



Vancouver Island Strata Owners Association

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VISOA Bulletin - NOVEMBER 2010

President's Report

VISOA has been in existence since 1973, and we have now embraced the electronic age. Some of you may have noticed that we are providing the option of using Paypal to purchase publications and individual memberships on our website. This option is being well used, as it is very convenient for our computer-savvy members. We will continue to provide the options of purchasing at seminars and also by cheque using the on-line forms and good old "snail mail".

With two board members from the North Island, we are now also holding Board Meetings in a new way. Reg Crone, our Treasurer from Comox, attended our last Board Meeting using "Skype" which saved him a very long commute. Using a laptop, webcam and

speakers, Reg fully participated in the meeting from the comfort of his home office. Now that we know this system works for us, we hope we will have more up-island board members in the future.

The Personal Information Protection Act (PIPA) of BC provides rules that strata councils must adhere to in discharging their duties under the *Strata Property Act*. Strata councils need to know what information may be collected, and also what information may not be collected. This topic is becoming more important for stratas and we have arranged for speakers to address it at our next seminar in Victoria, to be held November 21st in Victoria.

James Burrows from the Office of the Information and Privacy Commis-

sioner will speak on privacy requirements, followed by lawyer Shawn Smith who will lay out how your strata can comply with these requirements. Both speakers will be answering questions from the audience.

Remember that we are trying out a new locale for the Victoria seminar and we will be holding it at the Edelweiss Club, located in the James Bay area of Victoria. Check our website for the seminar notice and a map to the Edelweiss Club. We hope this new larger location will solve our occasional problems of lack of seating. Parking is plentiful along Dallas Road, but please plan on arriving early to ensure you can find the hall. After the seminar, we encourage your feedback on this new location.

- Tony Davis, President

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A current unofficial consolidated version of the **Strata Property Act** is available from the Queen's Printer for **\$35.33** – includes taxes and shipping. To order directly from the Queen's Printer phone **1-866-236-5544**. VISOA made a bulk purchase for our members. Available for **\$25 at our seminars**, or mail order through our website for **\$25 + \$8 postage and handling** while quantities last.

Editor's message

by Sandy Wagner, Bulletin Editor

This issue of the VISOA Bulletin is packed with useful information – at least I think it is, and I hope you'll agree.

Some of our regular contributors are back, with articles on strata maintenance issues: John Grubb has a timely article on Roofs and Gutters. With winter about to set in, this is great information. Jennifer Childs writes about Do-It-Yourself versus Hiring a Professional, and explains when the cost savings are worth the DIY and when they are not!

Legally speaking, Shawn Smith enlightens us on collecting money owed to your strata corporation, and Joyce Johnston reminds us of sometimes-missed steps for searches at the Land Titles Office.

Two of VISOA's board members have also contributed articles this month: Deryk Norton tells about a novel method used by a Vancouver strata to obtain money owed by their developer, and with her first article, Laurie McKay of our Helpline Team reminds us that not all stratas are plagued with problems.

My other VISOA "hat" is Seminar Coordinator. The topic for our upcoming seminar on Privacy Legislation and Your Strata was selected based on the large number of questions our Helpline Team receives on the topic of privacy – whether it is a strata wanting to know how to proceed, or an owner wanting to know their rights. We hope the November seminar will answer many of your questions.

As always, I'd like to hear what you think of this issue, or of our seminars. Please email me at editor@visoa.bc.ca with your comments or any ideas you have for future articles or seminars.

Roofs and gutters

by John Grubb

Water – We can't live without it, but we spend a remarkable amount of time, energy and money making sure it doesn't intrude into our lives, particularly here on our wonderful "Wet Coast". Take a moment to consider that the most significant purpose of the houses and buildings we live in is to keep water out.

The first line of defence for any structure is its roof and many Strata owners have never seen their own up close. Not that we are advocating that everyone should climb around on their roofs, but this significant building system tends to get far less attention than it deserves.

A single family home owner can completely ignore his roof if he chooses, but a Strata Corporation and its Council, under the tenets of the *Strata Property Act*, cannot. Not only is it obligated to maintain the roof (and all the other common systems) a wise Owners' group will include a regular levy for the Contingency Reserve Fund, in the annual assessment to each owner, to cover the cost of the roof's inevitable replacement.

