



Vancouver Island Strata Owners Association

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VISOA Bulletin - NOVEMBER 2012

Volunteerism at VISOA

Earlier this year, VISOA was honoured to have been nominated for a community award for volunteerism. Although we did not win the award, we were proud to have been nominated and wanted to share the nomination essay with you, our members. When the member who nominated us was quizzing us for some facts and figures, we had no idea just how many hours our volunteerism adds up to. This is the nomination that was submitted concerning us:

VISOA provides assistance to strata councils and owners in the management and maintenance of their strata property. VISOA's current membership is approximately 375 strata corporations representing 8,800 strata owners.

Need for assistance

Strata owners and strata councils must work cooperatively in the management and maintenance of their strata homes. Strata legislation and regulations are complex and not always clear. No government agency provides information or assists strata councils. The only way issues can be resolved is through the courts, which is expensive and beyond the financial means of most strata owners.

How VISOA helps strata councils and owners.

VISOA is a non-profit association, run by volunteers that assist strata councils and owners in solving problems related to the management and maintenance of their strata property. It provides the

following services:

1. Helpline for strata owners and councils

VISOA Helpline Volunteers who are knowledgeable in strata issues provide information to strata owners by telephone and email. Helpline volunteers also attend strata council and general meetings when asked. While the Helpline is intended primarily for members of VISOA, any strata owner may call or email the Helpline at least once for information.

The Helpline Volunteers respond to over a thousand calls annually and in total spend as much as 600 hours researching issues, providing information and attending strata meetings each year.

2. Bulletin

VISOA publishes a quarterly Bulletin which is available either in print or on VISOA's website. Bulletin articles are written by knowledgeable volunteers. The Bulletin is a thorough and reliable source of strata information. Bulletin topics are indexed on the website.

Volunteers spend approximately 200 hours per year writing, publishing and distributing VISOA's Bulletin.

3. Website

VISOA supports a website which contains a wealth of information for strata owners and provides links to other websites where additional helpful information for strata owners can be

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BOARD OF DIRECTORS 2011

President Sandy Wagner
Vice President Tony Davis
Secretary David Grubb
Treasurer vacant

MEMBERS AT LARGE

Deryk Norton, Harvey Williams,
 Laurie McKay, John Webb, Glenna Ireland,
 Cleve Patterson, Bev Grubb,
 Paulette Marsollier, Cathy Turner

found. VISOA's website is not password protected and may be freely accessed by anyone.

A volunteer webmaster spends as much as 100 hours per year in updating and maintaining the VISOA website.

4. Seminars

VISOA presents 6 seminars each year in Victoria, Nanaimo, and Courtenay on topics of interest to strata owners. Seminar speakers who are experts in their field present seminars on such topics as strata law, conflict resolution, strata accounting and strata maintenance. All speakers are volunteers.

The volunteer time required for the seminars is difficult to quantify, but each seminar requires 5 to 6 hours of time by 10 to 15 VISOA board members and other volunteers for a total volunteer time for each seminar of approximately 75 hours plus travel time of 60 hours for the two out of town seminars. Keeping in mind that board members are also volunteers, the total volunteer time for seminars is 492 hours annually.

5. Board of Directors and Officers

An organization that provides the range of services as does VISOA must be led by an able and dedicated board of directors. Each volunteer director has assigned duties and reports to the board each month. VISOA currently has 12 directors who meet monthly for two to three hours.

Volunteer time required for preparing reports and attending monthly board meetings is estimated at 300 hours annually.

Total time committed by VISOA's volunteers to all endeavors is conservatively estimated to be 1692 hours annually.

YOUR 2012 BOARD OF DIRECTORS

Tony Davis – Tony has served on the board in various capacities since 2007. Tony now manages our website and is always pleased to get comments or suggestions for improving it.

David Grubb – Elected first in 2009, David has been Secretary of the board and the Lead on the Helpline email correspondence for the past two years. In addition to contributing to the "You Asked" column and other articles in the Bulletin he also acts as Assistant Editor.

Bev Grubb – Bev was elected to the board at our 2012 AGM and is currently the chair of our Membership Committee, and part of the Seminar Team.

Glenna Ireland – Glenna has been a Board Member for nearly three years. She has helped out at seminars, served on the nominating committee and is currently a member of the Helpline team.

Laurie McKay – With three years board experience, Laurie enjoys assisting in several portfolios, particularly working with strata owners on the Helpline team and with other Board members representing the concerns of strata owners to government.

Paulette Marsollier – Paulette was elected to the board at our 2012 AGM and is currently helping us educate members on the importance of depreciation reports, and serves on the Workshops Committee.

Deryk Norton – While serving on the Board since 2007, Deryk's primary focus has been to identify owner concerns about strata legislation and to take those concerns forward to your board and to government.

Cleve Patterson – Cleve was elected to the board at our 2012 AGM and has been busy organizing our first workshops, in addition to seeking finance-related benefits for our corporate members. Cleve has been working on proposed revisions to BC's outdated regulations on CRF investments.

