



Vancouver Island Strata Owners Association

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VISOA Bulletin - November 2007

President's Report

Your Bulletin's New Look:

Perceptive readers and even not so perceptive readers will have noticed that this issue of the Bulletin has a new look and feel. That's because this Bulletin was printed digitally on higher grade paper which will allow publication of more and better quality illustrations, and there is a new logo on the masthead. The new logo is more expressive of VISOA's membership and mission. It will appear on all of VISOA's publications.

VISOA Welcomes a New Board Member, Debbie Allen

Debbie is a former member of her strata's council and a community activist, most recently fund-raising for cancer. She is a member of the Housing Integrated Task Team of the Ministry of Employment and Income Assistance. With an educational background in the social services field and an abundance of enthusiasm, Debbie will be a valuable member of the VISOA Board of Directors.

New Brochures:

VISOA's Publications Chairman, Tony Davis, with the assistance of other board members, has coordinated the design and printing of two new colour brochures. One brochure, aimed at prospective strata owners, lists the questions that should be answered before making an offer on a strata unit and is being distributed through real estate agents. The second brochure, aimed at strata corporations, individual strata owners, and strata service providers, provides information about VISOA and the services and benefits to be gained from being a member of VISOA.

of the new licensing and financial accountability requirements for strata managers has been an increase in the cost of strata management and a scarcity of managers for smaller strata corporations. Strata corporations with as many as 30 units have been dropped, apparently because it was unprofitable to manage them.

After hearing of a 14-unit strata corporation that received a quote of \$50 per month per unit for management services, I contacted the Cooperative Housing Federation (COHO) to find out how housing cooperatives were managed. COHO is able to provide most of the management services stratas require. The COHO representative with whom I spoke indicated a willingness to explore ways in which a quasi-management arrangement with a strata corporation could be reached. To learn more about COHO, go to their website site: <http://www.chf.bc.ca/pages/links.asp>. If your strata corporation works out an arrangement with COHO, please share it with other strata corporations either by describing it in writing for your Bulletin or sending the information to me, and I will summarize it for publication.

Meeting with Government Officials:

Under the leadership of Deryk Norton, VISOA's meetings with government officials aimed at improving the Strata Property Act continue. In October, Deryk and I met with Ministry of Finance officials, including Assistant Deputy Minister Andy Robinson and NDP legislative critic for strata corporations, Bruce Ralston. Both were surprised to learn that there are 1.3 million strata units in B.C.

An Alternative Management Arrangement:

An unintended consequence

- Harvey Williams

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Know your rights as a strata owner

by Sandy Wagner

We've all read our Strata's Bylaws, and they are likely carefully written to tell us all the things we *cannot* do; but are you aware of all the things you *can* do as an owner? The Standard Bylaws of the *Strata Property Act* give us many specific rights, and unless your strata has duly filed a contradicting bylaw, the Standard Bylaws apply.

Did you know that you have the right to

- attend council meetings?
- know the schedule of council meetings?
- view council minutes within two weeks?
- view financial information and contracts?

Let's examine each in detail.

The right to know the schedule of council meetings is stated clearly in Standard Bylaw 14: "The council must inform owners about a council meeting as soon as feasible after the meeting has been called." Often councils will include the date of the next meeting in the previous meeting's minutes or post a list with dates of upcoming council meetings. If your council does not do so, then ask for this information. You may want to know the schedule of council meetings because you have:

The right to attend council meetings. Standard Bylaw 17 states: "Owners may attend council meetings as observers." There are some

portions of the meeting which no observers may attend. When bylaw contravention or rental bylaw exemption hearings are held, the owner seeking the hearing is entitled to his or her privacy. I'm sure you would want your privacy under similar circumstances. In addition, the council may decide that the presence of observers could interfere with an individual's privacy on any other matter. But the routine business of your strata is *your* business, and you are entitled to observe it. If you wish to attend a council meeting, I recommend that you give the council the courtesy of a note in advance advising that you will be attending. Councils that are aware of the rights of owners *invite* owners to attend by placing a notation to that effect at the end of all council minutes. Which brings me to your next right:

The right to view council minutes within two weeks. Standard Bylaw 19 is a simple one: "The council must inform owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved." This is the only way that you, as an owner, will be aware of what is happening in your strata. The council does not have to give you a personal copy of the minutes but simply make them available for your viewing. Some buildings have a bulletin board for posting minutes, some post a copy in each floor's foyer, and some modern stratas have their own website where council minutes are publicly posted. You may request a paper copy of

the minutes, but be aware that the council may charge you a photocopying fee of up to 25 cents per page.

The *Strata Property Act* also lists many other records to which you are entitled.

The right to view financial information and other records is given in Section 36 of the SPA. You have a right to view, or receive a copy of, these important documents: the registered strata plan; written contracts to which the strata corporation is a party; the budget and financial statements for the current year and previous years; correspondence sent or received by the strata corporation or the council; bank statements, cancelled cheques and certificates of deposit; and names of the registered owner and/or tenants for each strata lot. The council must supply these to you within two weeks of your request. There may be a fee for each page copied for you, and the council might require you to pay that fee in advance. Why would you want any of this information? Perhaps you are a new owner and want to learn as much as you can about your new home. Maybe you are a former strata councillor and see that an inexperienced council is mismanaging your money. Perhaps you are considering serving on the council and want some background information. Or maybe you will ask for these records just because **it is your right.**

Let's not forget your most basic right as a strata owner:

The right to sit on your strata council. As an owner of a strata lot, don't forget that you are a part-owner of the business that is your strata corporation. Would you let your other investments such as your RRSP or prized antique Cadillac be handled by others without your input? Of course you would not! Every owner is eligible to be elected to their strata council. In some stratas the same few individuals volunteer year after year because no one else will, while in others, owners actively seek the role. The council are not your "boss" or "in charge"...they are owners volunteering to oversee the running of your property. It does not have to be a very time-consuming or stressful task, but without input and interest from all owners it sometimes can be. If you don't think you can handle it, then offer to assist on a sub-committee. The council will be grateful for your help and you will learn enough to help you decide whether to let your name stand for nomination at the next council election. Talk to current and former strata councillors and see what they have to say about their time on council; you might find that they found it both challenging and rewarding. If you still haven't decided, then perhaps you should try attending council meetings as an observer, studying past council meeting minutes, and viewing strata records. In other words **exercise your rights as an owner.**

The responsibilities of the strata council

by Harvey Williams

The Instruction Guides formerly published by the Superintendent of Real Estate are the most readable reference source for strata councils and should be read carefully by all council members. Because the provincial government no longer publishes the Guides, VISOA has printed them and distributes them to members at cost. They can also be downloaded at no cost from VISOA's website or directly from the Superintendent of Real Estate's website.

In general terms, the responsibility of the strata council is to

- act as the managing body for the strata corporation;
- make daily decisions that enable the strata corporation to operate smoothly; and
- operate within any restrictions created by the Act, Regu-

lations, bylaws, or a majority vote of the owners.

In order to fulfill these responsibilities, the strata council must meet regularly and members must be knowledgeable about relevant sections of the Strata Property Act (SPA) and the Strata bylaws and keep accurate and complete records. The SPA requires that strata councils keep and make available to owners, when requested, the records listed in Section 35 of the SPA and on page 4.6 of the Instruction Guides. And finally, a strata council must comply with the SPA, Regulations, and Strata Bylaws.

Protect and Maintain the Common Property

The strata council monitors the condition of the common property and sees that repair and maintenance work is completed. As provided for in the

annual budget or approved by a general meeting, the council lets contracts for needed maintenance and repair and assures that work is completed before payment.

A proper budget provides for general maintenance such as grounds maintenance, cleaning, window washing, cleaning dryer vents, routine repairs and the like. Some of this work, such as grounds maintenance, cleaning, and the like, is normally done on contract.