To ensure that the roof will offer its best performance and reach its potential life expectancy (and perhaps more), we advise our clients to have a professional inspect the roof twice each year, in Spring and Fall. We also suggest that quick inspections be made after significant storms to ensure that the membrane hasn't been damaged and the drains are clear. (In this context, "membrane" includes all types of materials used on both sloped and flat roofed structures.)

A roofing contractor or professional roof consultant's regular reviews will likely catch signs of early deterioration or damage that would be missed by someone with less knowledge and experience. The regular condition reports generated will, over time, give the Council a clear history of the membrane's performance, an

opportunity to address minor problems that develop, and a chance to control the "Who, When, How and What" of the replacement process, once the roof reaches the end of its useful service.

Winter brings cold and stormy weather, but summer's scorching sun is even more stressful on roof membranes, particularly flat ones. We suggest that Strata Owners (and all other building/home owners) have their roofs inspected soon in order to ensure they will do the job they're really there for – to keep the water out.

This is also the time of year to review the systems that drain the water from the roof and away from the building.

Most pitched or sloped roofs (and some flat roofs) have gutters, or eavestroughs, that catch the rain water at the edge and direct it to the building's underground perimeter drains. Unfortunately, the gutters tend to catch all the other debris that lands on the roof as well, and once the majority of the autumn leaves have fallen, it's time to clean them out and ensure the drain outlets are clear.

With all due respect to talents of the Strata's "handyman" owner, (and many Stratas have them) this is not a job they should tackle. Part of the Corporation's mandate is to manage risk on behalf of the Owners, and the Council is well advised to engage a WCB covered, and properly insured contractor to take on this work. It is also wise, and quite reasonable, to ask for proof of such coverage before the work starts.

The downspouts leading from the gutters to the perimeter drains should be checked to ensure they're properly attached to the walls and the pipe sections connected together. Many owners from the Prairies will think nothing to see the bottom of the pipe directed into the surrounding gardens or lawns, but this is not the common practice on our wonderful "Wet Coast".

The normal annual volume of rain

Continued on page 3

You Asked

Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. Various members of the Helpline Team will share Helpline questions that they think will be of interest to readers. 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.

Current Helpline Team members are David Grubb, Laurie McKay, Marlene Smaill and Harvey Williams.

When must a 3/4 vote be a unanimous vote?

Answered by Harvey Williams

Q. We own a unit in a triplex. The *Strata Property Act* requires a 3/4 vote to approve a special levy to re-roof our building. Two of us favour the special levy, but the third owner is opposed. Can the two of us approve the levy or must all three of us vote for the special levy?

A. Section 1 of the *Strata Property Act* defines a "3/4 vote" as a vote in favour of a resolution by at least 3/4 of the votes cast ... by those who have not abstained from voting. Since 2/3 is less than 3/4, all three of you must vote for the special levy. Similarly, both owners of a duplex strata corporations must support a special levy. This creates problems when the special levy is for something essential such as a new roof.

What is the process for changing Unit Entitlement?

Answered by David Grubb

Q. We have a few units on the upper floor which have loft spaces whose area measurements were never included in the registered strata plan for the purposes of calculating Unit Entitlement. Many of the units on the lower floors which have no lofts pay the same or more to the operating and contingency reserve funds than these units which in some cases sell for twice what units in the floors below sell for because of their extra loft space and their views. We need to find away of making our assessments equitable.

We are looking at changing the formula by which our assessments are calculated. We thought that an ideal formula could be based on the property value as assessed by the BC Assessment Authority. What is the procedure to change our Unit Entitlements?

A. You are heading on a long and complicated journey.

I would suggest that before you even start, you assure yourself that all eligible owners are "on side" -- And I mean ALL.

The SPA section 100 requires a unanimous vote. Unlike 3/4 votes, that is not a unanimous vote of "those present in person or by proxy at a general meeting". It is a favourable unanimous vote agreed to by all eligible voters. One negative vote or one abstention, and the motion is defeated.

What does eligible voters mean? It means every single voter in the strata corporation which could include: strata lot owners, legal guardians, proxy holders, tenants who

have been assigned the right to vote under Section 147 or 148, and even mortgagees in some circumstances which could affect the security of the mortgage. Moreover, if there is more than one owner of a strata lot, e.g. spouses, partners, etc., then each one of them must vote in favour of a unanimous resolution. So you may have 50 units, but there could be 75 "eligible" owners. Therefore you would need 75 positive votes. (Note: Abstentions are generally considered as negative votes.)