Cathy Turner – Cathy served on the board five years ago, and we welcomed her back earlier this year. Cathy has been part of the Seminar Team, and is currently "in training" for the Helpline.

Sandy Wagner – Sandy was appointed to the board in 2007 and has found her niche as editor of the Bulletin, and Seminar Coordinator. She was elected President midway through 2011.

John Webb – John has served on the board for four years and has overall responsibility for the publications that are produced and sold by VISOA to its membership.

Harvey Williams – Harvey is the senior member on the VISOA's board in terms of years served, having first been elected to the board in 2000. He served two terms as president and for the last four years has been the principal responder for the Helpline telephone.

Renters under the *Strata Property Act*

By Shawn M. Smith, Esq.



Shawn Smith

Section 141(2) of the *Strata Property Act* (“SPA”) permits a strata corporation to restrict the rental of strata lots by a bylaw that:

- (a) prohibits the rental of residential strata lots, or
- (b) limits one or more of the following:
 - (i) the number or percentage of residential strata lots that may be rented;
 - (ii) the period of time for which residential strata lots may be rented.

Most strata corporations pass bylaws of this nature with the expectation that subject to a few limited exceptions (original purchasers, family members and hardships) the building(s) will become owner-occupied. The rationale behind this is twofold: owners have a vested interest and will take better care of the building, and a building without tenants increases the value of the strata lots.

Such bylaws can create problems for owners who bought thinking they could rent or who move but don’t want to sell. Owners wishing to rent but who don’t fall within any of the exemptions often turn to creative and, at times deceptive, means to get around rental restriction or prohibition bylaws. These may include adding a tenant to the title of the strata lot or claiming that the person is just “house sitting”.

In addition to these scenarios there are other living arrangements, such as roommates and short term rental accommodation, that also give strata corporations cause for concern. The purpose of this article is to try and make some sense, although not exhaustively, of this rather complicated landscape.

The SPA recognizes three classes of people that may be found in strata corporations: owners, tenants, and occupants.

“Owner” is defined as: a person, including an owner developer, who is

(a) a person shown in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person’s own right or in a representative capacity, or

(b) if the strata lot is in a leasehold strata plan, as defined in section 199, a leasehold tenant as defined in that section,

unless there is

(c) a registered agreement for sale, in which case it means the registered holder of the last registered agreement for sale, or

(d) a registered life estate, in which case it means the tenant for life.

“Tenants” are defined as: a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant

in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate.

“Occupants” are defined as “a person, other than an owner or a tenant, who occupies a strata lot”.

The Standard Bylaws refer to the term “visitor” which is not defined, but would be someone who does not fall within any of the three categories.

S.141 of the SPA and most rental restriction bylaws do not refer to the term “tenant”. Instead they talk about the “rental” of a strata lot. The definition in the SPA of “tenant” refers to someone who “rents”. In determining whether an owner has breached a rental restriction bylaw, the strata corporation must determine whether or not they are “renting” their strata lot. The SPA does not contain a definition of the word “rent”. The Canadian Oxford Dictionary defines it as “regular payment made by a tenant to an owner or landlord for the use of land or premises”. This definition envisions an exchange of money taking place. Where that is the case, the strata lot is being rented and the bylaw has been breached. Simple enough.

What about cases where the arrangement between the owner and the person occupying the unit is less formal (ie. a house sitting arrangement)? In those instances the answer to the question of whether or not the rental restriction bylaw has been breached is not as clear. Based on the definition of “rent” taken from the Canadian Oxford Dictionary there is no breach. However, the Residential Tenancy Act (“RTA”) 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...” It is this expanded definition that would encompass many a house-sitting situation. If someone is watering your plants, feeding your cat and generally keeping an eye on the place, you are arguably receiving value in exchange for their living there. Of course, the definition of “rent” found in the RTA does not automatically apply to the SPA. It is persuasive however.

In *Strata Plan VR2213 v. Duncan 2010 BCPC 123*, the British Columbia Provincial Court (Small Claims Division) considered whether persons occupying a furnished strata lot on a short term (ie. one or two week basis) were tenants. In *Duncan* the owners of the strata lot had rented it to a company that provided short term furnished accommodation to third parties. The issue before the court was whether or not each time someone occupied the unit, a Form K was required. In the end, the court held that a Form K was not required because the persons occupying the units were not tenants but rather “occupants” given the short term nature of their stay. The court concluded that the arrangement between the corporate tenant and the person(s) occupying the unit did not have hallmarks of a tenancy, was thus a license agreement and not within the scope of

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the bylaw. The judge was also of the view that “the scheme of the Act and the bylaws contemplates persons lawfully occupying units who are neither owners or tenants or subtenants”. If *Duncan* were applied broadly it would permit the occupancy of strata lots under less conventional arrangements and there would be no breach of the bylaws. However, there was no discussion in *Duncan* about the definition of “rent”. If there had been such a discussion, the outcome might well be different. The persons occupying the unit might be held to have been paying “rent” thereby placing them within the definition of a tenant under the SPA.