Maintenance done less than once each year such as major repairs needs a 3/4 vote at an annual general meeting and should normally be put out for quotes.

Enforce Bylaws

All strata corporations have bylaws, and those bylaws

are the Standard Bylaws as amended or replaced in accordance with the SPA (Section 119, Division 2). In most cases, the Standard Bylaws will, minimally, have been amended by the particular strata corporation.

Section 26 of the SPA states that the strata council must perform the duties of the strata corporation, including the enforcement of bylaws and rules. This means that the strata council must enforce bylaws and rules in the manner prescribed by the SPA.

Call General Meetings

The strata council is responsible for calling, arranging, and setting agendas for annual and special general meetings. The council president normally chairs general meetings.

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While the council is elected at the Annual General Meeting, the officers of the strata council are elected by the strata council itself. The strata council elects the council president, vice president, secretary, and treasurer from among its members. The standard bylaws (section 12) allow the strata council to fill vacancies by appointment from among eligible owners.

Prepare the Budget and Report on Finances

The strata council prepares the budget for presentation to the AGM and recommends expenditures from and contributions to the Contingency Reserve Fund. This is an important function and sometimes a source of controversy. Accordingly, there should be maximum transparency in the process and clarity in the financial reporting.

Employs and Supervises Strata Agents

When a strata corporation decides to engage the services of a strata agent (formerly referred to as a strata manager), it is the strata council that selects the agent and negotiates the service contract. The first and foremost task is to negotiate a contract that is fair to both sides and meets the requirements of the SPA and the rules of the Real Estate Services Act. Contracts tendered by prospective agents have usually been drafted by a lawyer. It is prudent for strata councils to have such contracts reviewed by their lawyer before signing.

The strata council employs the strata agent, who is responsible to the council. That is why strata agents call themselves agents instead of managers and have named their professional organization The Strata Agents Association of BC. Although the situation has improved with the licensing of strata agents, cases of misappropriation of strata funds still occur, and the strata council must be alert to that possibility. Most banks require that bank state-

ment irregularities be reported within 30 days of the date on the statement. Otherwise, the bank claims no responsibility, as happened in the case of a strata corporation in Victoria which lost over \$116,000 to a dishonest bookkeeper.

To avoid such a possibility, strata councils should insist that strata agents provide them with actual monthly bank statements and inspect them carefully for mistakes or fraud.

Common Problem Areas

1. Planning for emergencies: Plans need to be in place for dealing with events such as fire, earthquake, serious injury or illness of residents or workmen, and the like.

2. Assignment of parking spaces and lockers: Many strata councils are unaware that common property can be assigned for only one year at time. SPA section 76 limits assignment of common property for limited use to one year.

This provision applies to parking stalls and lockers unless they are Limited Common Property. To comply with this section, strata councils should review all parking and locker assignments at their first meeting after the AGM. It is a good idea to reassign parking spaces and lockers to the same users each year unless there is good reason not to do so.

3. Enforcement of bylaws and rules: Because the SPA is self-enforcing, strata councils may need to resort to the courts when an owner or a rental tenant fails to comply with bylaws or rules.

4. Council decisions: Council members, particularly council presidents, should be aware they do not have authority to make decisions or act on behalf of the council without approval by the council. Only under special circumstances should individual council members act on behalf of the strata corporation without council approval.

What should be included in a strata insurance policy?

by Shawn Fehr

There are many responsibilities that are assumed by you when you volunteer to sit on your strata council. You may have knowledge in some areas, and others may be a mystery. Strata insurance is usually one of the mystery categories. You know you need to have it, but you probably do not know how it works. The following article outlines the coverage that should be included in every policy for insurance related to residen-

tial condominium or townhouse buildings.

How to Insure Strata Property: The Building

It is important to note that the insurance definition of building includes more than just the building. It also includes: fixed structures pertaining to the building and located on the premises; additions and extensions in contact with the building; permanent fittings and fix-

tures attached to and forming part of the building; materials and equipment on the premises for maintenance of, and normal repairs to, the building; growing plants, trees and shrubs or flowers inside the building or used for decorative purposes.