Under s.52, you might be able under certain circumstances to ask the BC Supreme Court for an order to allow a positive vote. But that is an expensive process, and depending on the calculation of UE that you might propose, the judge could decide against you.

Next is the method of calculation. Throughout the first legislation (the *Strata Titles Act*) in 1996, its successor (the *Condominium Act*) and the current Act, the calculation for Unit Entitlement has been based on square footage or what is now called "habitable space", presumably because that seemed to be the fairest way to assess costs and to recognize that a larger strata lot would be more valuable than a smaller one.

I wouldn't be convinced of your idea of using the B.C. Assessment Value. You would be recalculating practically every year as the real estate market fluctuates.

I strongly encourage you to consult a lawyer who specializes in strata law, as well as an accountant (CA or CGA) and possibly a property surveyor who can guide you on the effects of any kind of change of formula.

You need to know what you are getting into: not impossible, but definitely difficult.

Roofs and gutters

Continued from page 2

here is such that the downspouts must be directed into a perimeter drain pipe system around the building's foundation walls which, in turn, is connected to the property's storm drainage system and takes the water to the municipal storm drain, or other natural water course.

We remind the reader that a building's most significant function is to keep water out and, in doing so, we must

also install various systems to direct water away from the structure. A gutter system is the next line of defense after the roof and we recommend a similar, semi-annual program of cleaning, inspection and minor repair (Fall and Spring) to maintain proper operation.

John Grubb is a Property Maintenance Consultant serving Strata Corporations and building owners on Vancouver Island. 250-893-3445 or www.unityservices.ca

MARK YOUR CALENDAR

Sunday, November 21

1:00 - 4:00 pm

PRIVACY AND YOUR STRATA

How does privacy legislation affect your strata?

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Resources for frustrated strata owners

by Laurie McKay, Helpline Volunteer

As a fairly new owner in a strata corporation I have a degree of understanding for the frustration expressed by some callers to the VISOA Helpline. Listening to owners on the Helpline, speaking with members at seminars and even in discussions in social circles, everyone has a horror story about stratas in general and strata councils in particular.

As volunteers for the Vancouver Island Strata Owners Association, we certainly hear our share of those horror stories. It can be an easy trap to fall into to - we begin to believe that all councils are comprised of a cast of idiots, dictators and crooks. At VISOA we have all heard of councils that meet those criteria in one way or another. However, we also understand that our sampling is probably skewed because of who we are and what we do.

We also know there are many more stratas out there we don't hear from - and likely never will - because their system is

somehow working. For every strata or strata council that doesn't function well, there are many that do. All stratas are at some level run by volunteers. Not all volunteers make effective council members but certainly many of them do, putting in long hours doing the best they can, with the greatest of intentions and for precious little thanks. And don't get me started on how the responsibilities of individual owners get so lost in a sea of apathy. Owners and council members alike need help - not hostility.

Frustrated strata owners surfing the internet will run across countless unmoderated blogs, full of rants, tunnel vision, and more frustration. With luck, they will also find VISOA and other good sources of information that will help them find a balanced picture of strata life in BC.

Helping in all the practical ways we do is why VISOA exists. Our goal is to help owners access the factual information they need to find that balanced life.

Some of the resources we make available to strata owners are:

- confidential access to the Helpline for Councils and individual owners and (through the Helpline) access to the opinion of our lawyer
- informative and interactive seminars offered throughout the year in Victoria, Nanaimo in Courtenay/Comox area
- community outreach programs through other education programs, i.e. Elder College in Campbell River
- website links to dozens of other websites with useful information to strata owners
- access to reasonably priced publications, both government-released and in-house practical applications.

VISOA'S Constitution says it best:

The Purpose of the Society is to assist strata corporations and strata lot owners by providing education and training and, when requested, assistance to them in the discharge of their legal duties and obligations.

We hope you will find we are meeting our purpose.