Some owners take the bold (and rather risky) step of placing their tenant on title to their strata lot albeit for a very small percentage (say 1%). Doing so arguably no longer makes that person a tenant since the definition of “owner” refers to the person who is registered on title to the strata lot whether entitled to it in their own capacity or in a representative capacity. Even though the tenant is on title, the beneficial ownership of the property belongs to their landlord. Nonetheless they are an owner under the SPA and not renting the strata lot. Such arrangements are arguably a sham transaction and might not be honoured or recognized by a court because of that.

One way of achieving the goal of the tenant being an owner is to enter into a formal agreement for sale which is registered on title. Under the definition of “owner” in the SPA, the holder of an agreement for sale (being the tenant/buyer) is the owner of the strata lot. However, the true owner must recognize that with this comes a loss of control over the unit and the obligation to sell it to the tenant at the end of the agreement’s term (unless the tenant opts out).

Many strata corporations are concerned about owners who have

roommates. Are they breaching a rental prohibition bylaw by doing so? Arguably yes. The definition of “tenant” includes someone who rents part of a strata lot. However, the RTA excludes from its jurisdiction properties where the landlord and tenant share a kitchen and/or bathroom. If that exclusion were to prevail, then the decision in *Duncan* would mean that roommates are not tenants because there isn’t the formality of a tenancy relationship.

As you can clearly tell, there is not a clear answer to the dilemma of whether someone in a non-conventional landlord-tenant arrangement is a tenant or not. Clarity can perhaps be achieved through the bylaws. Bylaws which regulate the use of strata lots in a commercial context have been upheld by the court. In Ontario the courts have upheld bylaws which restrict strata lots to use as a single family dwelling. A prohibition on roommates may be permissible, but is it necessary? There are many people who dwell in strata lots who are neither owners nor tenants; i.e. spouses who are not on title, children, siblings. Does a prohibition on roommates really achieve anything?

Another possible approach is to define in the bylaws what “renting” is. For example:


“For the purposes of this bylaw, the rental of strata lot shall be defined to include occupancy of a strata lot by a person who is not an owner, without the owner also residing in the strata lot, for a period of greater than ninety (90) days regardless of whether or not money or other consideration is paid for the right to reside in the strata lot”.

A court will likely give deference to a strata corporation’s defining what a tenancy is or isn’t so long as the definition is reasonable. However, there is no guarantee in that regard. It might be viewed not as defining “rent” but amending the definition of “tenant”, which is not allowed.

Based on the decision in *Duncan*, rentals for the purpose of short term accommodation appear to be permissible. However, there was no consideration as to whether these arrangements could be prohibited by way of a bylaw that either directly prohibits doing so or one that prohibits commercial activity. With regard to the latter, the argument would be around whether or not that sort of activity is “commercial” in nature. There are undoubtedly a variety of cases that go each way and a court will ultimately have to reconcile those. We cannot do that here, however.

Until a court or the Legislature addresses these issues there will continue to be uncertainty regarding some of these less conventional arrangements. Until then strata corporations, owners and those who advise them will have to deal with these issues as best they can.

Shawn M. Smith is partner with the law firm of Cleveland Doan LLP located in White Rock and may be reached at 605.536.5002. He practices primarily in the area of strata property law. This article is intended for information purposes only and nothing contained in it should be viewed as the provision of legal advice regarding a specific situation.



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You Asked: Why aren't calendar days the same as legal days?

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. VISOA's Helpline Team will share Helpline questions that they think will be of general 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.

This issue's question is answered by David Grubb

QUESTION

Section 45 of the *Strata Property Act* (SPA s.45) states that the Notice of Annual or Special General Meeting must be sent out at least two weeks in advance. But we are told that "two weeks" doesn't mean 14 calendar days: actually it needs to be sent out 21 days before the date of the meeting. Likewise, if a council must respond to an individual's request to hold a hearing "within four weeks" such as is required by SPA s.144 ("Hardship Rental Request"), we hear that that does not mean 28 calendar days: it means 41 days from the date council mails its letter. Why is there a discrepancy?

ANSWER

The reason for the discrepancies is because of some sections of the B.C. *Interpretation Act* (IA). This act is an obscure one for most people because it deals principally with government specifications and definitions in enacting statutes. But there are some sections that directly affect the SPA in regard to the question.

One of these is Section 25 which deals in part with how the number of days is calculated for the official delivery of documents.

Calculation of time or age

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be

excluded.

(5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

An "enactment" generally means "Act" which includes the SPA. In the SPA, one can assume that a Notice of Meeting required in s.45 would therefore be a "conveyance" or at least an "instrument" and therefore subject to this section of the IA, as would a requirement for council to send a written response to a request or demand such as is found in SPA s.144.

So what is considered a "holiday"? The IA s.29 declares that:

"holiday" includes

(a) Sunday, Christmas Day, Good Friday and Easter Monday,
(b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, Family Day and New Year's Day,

(c) December 26, and

(d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday;

Then we notice that Saturdays are not mentioned in these definitions, but in practice they seem also to be considered as being "included". Unless there is another Act which has more definitions, we can only think of two possibilities in the IA. The first is that the recipients are considered for some reason to be an "office" which isn't open on Saturdays, so IA s.25(3) applies. The other is that the SPA must base its delivery time on the premise that documents are mailed by regular post as defined by IA s.29:

"mail" refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver;

The last word, "deliver", seems important because Canada Post does not deliver on Saturdays.