It is also important that the value used in insuring the building is the replacement value. Replacement value is the cost to rebuild a brand new building without deduc-

tion for depreciation. The tendency is to try and insure to market value. Market value includes many factors that affect the cost to purchase the unit, including the value of the land, the neighbourhood, the demand in the market, and perhaps even a water view. None of these factors should be considered when insuring replacement value. It is advisable to obtain an insurance appraisal to establish the correct re-

Continued on page 5

placement value.

Most policies will include a Coinsurance Clause

This is a clause that confirms that the amount the building is insured for is at least 80% to 90% of the actual replacement value. If you do not insure to the appropriate limit, then the insurance company can penalize you in the event there is a partial loss to the building. For example, if the building should be insured for \$1,000,000 and you only insure to a limit of \$500,000, you only insured 50%. If the coinsurance requirement was 90%, you are in breach of your coinsurance clause and the Insurance Company will only pay you 50% of your loss. In order to be sure you are in compliance with your coinsurance requirement, you should obtain an insurance appraisal to establish the correct replacement value of the building.

Most insurance companies will offer a policy form called All Risks or Broad or Comprehensive.

All of these terms mean the same thing, and they

are all adequate to cover the property. They all mean the property is covered for anything as long as the loss is not shown as an exclusion in the policy. A review of the exclusions in your policy is advisable.

Blanket Bylaws coverage should be included in your policy. This coverage will pay the following 3 categories:

- Increased Cost of Construction due to the application of a bylaw, for example, the additional cost to add fire sprinklers to the building after a loss.
- Debris Removal - the cost to remove and dump debris following a loss.
- Removal of the Undamaged Portion of the Building - following a loss, the building may be deemed to be unsafe and be required to be torn down even though it is not damaged.
- Earthquake includes the original shake as well as aftershocks occurring within 72 hours. The deductible on this catastrophic coverage will range from 10% to 20% depending on the construction and age of your building.

• Flood includes coverage against high water, tidal waves, tides, or the overflow of any body of water. The deductible on this coverage can range from \$10,000 to \$25,000.

• Sewer Backup is restricted to loss or damage caused by the backing up or escape of water from a sewer, sump, septic tank, eaves trough or downspout. The deductible is usually \$2,500.

• Boiler & Machinery coverage includes sudden and accidental breakdown of mechanical and electrical devices as well as the explosion of boilers and certain pressure vessels. Examples of items subject to mechanical or electrical breakdown include computers, telecommunications equipment, heating and cooling systems, generators and transformers, and electrical panels.

• Glass coverage may be purchased to reduce the deductible to \$250 from the standard policy deductible.

How to Insure Strata

Liability: Commercial General Liability

This coverage is to insure those sums that the insured

becomes legally obligated to pay as compensatory damages because of bodily injury or property damage. Stratas should carry a minimum of \$2,000,000 for this important coverage.

Directors and Officers Liabilities

This coverage protects the Board of Directors against liability for losses arising out of the failure to properly exercise their legal duties. As volunteers sitting on a Board, it is essential that each of you is properly protected with this coverage so no lawsuit could encroach upon your personal liability.

There are many insurance companies and many brokers that offer coverage for stratas. When all the coverage is compared, they are all very similar and should include all of the coverage noted above. Discuss your policy with your broker, and if you do not have coverage for any item noted above then ask if you need it. You don't want to wait until after you suffer a loss to find out you should have had it.

Shawn Fehr, BA, CIP, CAIB, is Commercial Insurance Manager for Tuffrey & Mills in Victoria. He may be contacted at 386-7737.

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VISOA has put together the following collection of publications of practical use to the management of your strata:

■ Strata Property Act – Instruction Guides:

The Strata Property Act in easy-to-understand language for everyday use by councils and owners. Covers a wide range of topics including roles and responsibilities of strata owners and councils, meetings, voting, bylaws, repairs, record keeping, contracting with a strata manager, complaints and arbitration.