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Strata developer not above the Small Claims Act

by Deryk Norton, VISOA Board Member

Many strata owners have heard of a provision in last year's Bill 8 (to amend the *Strata Property Act*) that would enable the Provincial Court to hear strata disputes that currently must be heard in the BC Supreme Court. Although this new provision has not yet been implemented it will not apply to disputes with the strata developer. However, strata owners should be aware that the Provincial Court (also known as the Small Claims Court) already has the power to hear cases involving matters of debt or damages. If the disputed amount is under \$25,000 a person or corporation can make a claim against another person or corporation for a minimal court filing fee and have the matter heard by a Provincial Court judge. Neither party need be represented by a lawyer. In fact the use of lawyers is discouraged by section 19(4) of the Small Claims Act that disallows lawyers' fees from any costs awarded against the losing party. This provision greatly reduces the financial risk to either party in having the case heard in court.

Some strata owners have been able to use the Small Claims Court process to help remedy matters of debt or damages. Recently I was contacted by a strata owner from the lower mainland who used the Small Claims Court process

to obtain compensation from an owner developer for multiple deficiencies in a 200-unit strata complex. The potential cost of correcting the deficiencies amounted to hundreds of thousands of dollars and the developer was refusing to correct them. Furthermore the owners could not obtain the $\frac{3}{4}$ vote required under section 171 of the SPA for the strata corporation to sue the developer. Apparently, many owners in the strata complex were fearful of challenging the developer and were prepared to suffer in silence.

Undaunted, the owner organized 51 separate Small Claims Court actions by individual owners against the developer. The developer and its high-priced law firm sought to have these claims dismissed but the presiding judge would not do so. This judicial decision forced the matter to mediation that resulted in the owners receiving \$250,000 from the developer in an out-of-court settlement, an amount that went a long way toward correcting the deficiencies.

An important lesson from this case is that a strata owner has the right to pursue a matter of debt before the Small Claims Court even when it involves an action against a non-performing owner developer and the strata corporation has refused to act.

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Usually, terrible things that are done with the excuse that progress requires them are not really progress at all, but just terrible things.

*Russell Baker
US Journalist (1925 -present)*



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Collecting unpaid strata fees and other monies owed to the strata corporation

by Shawn M. Smith

For some strata corporations, arrears can be a significant problem. When owners do not pay their strata fees this creates a dilemma for the strata corporation since its primary source of funds is the contributions of the owners. This problem can be even more acute when it comes to special levies. Should the strata corporation not have all the funds it requires for a project it may not be able to complete that project. However, these are not the only time that an owner may owe money to the strata corporation. They might owe the strata corporation for an insurance deductible that it has had to pay or for the costs of remedying a bylaw contravention. In these latter two cases the strata corporation will be out of pocket and will likely need to recover those monies to avoid a shortfall. The purpose of this article is to assist strata corporations in understanding the relatively easy steps that can be taken to remedy these problems.

First things first, send a demand letter

S.112 of the *Strata Property Act* (the Act) requires that before suing an owner for money, commencing an arbitration to collect money or registering a lien against a strata lot, the strata corporation must send the owner(s) written notice which:

- (a) demands payment;
- (b) indicates what action may be taken if the money is not paid; and
- (c) gives the owner at least 2 weeks to respond.

In the letter make sure to list all the possible options available to collect the type of debt owed. This will help ensure that the strata corporation is not limited to only one option (for example, when collecting unpaid strata fees, state that the strata corporation can sue to obtain a judgment, register a lien, or apply to sell the strata lot)

When sending notice keep in mind that s.61 of the Act sets out the methods of delivery. If the letter is mailed or slipped under a door, a letter or notice is deemed to be received 4 days later. (So “at least 2 weeks” is really 20 days – lawyer math).

When writing make sure that the letter is addressed to the correct owners. A land title search might be warranted. If the owner has provided an address outside of the strata corporation, the letter must be sent there.

Registering a lien

Under s.116 of the Act a strata corporation can file a lien in relation to certain monies owed to it by an owner. The lien ranks in priority to any mortgages or other charges against title except a lien in favour of the Crown or a builders lien.

However, a lien can only be registered against a strata lot for certain things.

Those are:

- unpaid fees;
- special levies;
- reimbursement for work to a strata lot ordered by a government authority;

- the owner’s share of a judgment against the strata corporation;
- interest on strata fees and levies
- reasonable legal costs and disbursements for registering the lien

The following things cannot be included in a lien:

- fines;
- the cost of remedying a contravention of a bylaw;
- NSF charges;
- late fees;
- insurance deductibles;
- parking space rentals;
- legal fees (except in relation to the lien itself).