So presumably either or both possibilities explain why Saturdays are somehow included in some way as a "holiday" for practical purposes of the calculation of time.

Now we might be able to explain how "two weeks" translates into 21 days (SPA s.45) instead of 14 and how "four weeks" (SPA s.144) translates into 41 days instead of 28.

Let's look at an example for an AGM.

Referring to the 2012 calendar, let's say that a strata's year end is October 31st and the council wants the AGM to be held

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Who will prepare your depreciation report: Three quotes - then what?

By Rudy Wouts, P. Eng.



Rudy Wouts

For some strata councils, the task is quite simple; get three quotes that comply with *Strata Property Act* requirements. Choose, based on price. Lowest fee. It may seem straightforward at first but the decision-making process requires close examination of strata councils' responsibilities and understanding of the utility of a depreciation report.

At the same time, the challenge of whom to select to provide a depreciation report is an issue many strata councils and owners throughout B.C. are wrestling with, given the new legislation combined with a variety of report providers coming onto the scene. Add to this the uncertainty of many owners about the value of a depreciation report, choosing a provider can, for some, be a daunting task, indeed.

Depreciation Reports: Some Owners Value Them – Some Do Not

From someone who has been in this field for several years and prepared over five hundred studies, I have seen strata councils with an approach that gives a very negative message to their fellow owners - the message is that a depreciation report is not that important, really. It's something we have to do. Deferral is an option; we'll take that route. My experience does not support this position. Strata corporations that see no value in a quality depreciation report and plan are frequently subject to unpleasant surprises and significantly large special assessments, resulting in decreased market values. Sadly, the outcome of a deferral philosophy is often an underfunded contingency reserve fund that leaves new and forward thinking

owners paying a hefty price.

Let's back up the bus just a minute. What really is the value and purpose of these reports and plans? Strata developments, condominiums and other multiuse facilities including private and public, have been opting for depreciation reports or reserve fund studies and plans long before legislative requirements were introduced in British Columbia, other Canadian provinces or the United States. Why? Because there was and is value attached to understanding current conditions of a building's components. The importance of a schedule of estimated replacement timing and an awareness of what lies ahead in terms of costs, supports putting into place a plan for funding those costs, thereby reducing the risk of surprises.

From this perspective of good planning, strata maintenance and operating budgets are developed annually and monitored closely by those charged with their stewardship. Many projects learned long ago that having a relevant, practical and up-to-date schedule and funding plan for common infrastructure not only offsets the risk of surprise assessments but, arguably, adds value to all share holders/owners in the project.

If the depreciation report and the funding plan are seen by Councils as key to their short and long term stewardship, then the service providers invited to propose to do the work need to have the experience and capability to deliver a document that meets these criteria.

Selecting A Service Provider to Develop Your Depreciation Report

There are several ways to begin the process of whom to ask for a quote for your depreciation report. As a first step, go to VISOA's website where firms who provide this service are listed. Check

them out via websites, ask your realtor, property manager and fellow strata owners whom they recommend and why. Call the firms and ask to speak with the persons involved with this service to learn more about them and their team. How do they prepare the reports, what is their process, time line, direct experience and background? From this, develop your list of the companies you will invite to propose on your depreciation report. In summary, do your homework and due diligence. It's your responsibility as a council member. Then trust your instincts!

When preparing your requests for proposals there are several aspects of your property that should be identified for the companies you are inviting. Have a look at Clear Path's Checklist on VISOA's website. It provides a number of points such as age of the property, type of project, i.e. apartment, townhouses, or bare land designation to name a few. Consistency of project description and your requirements are important for comparing proposals when they are submitted.

In addition to the description and details of your project, there are a number of aspects that should be requested from your selected providers. This information will assist you in the proposal review process that will follow when all have responded. These points are also part of the Checklist.

Key Considerations

A key consideration is the experience of the company and who would be involved in the preparation of your study and funding plan. It is important to view samples of studies so as to see what you will receive. Is the report understandable, practical, complete and readable, for

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example? As well, asking for project references of similar projects completed is important.

Another important aspect in selecting a firm is checking out who conducts the site review. Is this person experienced in design, construction and replacement of the various components that make up the common property elements of the project? Also, is the provider conversant with other trades and professions engaged in the building's lifecycle? References are important here, to get a picture of how providers interact with others involved with a building, ie. mechanical engineers, contractors and other consultants.

Additionally, the experienced and discerning building professional also has the training and capability to create realistic cost estimates and projections of component costs and replacement timing. This translates into funding plans that are firmly grounded in the use of accepted accounting practices. Financial logic must be combined with sound and professional experience with building infrastructure.