Cost: \$15.00 plus \$6.00 postage

■ A Practical Guide to Budgeting & Financial Reporting for Residential Strata Corporations:

A handbook for strata Treasurers and the rest of the council. In straight-forward language, explains the basic elements of financial records required by the Strata Property Act. Guide to generating and approving an annual budget, planning and managing the contingency reserve fund, creating a depreciation schedule, and calculating strata fees.

Cost: \$8.00 plus \$4.00 postage

■ You Asked (A Series of VISOA Bulletin Columns):

This publication is comprised of reprints of popular VISOA Bulletin Columns, answering questions on a wide range of topics including budgeting, strata fees, meetings, management companies, lawyers and other concerns.

Cost: \$9.00 plus \$4.00 postage

■ Sample Strata Residents' Manual (includes CD containing residents' manual template):

This workbook is designed to assist stratas with developing their own Strata Residents' Manual. Includes examples and templates for everything from a welcome letter to maintenance schedule and security issues. Easy to tailor to your own strata's needs by using the enclosed CD-rom.

Cost: \$12.00 plus \$4.00 postage

■ Democratic Rules of Order by Peg Francis:

Complete, easy-to-use parliamentary guide for governing meetings of any size. Cuts through the complexities of running a meeting and reduces them to a simple set of common-sense rules which anyone can follow.

Cost: \$10.00 plus \$4.00 postage

■ What Every Strata Owner Should Know About the Strata Property Act, Regulations, and Bylaws:

The Strata Property Act is heavy reading for the average strata owner. This volume excerpts those parts of the Strata Property Act and Regulations which owners use on a daily basis. Also includes the Schedule of Standard Bylaws, and Definitions.

Cost: \$8.00 plus \$4.00 postage

To obtain a publication download the order forms from the VISOA website www.visoa.bc.ca or contact the Help Line 250-920-0222.

Invitation to join bare land strata interest group

Earlier this year VISOA formed a bare land strata interest group for the purposes of:

- Identifying issues of concern to bare land strata owners,
- Identifying and explaining need for changes to provincial legislation affecting bare land stratas to include with forthcoming VISOA and CHOA representations to the provincial government, an
- Identifying topics for future VISOA seminars or articles in the VISOA Bulletin.

Several VISOA members have joined the group. If you are a VISOA member living in a bare land strata, you can join the bare land strata interest group by contacting Elsie Lockert by email at membership@visoa.bc.ca or by calling VISOA at (250) 920-0222 or toll free at 1-877-338-4762.

YOUR AD HERE FOR PENNIES A DAY!



Members in good standing may place an ad in the Bulletin. Rates are based on 5 Bulletins a year, and are as follows:

- **Business Card Size:**
\$50/yr (\$15/single issue)
- **1/4 Page Size:**
\$100/yr (\$30/single issue)
- **1/2 Page Size:**
\$200/yr (\$60/single issue)

Ads must be paid for in advance, and are subject to VISOA Board approval. Ads must be "camera ready", in BMP, PDF or TIFF format - additional fees for scanning or layout may otherwise apply.

VISOA's upcoming 2008 seminar series

~ Mark your calendar ~

- Date: *Sunday, February 17, 2008*
- Location:
Trafalgar / Pro-Patria Legion, Victoria Annual General Meeting & Seminar
- Topic:
Strata insurance for beginners
- Speaker:
Shawn Fehr, Commercial Insurance Manager, Tuffrey & Mills Insurance Ltd.