Reasonable legal costs and disbursements can be added to the lien as per s.118 of the Act and become part of it. Thus the lien does not have to be discharged until the legal fees are paid. “Reasonable legal costs” has been held to be “taxable costs” under the Tariff Scale found under the Court Rules. Fees charged by strata managers to register a lien cannot be included and are not collectible as strata managers cannot charge for performing legal services. If the strata corporation requires assistance in registering a lien it is best that they retain a lawyer (preferably one with experience in collecting strata arrears) to do so.

It is important to ensure that the lien includes only those amounts permitted by s.116 of the Act. In a relatively recent case the court held where a lien included amounts

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Collecting unpaid strata fees

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that were not permitted by the Act the lien was invalid.

The lien acts as a “floating charge”, thus there is no need to register further liens as the arrears mount. The amount owing under the lien will be calculated when it comes time to pay it out.

If an owner is suspected to be headed toward bankruptcy a lien should be registered as soon as possible. As soon as the owner makes an assignment into bankruptcy the strata corporation is prevented by the terms of the Bankruptcy Act from registering a lien and would rank as an unsecured creditor and might end up with only cents on the dollar. However, if the lien is registered then the strata corporation can proceed to enforce the lien as a secured creditor. In this regard, bylaws which prohibit a strata corporation from filing a lien until the owner has been in arrears for a certain number of months are not a good idea.

Another advantage of filing a lien is that it ensures that notice of any foreclosure proceedings by the owner’s lender is given to the strata corporation. Occasionally there is the need in such proceedings to ensure that the strata corporation’s priority is preserved.

When paid, a lien must be discharged within one week of payment. The costs to discharge should be added to the lien when calculating the lien amount.

Enforcing the lien

Filing a lien only acts to give notice to others of the strata corporation’s claim. It does not necessarily get the arrears paid. Further action is often required to achieve

that goal.

Once a lien has been registered the strata corporation can commence a court action to apply to have the strata lot sold and the amount secured by the lien paid from the sale proceeds (the process is very similar to when a lender forecloses under a mortgage). Commencing such an action does not require a $\frac{3}{4}$ vote, only the approval of council.

Such an action is brought in the British Columbia Supreme Court (Small Claims has no jurisdiction to deal with issues regarding land) and names the owner(s), any chargeholders on title (ie. mortgagees) and the tenant(s) of the strata lot (if any) as respondents.

Owners are typically given 30 days to pay the arrears (including legal fees). If they don’t then the strata corporation gets the right to sell the strata lot which means listing it with a realtor, showing it to prospective buyers and ultimately accepting an offer. The offer is subject to court approval and as such must be close to the fair market value (which is determined by having an appraisal done).

The amount owing under the lien gets paid out first (assuming no builders lien or charges in favour of the Crown) after real estate commissions and property taxes Fines, the costs of remedying a contravention of a bylaw and other monies do not get included in the foreclosure amount. However, if there are excess sale proceeds the strata corporation can request to be paid out of those monies.

Notifying banks

Some strata managers follow the practice of advising mortgagees (ie. the owner’s bank) when the owner is in arrears. If the lender has filed a Form C Mortgagee’s

Request for Notification then doing so is not only acceptable but required. Where the lender has not done so, notifying them without the owner’s consent might well be considered a breach of the Personal Information Protection Act. As such, strata corporations are best to avoid doing so.

Bank Foreclosures

Occasionally the strata corporation will be served with court papers (usually a Petition and supporting affidavit) which name it as a Respondent. This is due to the fact that either a lien has been registered or the bank’s lawyer is simply being cautious and assuming that the strata fees are in arrears. Typically in a foreclosure proceedings there is nothing for the strata corporation to do. However, care should be taken to review the Petition and ensure that there is no attempt (usually inadvertent) to place the mortgage in priority ahead of the strata corporation’s lien.

A Form F is not required on a court ordered sale and thus fines are usually not collected in such a scenario.

Suing an owner(s)

An owner or tenant who owes money can be sued to recover it. The money owed could be strata fees, the amount of an insurance deductible for which the owner is responsible, the costs to fix damage the owner has done and even fines. Where the sum owed is for unpaid strata fees, an action to obtain a judgment is not the best way to collect those since the strata corporation would then have to enforce any judgment it obtains. The forced sale

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Collecting unpaid strata fees

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process outlined above is better. However, where the sum owed is for something that cannot be collected under a lien (ie fines or an insurance deductible) then an action to obtain a judgment is the only option.