A Simple Rating System Can Help Compare Apples to Apples

If price is not the main criteria, then how do you assess the proposal that provides the highest value to your project? As mentioned earlier, if the lowest fee carried the highest value for you, then

the decision of who to choose is simple. If, however, quality of the review of component conditions and funding plan together with ongoing support services/updates are important, then cost alone will not be the deciding factor

Many Canadian municipalities use a rating system that could be considered by councils wishing to design a method for ranking proposals. This is usually a simple scoring system such as from 0 to 5 with 0 being the poorest and 5 being the best. Criteria such as quality of the report, experience and academic/professional background of those doing the work, readability of the report, the ability to analyze and synthesize technical information, etc. can be ranked. At the outset, the criteria for ranking the proposals on needs to be agreed upon by council members, and they must agree on what specifically is of importance to them. Council must also establish what criteria are important to the rest of the owners. Each council member should first review each proposal, then work together as a group to reach a common consensus as to which proposal gives the best overall value.

*Rudy Wouts, P.Eng.
Principal
Clear Path Engineering Inc.
Serving British Columbia & Alberta*

BROKEN WINDOWS THEORY

By Sandy Wagner

No, this isn't an article about windows. It is simply a bit of something to get you thinking.

The Broken Windows Theory of criminology is the theory that the persistence of graffiti and vandalism in an urban setting normalizes and encourages further criminality. George L. Kelling and James Q. Wilson, the authors of the theory, explained it this way in their original March 1983 Atlantic article:

Social psychologists and police officers tend to agree that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in rundown ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.

How does all this relate to strata living?

You tell me.

Does one un-repaired scratch on your strata's gate matter?

Does one graffiti tag matter?

Does one contravention of a bylaw or rule matter?

Perhaps not – but when does the single scratch or graffiti tag or bylaw contravention become important enough to do something about it? At three? Six? Sixteen?

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You Asked: Why aren't calendar days the same as legal days?

Continued from page 5

“two weeks” after that. The Notice is sent out on November 1st, but that doesn't mean the meeting is on November 14th. Under the IA, the day the Notice is mailed and the day of the meeting aren't included in the 14 days. So, in the intervening days there will be three weekends which will not count (6 days); and the statutory holiday for Remembrance Day is on November 12th so it is out too. That means we have to add 7 days to the actual “working” days which takes us to November 22nd. The AGM has to be held after that “14th working day” which would be November 23rd at the earliest. That is how 14 calendar days become 21 days in law.

You will note that because SPA s.45 says “at least”, the meeting could be held later than November 23rd if the Notice is sent on November 1st, but not earlier.

Such is not the case with holding a hearing under SPA s.144 which specifies “not later than” four weeks. There is a slight difference here in that unlike the day of the AGM not being included, the day of the hearing is included. Nevertheless, even though the council could hold the meeting earlier, the rest of the conditions must apply with respect to the latest date the hearing must be held.

Therefore, assuming that a letter of response in accordance with the SPA is sent on November 1st, once again under the IA, the first day is not included. So the intervening weekends or holidays don't count but the day of the meeting is included. That means the total number of days must allow for 13 extra days (12 days for weekends, and 1 day for Remembrance Day) in addition to the 28 “working” days (four calendar weeks) resulting in a total of 41 days. Thus the council must hold the meeting at the very latest on December 12th. (Note: If this activity took place in the December – January period there would have to be yet another 2 statutory holidays added!)

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			October 31 Strata's Fiscal Year End	1 AGM Notice Mailed Not Included	2 Day 1	3 DOESNT COUNT
4 DOESNT COUNT	5 Day 2	6 Day 3	7 Day 4	8 Day 5	9 Day 6	10 DOESNT COUNT
11 Remembrance Day DOESNT COUNT	12 Stat. Holiday for Remembrance Day DOESNT COUNT	13 Day 7	14 Day 8	15 Day 9	16 Day 10	17 DOESNT COUNT
18 DOESNT COUNT	19 Day 11	20 Day 12	21 Day 13	22 Day 14	23 AGM DAY Not Included	24
25	26	27	28	29	30	

This is how “the law” manages to make 14 days = 21, and 28 days = 41! (Aren't mathematics grand?)

One final comment – the *Interpretation Act* does acknowledge hand delivered and fax communications (though not email yet) and the SPA acknowledges both those and, more recently, email (electronic mail). Yet nothing has changed with respect to having to measure time in terms of days for postal delivery by Canada Post.

In contrast, recently the Land Title and Survey Authority (formerly the Land Title Office) dictated that it will no longer permit a strata corporation to register its bylaw amendments by either hand delivery or Canada Post. The only acceptable method is electronic mail (email) through an authorized lawyer or notary. Very interesting!

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Customers with invoices which pre-date January 1, 2013 must proceed through PSPX and those with invoices after January 1, 2013 will only be eligible for PIP. For PIP program information, policies, and eligible retrofits, please visit bchydro.com/incentives. Applications for PIP must be submitted within 120 days of the invoice date, and only specified retrofits and products listed on BC Hydro's e.Catalog are eligible for incentives. Before starting your project, please contact the Power Smart Business Helpdesk at 1-866-522-4713 to confirm your eligibility. To determine which program is right for you, check BC Hydro's on-line Program Eligibility Tool.