Programs are being planned for the following dates and locations:

- Date: *Sunday, April 20, 2008*
- Location: *Beban Park, Nanaimo*
- Topic: *TBA*
- Speaker: *TBA*

- Date: *Sunday, June 22, 2008*
- Location: *Trafalgar / Pro-Patria Legion, Victoria*
- Topic: *TBA*
- Speaker: *TBA*

- Date: *Sunday, September 21, 2008*
- Location: *Beban Park, Nanaimo*
- Topic: *TBA*
- Speaker: *TBA*

- Date: *Sunday, November 23, 2008*
- Location: *Trafalgar / Pro-Patria Legion, Victoria*
- Topic: *TBA*
- Speaker: *TBA*

Annual Maintenance Schedule

Part 3 - Winter season

by John Grubb, SMA, RPA, RRO

Working on the basic premise that the real purpose of a Strata Corporation is to operate and maintain the property on behalf of its Owner/Shareholders, we offer the following series of articles with the hope of providing readers with some pertinent information and a practical approach to the task. Once the weather closes in for the Winter season, there is little in the way of practical maintenance to do, other than maintain safe access to and from the building(s) and parking areas, make sure the lighting (exterior and interior) is operating properly, and walkways are kept clear of snow, leaves, and other storm debris. Winter is the time we put the most pressure on the property's interior systems, including heating, hot water, and ventilation, and in the Common Areas, heavy foot traffic brings moisture, dirt, and salts to attack carpeted hallways and elevators in particular. If there is anything other than electrically operated heating appliances (i.e. gas or oil furnace/boilers and hot water tanks), we can only hope that their regularly scheduled service has been completed and chimneys inspected and cleaned. It is also particularly important to meet the wet season with clean clothes dryer vents. If the common area carpets have been given a thorough cleaning in the early Fall, we recommend a traffic-lane cleaning in January, once the heavy traffic of the Christmas season dies down. Once any storms have

blown themselves out, we recommend a walk-around inspection of the building(s) and a review of the roof(s) and gutters to ensure drains are clear and any damage is dealt with quickly.

Maintenance Administration

The real work to be done during the Winter is more administrative from the perspective of the Maintenance Committee. This is the time to invite tenders from qualified bidders for major projects scheduled for the coming Spring and Summer months. These are the projects that were in planning during the Winter of the year before and have gone through the process of scope and budget development and approval by the owners at the AGM or SGM. It follows that this is the time to review the list of major projects identified in the Long-Term Maintenance Plan, and assess the condition of the various systems to fine tune their priority. Once those priorities are confirmed (and this can change from year to year), it is time to start planning for the next major project to be executed the following year. For some large, condominium buildings with, for example, large Common Heating, Boiler, or Fire Alarm Systems to replace, this process will take longer and will require the support of an engineering professional. Given the size and cost of this type of project, starting the process 3 to 5 years in advance of the actual

work is not unreasonable. In fact, in these cases, the planning is actually a project of its own, complete with a project budget and Request for Proposals (RFP) from qualified professional engineering firms to develop the design drawings and scope documents required for the tender process and various permits.

The Maintenance Manual

Another important but often unrecognised "project" is the development and updating of the property's Maintenance Manual. If done well, this becomes the "bible" for any and all members of the Maintenance Committee and Council. The developer of new stratas must, by statute, provide what is called the "Maintenance Manual" to the new Council, a record which should contain all the technical documentation and warranty information on those systems for which the Corporation will be responsible. It is our hope that this Regulation will eventually include a requirement for as-built drawings. In the meantime, any and all available drawings of the development are a critically important piece of the Manual and must be guarded jealously. In our opinion, however, this is just the bare bones of what an effective Maintenance Manual should be, as it forms just a small part of the Annual and Long-Term Maintenance Plans. In essence, the Manual will become the "job descrip-

tion" for the regular, scheduled maintenance work that must be carried out annually, periodically, (3-5 years) and over the long-term life of the development.

Winter Musings

We urge all strata owners, and particularly those charged with the oversight of the maintenance, to view their corporation's buildings as living, breathing (literally) entities, which require attention from the moment they are completed. Those of you who purchased a unit thinking that someone else was going to take care of it for you are in for a rude awakening at some point in your term of ownership if you continue to think this way. We strongly encourage every owner to take an interest in the upkeep of the building and to acknowledge that, while a new development may not cost very much operationally, it will require significant funds to undertake the larger maintenance projects which are inevitable, even if they are years ahead. The coming Winter evenings are a perfect time to bring the owners together to discuss and decide how best to operate the property and identify and fund its long-term maintenance requirements.