If the amount owed is less than \$25,000 (which is usually the case) then the action must be brought in Small Claims Court. (Doing so requires approval by way of a 3/4 vote unless the bylaws authorize the strata council to commence such an action). Keep in mind, however, that legal fees are not awarded in Small Claims Court. Thus if the amount owed is small, hiring a lawyer to act is not a recommended course of action as the fees charged to see the action through to its end may equal or exceed the sum recovered.

If the sum owed exceeds \$25,000 (which is quite rare) then the action can be brought in Supreme Court and the strata corporation (if successful) can recover at least some of its costs.

If a judgment is obtained, it can be enforced by seizing assets, garnishing wages and bank accounts or calling the owner into

court for a payment hearing. Thought should also be given to the likelihood of enforcing a judgment as it does not rank in priority like a lien. If the owner has very limited assets the judgment might never be collected.

Wait for the strata lot to be sold

The least proactive approach for collecting monies is to simply wait until the owner sells. An owner selling a strata lot must pay any unpaid fees, fines and costs of remedying a contravention of a bylaw in order to obtain a Form F to permit the transfer of the title. S.115 of the Act lists items that can be collected in relation to the Form F. However, it is unclear as to whether items listed in that section are exhaustive or whether all sums owed to the strata corporation can be collected. For example, s.115 does not refer to an insurance deductible for which the owner is "responsible". Does that mean that an owner can transfer their strata lot without paying that deductible? Lawyers practicing in this area have differing views. What is clear, however, is that the strata corporation cannot add amounts which have no basis (ie. general damages that it thinks are owed for some civil wrong done by an owner).

If there is a dispute as to the sum claimed, it can be paid into court or to the strata corporation in trust under s. 114 of the Act and the Form F issued.

If a strata corporation wishes to take this approach it should keep in mind that the provisions of the Limitation Act would likely apply and any monies outstanding for longer than 6 years might become uncollectible.

Conclusion

A prudent strata council will take steps to see that monies owed to the strata corporation are collected in a timely and cost effective manner. Where necessary or when in doubt they should obtain the assistance of a lawyer in doing so.

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



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Land title office searches of the common property

by Joyce Johnston

Every lawyer who handles the purchase of a strata lot for a client does several searches of the strata lot property, either at the Land Title Office or through BC Online. Many lawyers who handle such a purchase do not do a common property search.

There are good reasons to do a common property search prior to the conveyance. Such a search costs about \$10.00. Several legal interests will only show up on the common property search, these being:

- Easements and rights of way against the common property land
- Leases that are given to such entities as Telus and Shaw, so that they can place equipment to transmit
- Options to purchase, especially in the case of septic fields.

EASEMENTS, RIGHTS OF WAY, LEASES

The *Strata Property Act* section 69 implies easements in favour of each strata lot and in favour of the owners of the common property, concerning the building itself. These easements are for support, provision of services such as electricity and water, and shelter.

However, easements over the land must be registered (not implied), and these will show up in the common property title. For instance, such an easement may be in favour of a neighbouring property.

OPTIONS TO PURCHASE

Options to purchase that can be registered against the common property have been the subject of litigation in recent years. In these cases there has been a dispute between the developer and the strata corporation centered around rights over septic fields, once

municipal sewage systems become available to the strata corporation. In such cases, septic fields are located within the common property, and the developer, anticipating later access to municipal sewage, registers an option to buy back these lands at a low price.

Depending on the structure of the deal (including whether it is held to be a subdivision under the LTO), the option may or may not be valid. The effect of the exercise of the option to purchase, if it is held to be enforceable, is that the strata corporation loses that land.

CONCLUSION

If purchasing a strata property, request that your solicitor search the strata lot itself, and the common property.

Joyce M. Johnston practices law in Victoria, BC. This article is not intended as the provision of legal advice.



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We all need professional help!

By Jennifer Childs

We all need professional help at some point to help take care of our homes. With the growing DIY (do it yourself) movement, more and more people are taking on projects around their homes, and this often extends to the common property of a strata. While there may be many skilled people in your strata willing to help out and do some work, there are a few things that should be considered when deciding whether to call in a professional, and how to choose who to trust with your investment. The potential of the future sale of your property and possible litigation could depend on your choices.