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INDUSTRIAL **PLASTICS**
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Getting the most from your depreciation report

By Jan Craig

You thought the hard work was over. Just getting your owners to approve performing a depreciation study seemed like a monumental task. But once the Depreciation Report arrives, the real work for a council begins. Consider the findings to be simply the raw ingredients – the building blocks that you will now routinely use to do your job. You will be using the data within the report to build your own plans. You may be lucky and be able to adopt the renewal schedules and one of the funding schemes contained within your report, but the likelihood is that you will need to make some modifications and construct your own set of plans. There are lots of reasons for this:

- Just because the engineers recommend that a project be tackled in a certain year doesn't mean that you will be able to convince three-quarters of your owners to support it. The project schedule within the report may therefore slip.
- The schedule of renewals and replacements is based upon estimates. In some instances your building's experience may prove better; in other instances, your experience may be worse. The schedule will thus always need to be adjusted.
- You may need to add projects to the plan to deal with mandated upgrades. These have probably been highlighted in your report but not included in the funding schedules.
- Each item within the inventory will have its own life expectancy calculated, but it makes sense both from a financial and logistical perspective to tackle some items as part of one project. For instance, we bundled a series of building envelope projects into one major

renewal effort. This meant that we delayed some renewals while advancing others. By so doing we saved considerable money in both engineering and access fees and the contractor was able to deploy his resources in a more efficient manner, which resulted in higher quality work at a lower overall cost.

- Opinions of probable cost are just that: opinions. When the time comes to take a project to bid, you may find substantial differences in the final cost estimates.
- Your owners will have their own ideas about the best way to raise the funds to deal with your shared obligations. You will need to get their buy-in to develop an acceptable funding scheme which may or may not coincide with the proposals contained within the report.

The Depreciation Report is thus simply your starting point. You will use it to customize your own plans. Consider it a tool, not holy writ.

Keep It Simple

As you begin the process, here are a few tips to help you keep your sanity:

- Things change. Between the time you select the company to perform your depreciation study and the arrival of the report, something new will probably have fallen apart or an unexpected problem will likely have arisen. It will always be so. While the report is one instant frozen in time, you have to deal with a dynamic situation. The depreciation report may be set in stone, but the plans that you build need to be flexible and capable of modification when required. This means that you need to set up procedures to deal with the continual changes. More about this

later. But you need to recognize that change will be your one constant. So relax and take a deep breath!

- Don't worry about the long-term – yet. In the first year, I suggest that you simply focus on the upcoming budget year and perhaps the subsequent two to three years. You will have lots of information to digest and lots of work to do to set up a framework for planning. You will also need to spend considerable time educating the owners on the issues that your building faces. As a council member, you will be busy. Once you have initial plans in place and have established the ground rules that you wish to operate by, you can extend your planning window to embrace a 10-year view and beyond. So don't fret about long-term strategic planning initially; it can probably wait.
- Stay focused on the practical. If yours is an older building, the likelihood is that you will be facing some immediate major projects. You will want to ensure that you have the appropriate action plans in place and a firm funding plan to deal with these near-term challenges. Make this your priority rather than worrying about gaining agreement on long-term funding plans.
- Bone up on Excel. You will need someone who is capable of working with Excel or some comparable spreadsheet software. With so many numbers, spread over so many years, and with so many potential changes, having someone proficient with spreadsheets will make the task of building and updating your plans much more manageable and less error-prone.

Continued on page 12

First Steps

The immediate reaction to your first depreciation study will no doubt be shock and dismay. Even assuming that your building has been well maintained and is in good condition, the sheer extent and scope of the full inventory of assets, the costs of replacement and the impact of inflation over a 30-year period will be daunting. It is important to establish goals so that the management of the report is not an overwhelming task.

Upon receipt of your first Depreciation Report you will wish to do three things:

1. Update your Maintenance Plan (or create one if you don't have one!)

We received a complete inventory of assets with our report and discovered that there were many items that we were overlooking. Routine maintenance can of course extend the life of most components. We therefore amended our maintenance plan to include these items and expanded the job description of our resident manager to ensure that these items now receive appropriate oversight.

2. Develop a Capital Plan which will lay out the schedule and scope of renewals and replacements for the building.

We knew that we had a number of major items (like the roof and elevators) that were looming in the near future, but our list was far from complete and we only had vague ideas on the likely timing and the probable cost. We adopted the engineers' assessment for both the schedule and scope, with one exception: we combined a number of separate building envelope tasks into one major project. This meant

we advanced some items and delayed others, but by so doing, we were able to save considerable costs.

3. Develop a Funding Plan that summarizes both the strata corporation's financial obligations as well as the means that will be used to raise the necessary funds.

As most stratas do, we had simply been dealing with the next budget year and did not have a long-range funding plan. We now had the details that allowed us to lay out our long-term obligations and to develop alternate funding scenarios. This, of course, is the information that will be of most interest to your owners.