John Grubb is a Facilities Maintenance Consultant and welcomes member inquiries at usc@shaw.ca

What costs can a strata corporation recoup?

by Joyce Johnston, Attorney

When an owner persistently fails to pay strata fees or does not pay a special levy, the Strata Corporation must follow the procedures set out in Sections 116 to 118 of the Strata Property Act. These sections authorize the registering of a Certificate of Lien and the forced sale of an owner's strata lot to collect money owing. The question is what level of court costs can be awarded against the delinquent owner and in favour of the strata corporation.

Section 118 indicates a strata is entitled to reasonable legal costs. The wording under the equivalent section in the Condominium Act was "legal costs of the proceeding." The courts have interpreted these phrases to mean the same thing – the strata is entitled to taxable costs and disbursements, not special costs, in most circumstances. Special costs would be more of an indemnity, a fuller reimbursement of costs to the strata.

The tariff under the Supreme Court Rules provides several levels of taxable costs. The practice in standard foreclosure cases is to award costs at Scale 2 (now Scale A). Some judges have also awarded costs at this scale in strata corporation forced sales. However, the practice has been evolving to award costs in strata

corporation forced-sale applications at Scale 3 (now Scale B). The recent case of *The Owners, Strata Plan LMS 4012 v. Rangi* confirms this is the proper level of compensation.

In deciding whether the new tariff Scale A or Scale B is appropriate, the judge looks at two issues of particular importance. First, the strata corporation is required to pursue unpaid assessments in order to protect the individual owners in spite of the fact that the amount owing may be relatively small – often less than \$3,000. In spite of the modest amounts, inexpensive relief by way of small claims is not available to strata corporations in these cases.

The second issue is that the actual cost of the process is borne by a relatively small group of individuals – the owners. There is an internal reliance on mutuality. When one person fails to meet their obligation, the effect is borne by the other owners.

In summary, while special costs are not usually awarded in a collection matter under the Strata Property Act, the court has decided that taxable costs at Scale B, rather than the lower Scale A, are appropriate to award.

The New Strata Management Contract



BOO! If it doesn't frighten you, it should!

by Harvey Williams

Many strata management companies are now replacing their management contracts with a standard contract produced by the Strata Property Agents of B.C. (SPABC). We suggest that strata corporations consult their own lawyer, not the management company's lawyer, before signing it, as it appears to be heavily slanted toward the interests of strata agents.

Specific concerns regarding this contract include the following:

Clause 5.1 relieves strata agents of all responsibility for their errors and omissions. It has even been suggested that strata corporations' insurance should cover their strata agents. Clause 5.1 reads as follows:

Indemnity - To save the Agent harmless from any and all claims, damages, costs and liability incurred in connection with the services provided to the Strata Corporation and, without limiting the generality of the foregoing, to indemnify and save the Agent harmless from all claims, damages, costs and liability whatsoever incurred by the Agent in performing its responsibilities hereunder and to protect the Agent against any and all such claims, damages, costs, and liability in the same manner and to the same extent as the

Strata Corporation, unless such claim, damage, cost or liability is caused by the gross negligence or wilful misconduct of the Agent.

Clause 5.7 prohibits a strata corporation from hiring any former employee of the strata agent, including former janitors and gardeners, for two years after termination of the management contract. This clause reads as follows:

Exclusivity - That the Strata Corporation, during the Term of this Agreement and for two (2) years after the termination hereof, will not engage or contract directly or indirectly with any present or past employee of the Agent, to perform services the same as or similar to the services the employee performed for the Agent unless agreed to in writing by the Agent.

Clause 9 allows the management company to assign a strata corporation's management contract to any other management company without permission of the strata corporation. A strata management company might even be able to actually sell a management contract to another management company if it so chooses.