TO DIY OR NOT?

When evaluating a project or ongoing maintenance at a property, it is important to look at the size and scope of work, as well as the impact of that work on the integrity of the property. If a project is large or involves continual maintenance, it may be better to call in a professional to complete work on schedule and be relied upon for ongoing maintenance. While volunteers are inexpensive, they also have other priorities and demands on their time.

Work that may compromise the integrity of any major system in a property should also

be left to the professionals. These include building envelope, structural elements, heating and ventilation, electrical and utility services among others. Remember that water-related damage is the number one claim to insurance companies and taking on any work that may result in water damage can have an enormous impact on any residence. Water damage may come from many different sources (such as skylights, windows and doors, exterior drainage, plumbing and hot water tanks, any opening for electrical and municipal services and others), and should be taken very seriously.

The tools, skills and materials required should also be considered. If a project requires complicated or expensive tools, it is worthwhile to consult a professional who has access to the required tools and the skills to use them correctly. It is also important to look at the cost of materials and the associated expense if mistakes are made. Expensive materials can include flooring or trim, wall coverings, lighting and even landscape plantings.

Most importantly, any safety concerns and required follow-up need to be addressed, when deciding on who should take on a project. Working on your electrical system can not only be dangerous to the worker,

but any mistakes could lead to catastrophic events. Work that involves heights, small spaces, or municipal services such as gas can also be inherently dangerous and any cost savings are not worth risking safety. Even working on small step ladders can result in injury - most ladder injuries are falls less than four feet off the ground. Ladder safety is paramount whether working in your own home, or changing light bulbs around your building.

Complicated or dangerous tools can also pose a safety hazard if the worker does not have the experience or familiarity required to complete the work safely and properly. Having the work performed by someone who can followup if there are any issues is also important. A volunteer will not be able to provide a warranty on any of their work, and will leave the strata council responsible for any problems.

DIY projects can be a great way to get residents involved and save some money for the strata council; however, only if the right people are taking on the right projects. Even a project as simple as painting may not prove to be a big cost savings, if it needs to be redone twice as often. Professionals may

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also be able to provide you with different options or suggestions on how to do a project, or maintain current systems so they will last for many years to come.

HOW TO CHOOSE A PROFESSIONAL

Whether you need to paint your building, change out a light fixture, or have your elevator maintained, there are a few simple things that should be considered when looking for a Professional. They should be experts in their field, well established, able to stand behind their work and offer you value-added services; while completing the task to a high standard, in a timely manner and with the highest regard for safety. By doing your research, you can develop long standing relationships with reliable contractors, which will benefit strata council and residents alike. By working with these professionals you have experts to rely upon and can also provide residents with a list of people who are familiar with your property and can take care of their individual needs.

Well established professionals should be able to give you references (which you should call) and a warranty on their work. Many contractors will also extend the warranty on parts and materials to the customer if it is purchased through them. The

warranty may not apply to equipment that is not installed by a professional, depending on the product or project. Experts should be able to give you advice on your project and also know if a permit is required; you should ask about permits and double check with your municipal or provincial office to see if a permit is required. Never go ahead with a project if a required permit has not been pulled, and just because you have been charged for a permit, does not mean that the contractor has requested one.

Professional contractors should have a Work Safe BC number and be willing to discuss their safety record and safety training of their employees with you. Ask a potential contractor what safety precautions they would take on your site to keep themselves, your residents, guests and passersby safe. They should also be well insured, including liability insurance.

You should ask potential contractors about their experience in different sized projects to ensure they can look after your immediate work, and can also be called upon for larger or smaller jobs. That way you only have to deal with one company for each area of expertise, and they may also be able to help residents with smaller jobs around the house. Their experience can also lead you to connections with other well established businesses and recommendations for suppliers and reliable products. Additionally, experienced contractors should be well versed in any

incentives that may be available to you, such as BC Hydro Power Smart. It is also important to note that for many government sponsored incentives, the contractor must be a pre-approved vendor in order for you to qualify for any rewards.

Choosing whether to take on projects yourself or hire a professional often comes down to cost, but it should really be a question of responsibility. A strata council needs to seriously address any safety or liability issues when ensuring that the integrity of their property and the investments of the residents are maintained.

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