In other words, you need to determine what you are going to do, when you plan to do it and how you will fund it. The Depreciation Report furnished you with the status; your plans represent your commitment on how you will address the findings in the report.

After spending so much money on a Depreciation Report, you may wonder why you need to spend more time and effort on creating plans of your own. Hasn't this job just been done for you? Not really. The report contains data. You, as a council, must decide what plans to construct with that data and what recommendations you will make to your owners. As the list above suggests, there are lots of reasons why you may not be in a position to simply adopt the project schedule within the Depreciation Report. If you are forced to modify the timetable in any way (e.g. by performing upgrades not included in the schedule), then the proposed funding plans within the Depreciation Report will also need to be revised to match.

You may be lucky and be able to plow ahead following the recommendations in your

Depreciation Report. But the likelihood is that it will prove simply to be your starting point. Implementing your plans will require a three-quarter consensus on most issues, and the time delays and changes in scope and costs to your project plans that this will entail, will quickly wreak havoc with the engineers' best thinking.

Analyzing the Report

Before you sit down with your council to begin the debate of how to proceed, it is a good idea to read the report through in its entirety a few times. Give yourself ample time to digest the information and to formulate the questions that you will naturally have. The subject matter can be highly technical and as lay people, we can easily be confused and lose sight of what's important. It makes sense to combine all your council's questions to present to the provider of your depreciation report. Their time will be limited and by respecting their constraints, you will enhance your working relationship. It is a good idea to delegate one person on council to be the liaison with your provider and to funnel your communications through that one point.

The Physical Asset Review

1. Begin by analyzing the condition assessment within the Depreciation Report to determine if immediate maintenance plans should be created to address any problem areas that have been identified. Your report may have a list of recommendations in this regard. If so, you simply need to decide whether you will embrace all those recommendations.

2. The next step is to review the list of improvements or upgrades (if any) suggested by the report and develop

Continued on page 13

an action plan. Some improvements may be required to meet current code and may therefore need immediate attention. Others may be delayed until such time as the item is replaced. Getting legal advice on the corporation's liability might be necessary.

- Some of the upgrades that are highlighted in your report may not be mandated but may simply provide operational improvements. A cost-benefit analysis can be done for these items to see if they warrant immediate action or if they can be delayed a few years.

3. Review the near-term renewal projects on the expenditure schedule and establish priorities with particular attention to the up-coming budget year.

4. Finally, consolidate all three of the above lists (maintenance, upgrades and renewals) in order to develop

a master plan for the next budget cycle. You may not be able to tackle the entire list in the timeframe required due to logistics or funding and therefore trade-offs may be necessary. In establishing priorities, consider the following:

- Are there safety risks or legal liabilities that you may incur if work is delayed?
- Will damage occur if the work is delayed and will that complicate or increase the costs of the eventual repair or replacement?

Remember, as council members, you may bear personal liability if you fail to disclose the recommendations of the engineers.

The Financial Review

You have now created a one-to-three year tactical plan with a prioritized list of all the projects that require attention within this timeframe. Your Depreciation Report will provide you with the costs of these items. You then need to assess these costs in light of

your current financial status.

The final step is to compare your funding requirements with each of the three funding scenarios proposed within the Depreciation Study. Since you may have now created an action plan that may have a new set of assumptions, the proposed funding scenarios may no longer be applicable and may require some adjustment. You may therefore need to alter one of the formulas of the proposed plans to meet the new circumstances or to develop a new scenario if your tactical plans differ significantly from the schedule outlined in the report. (More on developing your own funding plan later.)

Protocols for Managing Your Plans

After muddling through our first year, we came to realize that we would need to set some rules and put procedures in place in order to protect the integrity of the plan and to ensure transparency in its

Continued on page 15

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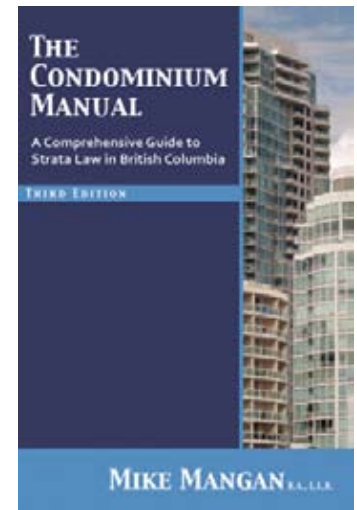
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court cases since the last edition. The third edition also provides extensive new coverage concerning repairs, lawsuits and arbitrations, and insurance and captures all significant legislative changes and court cases since 2004, when the last edition was published.

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We may have all come on different ships,
but we're in the same boat now.

— Martin Luther King Jr.

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management. We created a bylaw that added new responsibilities to council: specifically, a requirement to provide the ownership with an update of the status of the CRF plan at the Annual General Meeting. The update was to include an annual and a 10-year forecast, and was to summarize any actual work that had been performed, the date, the contractor and the final cost, as well as capturing any pertinent observations that might impact future planning. (Now that the legislation stipulates 30 years, we shall extend the 10-year timeframe.) We also stipulated in the bylaw that council was not able to eliminate any projects from the plan, and that if the estimates of probable cost were changed from those provided by the engineers, then we needed to document when, how and why the estimate had been altered and indicate who had authorized the change. We

also required that a record of the assumptions used for inflation and interest rates be maintained.