Clause 9 reads as follows: *The Agent may assign all of its interest in this Agreement*

Continued on page 11

You asked:

Our strata has a bylaw that allows fines to be deducted from strata fee payments. Is this legal?

by Harvey Williams

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.

Question:

One of our owners owes a fine for breach of a bylaw and refuses to pay it. We credited part of his last strata fee payment to the fine and notified him that his strata fees are in arrears. He is now threatening to take the strata council to court. Does he have a case?

Answer:

This is a legal issue, and if you want legal advice, you should ask a lawyer. My common-sense take on it is that it's not a good idea for several

reasons. First, as the long-time treasurer for our strata, keeping track of fines deducted from strata fees would complicate my life, and reporting it in my monthly financial reports might confuse the other owners. In other words, it also punishes your treasurer.

Second, there are a lot of hoops to go through in levying a fine, and collecting the fine may be the simple part of the process. If your council has gone through all of the hoops for levying a fine that are spelled out in the Strata Property Act and described in Instruction Guide 14, why

not take the offender to small claims court? It's a simple and inexpensive process that can be set up by filling out a form and does not require the services of a lawyer. If the intent is to circumvent all of the due processes required to levy a fine, that sounds like an even worse idea. Finally, collecting money for one purpose and then using it for something else might create additional legal issues. Such a bylaw might be a good bluff to encourage offenders to pay their fines, but I would consult a lawyer before attempting to implement it.

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citizen in a democracy"*

*Charles de Montesquieu quotes
(French Politician and
Philosopher, 1689-1755)*

and its rights hereunder to any other strata property brokerage, provided such assignee is a competent strata property agent and covenants with the Strata Corporation to observe and perform the obligations of the Agent hereunder.

Clause 14 requires a 3/4 vote at a general meeting to terminate a strata management contract. The Strata Property Act allows a termination date to be included in a strata management contract. A termination date allows a strata council to review the quality of service provided by a strata management company before renewing a contract. It is prudent for a strata

council to specify a date for termination of a contract.

Clause 14 reads as follows: *This Agreement shall commence and become effective on the date set forth in item 1 of Schedule A hereof, and shall continue until terminated in accordance with this Section. This Agreement shall terminate upon the occurrence of any of the following events: Two months after receipt by the Agent of a notice of a resolution passed by a 3/4 vote approved by the Owners, terminating this Agreement.*

Schedule A at the end of the contract lists the services and costs of the services to be provided. But Schedule A is not clear about the ser-

vices that are paid for by the "Monthly Agent's Fee." In fact, it's difficult to determine just what service is provided by the agent's fee.

Section 3.17 of Schedule A is particularly troubling. It leaves spaces to be filled in for *Maximum Number of Meetings* and a *Maximum Number of Hours per Meeting*, but sets no minimums for either. As this section reads, an agent could fail to be present for any meetings and still fulfill this requirement.

If it were rephrased, "Agent shall attend up to *x* number of meetings per year," and "*X* dollars per hour shall be charged for meetings that last more than *y* hours," an agent

could be held accountable for attendance at meetings as contracted.

A common complaint on the part of strata councils is that strata agents fail to attend the agreed on number of council meetings. Strata councils might wish to include a penalty clause for failure to attend the agreed upon number of meetings.

The above concerns are obvious even to one such as myself, untrained in the law. Clearly this document should be reviewed by a lawyer retained directly by the strata corporation, with no connection to the strata property agent, before it is signed.



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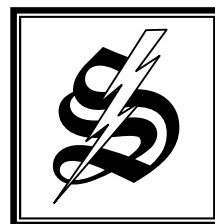
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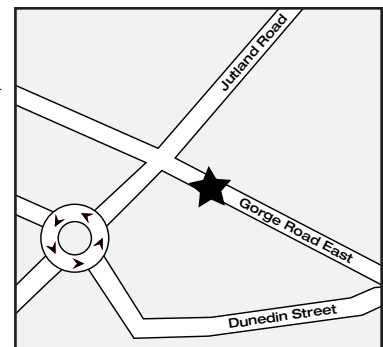
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