of remedying a contravention, or

(c) deny a person the use of a recreational facility for a contravention of a bylaw or rule unless the strata corporation has

(d) received a complaint about the contravention,

(e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

(f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

Do we have to follow SPA s.135? It does not apply to individuals, but the answer is, "Most of the time". If the matter cannot be resolved first, it is best to do so. The important thing is that if every strata followed SPA s.135 every time, they would ensure that they are covering all the bases in imposing any kind of punitive action on an owner or tenant each time.

But it has an even greater implication if the dispute is submitted thereafter to the Civil Resolution Tribunal (CRT).

As a current example, in the CRT case *Price v. Residential Section of The Owners, Strata Plan BCS 1437*, 2019 BCCRT 517, the adjudicator states in part, at section 40:

*The tribunal also found that a strata corporation **must ensure** that the tenant receives the benefit of the procedures found in section 135 of the SPA. See also Barpoutis et al v. The Owners, Strata Plan BCS 3805, 2018 BCCRT 477.*

More often than not, the CRT adjudicators are demanding that the issue has been dealt with correctly under SPA s.135 before the CRT will uphold any penalty pronounced by the council. So it becomes even more important to ensure that councils follow the law to be sure they stand on solid ground whether to pursue a punitive action or dismiss the complaint!

All that said, if an individual is challenging the strata corporation about any matter under the CRT's mandate, they will generally be required to have that hearing before the CRT will consider it. SPA s.189.1 states:

Strata corporations, owners and tenants initiating tribunal proceeding

Continued on page 19

189.1 *(1) Subject to subsection (2), a strata corporation, owner or tenant may make a request under section 4 of the Civil Resolution Tribunal Act asking the civil resolution tribunal to resolve a dispute concerning any strata property matter over which the civil resolution tribunal has jurisdiction.*

(2) An owner or tenant may not make a request referred to in subsection (1) unless

(a) the owner or tenant requested a council hearing under section 34.1, or

(b) the civil resolution tribunal, on request by the strata corporation, owner or tenant, directs that the requirements of paragraph (a) of this subsection do not apply.

One final note: Can an "accused" see the unredacted letter of complaint received by the council? (That letter itself does not get sent automatically to the person by the council under SPA s.135(1)(e). The "accused" is only informed of the details of the incident or incidents.)

The issue of removing names and signatures from a complaint is, apparently, under review by the Office of the Privacy Commissioner (OIPC) because there are some who say "Yes" while others say "No".

Without getting into the details, VISOA treats the quotation from the OIPC's *Privacy Guidelines for Strata Corporations and Strata Agents - June 2015*, page 22, as the correct interpretation:

In addition, s. 36 of the SPA requires strata corporations to make records and documents available to an owner or another authorized party upon request. Strata corporations and agents should consider the following when handling requests for correspondence related to a complaint:

• Section 35(2)(k) of SPA requires the strata corporation to retain copies of correspondence sent or received by the strata corporation and strata council. This correspondence could include complaint letters.

• Section 36 of SPA states that a strata corporation must make the records and documents referred to in s. 35 of SPA available for inspection by an owner (or tenant who, under ss. 147 or 148 of SPA, has been assigned a landlord's right to inspect and obtain copies of records and documents), or any other person authorized in writing by an owner.

• The requirement to provide access to correspondence found in ss. 35 and 36 of SPA is clear and any personal information in that correspondence need not be withheld under PIPA.

Therefore, while the disclosure of personal information in the particulars of a complaint should be limited as described above, *this does not mean that correspondence required to be provided under s. 36 of SPA is to be limited or severed in any way under PIPA, even where that correspondence relates to a complaint.*

So, Yes, if an "accused" requests the particular complaint document, the council is bound to show or give him/her a copy unredacted in accordance with SPA ss.35 and 36 – i.e. all the names are included: there are no blanked out spots.

As a former officer of OIPC put it: *The most important issue now is for strata corporations to explain to owners how complaints will be handled so that no one is surprised that they need to stand behind their complaints.*

President's Report

As I write this, Victoria's usual blue skies are under a smoky smog due to a downtown hotel fire and the ensuing cleanup. The building was destroyed by the fire and is now being demolished. The hotel had been closed for several years, but it was noted that the sprinkler system and fire alarm system had been turned off.

My thoughts turned to our largest shared asset, our strata corporations. My building has sprinklers in each unit but many stratas do not. The fire safety code is continually changing, and older buildings are not expected to meet the newest code although they may be required to upgrade systems if they have an incident.

Has your strata corporation investigated the possible costs of upgrading your fire and safety protection? Whether it's hard-wired smoke alarms in all units; upgrading your emergency lighting so it doesn't stop working after 30 minutes; fire escape ladders for units above ground level; multiple fire extinguishers in the common areas; sprinklers in common areas or in the units – depending on the age of your buildings these may not be required, but why would you not at least investigate the expense and have the owners decide? Your Depreciation Report Provider has likely already added an estimate into your DR, but you probably skipped right past it as being "not essential". If it's in the DR, remember that it needs only a majority vote at a General Meeting to take money from the CRF.

What's the use of building up the Contingency Reserve Funds only for failures of building components, if the building itself may not survive a fire? Of course you have insurance, both for the strata corporation and your own personal effects, but wouldn't you prefer to avoid using it? And remember, sprinklers save buildings and lives, but won't save your personal possessions which will all be soaked and damaged in the event of a water release.

Fire Safety Week is the second week of October, and I challenge you, our members, to take the coming summer months (when we might unfortunately be under smoky skies as a reminder) to check into the potential costs of upgrades to your fire safety systems, report back to your owners, and see if they might approve the expense. Your local fire department might be available to give a presentation to your owners at a meeting, if they need convincing that it's money well spent. I'd love to hear your success stories!

The Province's Building and Safety Standards Branch put out a short Information Bulletin in November 2018 that highlights and links to amendments to the BC Fire Code, if you are interested:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/construction-industry/building-codes-and-standards/bulletins/b18-07_2018_edition_of_the_bc_fire_code.pdf

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— Sandy Wagner

~ DISCLAIMER ~

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