Of course what we wanted to guard against is a council deciding that a project was not necessary (“Oh, we don’t need to bother with that!”) or to arbitrarily reduce the costs (“Oh, we can get it done much cheaper than that!”) Our position is that the “Engineers Rule” until such time as we replace their opinions with actual quotes.

After further trial and error, we recognized that we needed to limit the number of people who could actually make changes to the spreadsheets. We found that we had too many hands stirring the pot, and the result was a bad case of “versionitis”. We now designate the Vice President of Building and Grounds with the responsibility of maintaining the Capital Plan (i.e. the projects, their costs and their scheduling). In addition, he is the chief historian and maintains the chronology of the changes that are made and

records the details of each project as it is completed. The Treasurer is responsible for maintaining the Funding Plan and updates it with each new version of the Capital Plan so that the two documents are kept in sync.

What does our plan look like? It consists of 2 spreadsheets and a narrative. One spreadsheet contains the Capital Plan and looks much like the expenditure schedule provided by the engineers, particularly in the outer years. The second spreadsheet shows the funding plan, with the starting balance, the annual reserve fund contribution plus any special assessments, and the interest earned, minus the capital expenditures for each year within the plan. It also shows the average reserve fund contribution by suite on a monthly and annual basis, and includes an estimate of operating fees as well. This provides owners with a precise map of their costs for the next thirty

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Editor's Page



Sandy Wagner

We are trying a few new things with this issue of the Bulletin. I'm sure you've noticed we are including photos of some of our contributors. Here is my mugshot as well.

You may also notice that the President's Report is no longer on the front page. Sometimes I'm not sure whether to call it the Editor's or President's message, as I fill both those roles. Either way, I've demoted myself to the back page – and this will also be where Letters will appear, when readers write to me.

You can reach me at editor@visoa.bc.ca - please write and tell me what you think of this issue.

The front page will now be devoted to an article of interest, instead of a report from me. What sort of articles do YOU want to see in your Bulletin? This edition, our front page article is about VISOA's volunteerism. But next issue it will be on a topic suggested by you, our members. Please write and tell me what articles you'd like to see.

We have been devoting quite a bit of space to depreciation reports, and we are following up with an article by Jan Craig advising us all on what to do with our depreciation report once it arrives. This is the second of three articles from Jan; next issue she will tell us about the depreciation funding plan.

We also have an article from Rudy Wouts on how to choose the company to prepare your depreciation report. Rudy tells us, and other companies doing this work have told us the same, that they are not getting as many calls as they expected, given that 25% of all properties in BC are strata properties. We hope you aren't all leaving it until the last minute? Your first depreciation report is due in just over a year – December 13, 2013.

We have an article from lawyer Shawn M. Smith, on rental bylaws. At the Helpline, we noticed an increase in the number of questions on rentals, so we asked Shawn to try to clarify some points for you in his clear writing style.

I'd also like to hear from you regarding advertising in your Bulletin. Currently, our advertising ratio is about 2/3 articles to 1/3 ads. Some of our advertisers are asking to run larger ads, and before we make that decision we want to know how you feel. Please let me know.

And lastly, in addition to our "You Asked" feature, which we pull from our real Helpline questions, we are considering a general Q and A column, where readers can write in with general questions and we'll publish them along with short answers. The questions have to be, first, of general interest and not specific to your strata; and secondly, they must be a question whose answer can wait a few months – keeping in mind that this bulletin is published quarterly.

If you'd like to write to me on any of the above matters – articles, ads, or questions – or any other matter – please do so. I'd be glad to hear from you.

Sandy Wagner
Board President and
Bulletin Editor

Getting the most from your depreciation report

Continued from page 15

years. The narrative concentrates on three time periods: the upcoming budget year, the next five years and the next ten. It outlines the major project plans in these three periods. While we feel it important to keep an eye out for developments in the longer term, we have decided that given the degrees of uncertainty that expand over time, we would focus our planning on the nearer term.

Lessons Learned

We are now in the process of preparing for the first update to our study. While we are much smarter about the challenges and pitfalls than we were when we innocently embarked upon this project five years ago, we are still experimenting and still learning. One of the biggest surprises for those of us on council was the amount of time that we would be spending working with the depreciation study. We were quite unprepared for the investment of time and energy that it would require. But we were even more surprised by the benefits that we have derived in having access to the data contained within the report: we are now able to make smarter decisions and we are much better prepared for our future.

This is the second in a three-part series highlighting one strata's experience in dealing with a depreciation report. Jan Craig is President of The Rockland, a 25-year old, 7-story concrete and steel building with 40 suites. In 2008, The Rockland commissioned its first depreciation report. Therefore they have had a few years head-start in learning how to manage the report and how to extract value from it.

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