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VISOA Bulletin - NOVEMBER 2014

Update on the Civil Resolution Tribunal

By Shannon Salter, CRT Chair

It is my pleasure to introduce myself as the new Chair of the Civil Resolution Tribunal (CRT). As Canada's first online tribunal, the CRT will significantly increase access to justice for British Columbians by helping them to resolve strata property and small claims disputes fairly, quickly, and affordably, ideally from the comfort of their home computer or even their mobile phone. The CRT will also empower and support citizens to use a variety of dispute resolution methods, including negotiation, facilitation, and if necessary, adjudication.

This will be especially important for strata members, because resolving disputes early and collaboratively is essential to cultivate the kind of positive and respectful environment which embodies strata living at its best.

As members of the strata community, I know that you have been waiting patiently for the CRT to open. We are working hard to implement the CRT and I want to keep you up-to-date on our progress.

First, together with other tribunals, we have been designing the CRT's dispute resolution technology platform. This process is similar to drafting blueprints for the construction of a building, and is necessary for the technology partner to be able to create a solid, well-designed CRT platform. We are in the final stages of selecting this technology partner, and the successful candidate will be expected to hit the ground running, to ensure that the CRT opens its virtual doors in 2015.

Second, this fall, the CRT will be hiring two staff members who will work hard to establish the myriad of systems and processes which help tribunals operate smoothly. We will be hiring more staff in the New Year, as the CRT gets closer to opening.

Finally, in the next few weeks, I will be launching an implementation website for the CRT, which is intended to provide helpful information about how the CRT will work and keep you informed about our progress in implementing the CRT. Equally important, the website will let you share your questions and comments with us. We are committed to making the CRT as easy-to-use and accessible as possible, and we encourage you get in touch with us through the website. I will be sure to pass along more information and

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a link to the CRT's implementation website so that you can have a look.

This summer, I have enjoyed meeting with a number of representatives of the strata community, and I have been impressed with their knowledge, enthusiasm, and support for the CRT. I would like to thank you for your assistance, and I look forward to working closely with you to implement the CRT in the coming months.

VISOA is pleased to welcome these new Business Members

See our website for more details on all our Business Members

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

YOU HAVE YOUR DR? GREAT! NOW WHERE IS YOUR PLAN, MAM?

By David Grubb

There are still plenty of stratas who insist on opting out of obtaining a Depreciation Report (DR). Some feel "The Government" has no right to dictate to them and use Section 94(3)(a) of the *Strata Property Act* (SPA) to avoid it; some feel that they are "too new" to have to bother; and some feel that they are too small to have to worry.

Some, on the other hand, wonder why opting out was even permitted in the SPA: Ontario and Alberta condo owners don't even have that option.

However, those "fiends" in the Corridors of Power in Victoria were spot on when they said, "Just wait! The market will drive this issue!" How right they were.

Financial institutions, insurance companies, Realtors and buyers who have paid attention to what is going on in the strata/condo world are now asking for those DRs. Where a strata lacks one, they start to raise questions about the appropriateness of a mortgage, or the premiums and deductibles on strata and home owners' policies, or whether to advise a client to consider even buying a unit.

In the next few years, however, it may become more evident that although stratas may have a DR, the owners don't actually have to *do* anything with it: they can just shelve it for the next three years if they choose.

So the savvy people will be asking not only for the DR, but also for what I call the strata's "Major Asset Management Plan" (MAM). The MAM is what will show what the owners are doing about the major repairs and replacements of the elements identified in the DR and how they are planning to fund them through annual maintenance, the CRF and/or special levies.

Without a MAM, banks and insurers may be reluctant to assist investors – be they current or prospective owners – and Realtors may be inclined to point out that buyers will be equally aware that there could be major known but unplanned-for expensive repairs which the current ownership has refused to do anything about. The buyers, even if they are prepared to accept the risks, will undoubtedly reduce any offer to purchase by a significant amount.

Similarities of a house and a strata lot

In determining the value of property, there are, of course, some similarities between a single house and a strata lot.

The value of a house depends on its location in a community, the size of the lot, the size of the house and the condition of the building. The first three points are significant factors of course in the overall value, but it is the last point that will often be the major determiner to any buyer as to the worth of the property. If a house has obviously been well looked after, it will command a better price. But the less that the owner has put into its repair and maintenance the less likely it is to command the best price.

A house owner has choices, therefore, when deciding on repair and maintenance requirements such as re-roofing, refurbishing the building envelope, installing new floor coverings, installing a new furnace or remodelling the kitchen or bathrooms.

In order to deal with such necessities, he can:

- Identify long term maintenance requirements for repairs, etc., and put money aside regularly to meet the major expenditures at the appropriate times;
- Get a loan or mortgage to meet an immediate need and pay it off in instalments; or
- Do nothing – or make only minor repairs – and be prepared to accept the devalued worth if he sells the house.

It is notable that regardless of what the owner chooses to do, or not do, with his house, the only one affected is himself.

In a strata, there are indeed some similarities when it comes to considering the owner's strata lot which he owns outright.

Location of the strata plan in a particular neighbourhood plays a part, but the location of the strata lot itself may also determine a value since a top floor unit with a panoramic view will likely command a better price than one on the ground floor with only a view of the parking lot. Likewise, the SPA recognizes the significance of the size of the unit since there is a greater Unit Entitlement which determines the size of the "share" the owner has in the common property and thus affects his contributions to the strata funds.

Furthermore – and perhaps more especially – if the owner takes the effort to keep his unit in pristine condition regarding upgrading the kitchen or bathroom, installing new floor coverings, etc., then the value of the strata lot is greatly enhanced.

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However, from this point on, the game changes considerably and far too many strata owners and prospective buyers fail to recognize the difference.

The comparison ends and the contrast begins:

• The strata lot, as the personal property of the owner of a freehold estate, ends half way through the walls, ceilings and floors of the unit thus creating a border with either another strata lot or the common property.

• Where the borders occur with the common property, the owner, along with all other owners, has only a *proportional undivided share* in that common property, much like owning shares in a company – the strata is called a "corporation" for a reason! So, in a 50 unit condo, aside from his strata lot the owner has – very roughly speaking – only a 1/50th share of each bit of the strata plan, whether it be the building envelope, neighbours' windows, roof, boiler, common hall carpet, grounds, driveway or even the recreation room's toilet. No one "owns" any specific part.

• The strata lot may, indeed, be your "home" (and even that has some limits): But the rest of the property is *not* your "house".

• Much of the value of your "home", therefore, is inextricably based on the value of the "house" (common property), and the better kept the "house", the more valuable the "home".

The DR is only the beginning

The DR Provider is obliged by SPA Regulation 6.2 to provide "at least 3 cash-flow funding models for the contingency reserve fund, relating to the maintenance, repair and replacement over 30 years…of the items listed [in the DR] ."

Many strata owners were under the impression that they would be able to just settle for the model that was sort of the "best of the three". When they received the report, however, they were shocked at the amount of money involved which they would have to raise especially in the next five to eight years; at the cost estimates for many components which seemed to be far too extravagant; and at the DR's recommendation that they might have to raise extra capital through special levies because the CRF wasn't nearly sufficient.

Moreover, they were frustrated that they couldn't experiment with many of the variables used by the Provider to change the amounts, the anticipated years, the separation of some projects to spread them out or the combination of others to save on bulk purchases, and even the ability to question or reject some recommendations.

For those who have read "Depreciation Reports – Now What Happens" in the VISOA publication *Depreciation Reports of BC Strata Corporations*, these questions have been addressed. For those who haven't, the answers are coming more slowly. But to summarize, the DR – except for the critical identification of all the common property and asset components – consists of the opinions of the Provider. One generally gives credit that those opinions are solidly grounded in sound knowledge and considerable experience, but that does not absolve owners from examining

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them critically to establish in their own minds the criteria the Provider used and whether they have a solid reason to differ from the Provider's opinions.

It must always be borne in mind that the Provider has taken only a day or two to physically inspect the property. It was never the intention that the inspection would go into any detail, although a good Provider will identify critical areas that call for a closer examination. Thus, the opinions expressed in the DR may be based to a large extent on "industry standards", so pricing for replacement and repair often tends to be much higher than local market conditions at the time.

A common example is the Provider's opinion that the windows all need replacement in 5 years for $80,000. He based that opinion on facts such as the windows are 35 year old aluminum frames and the "life" of these, according to "industry standard", is 40 years and that if the entire frames were replaced there would probably be associated building code, building permit and engineering costs. The owners, however, might decide not to do anything in the time frame because they can ensure that the windows are well maintained annually with caulking, etc. Moreover, rather than the installation of entirely new window frames envisaged in the DR, they might decide on "replacement windows" which fit neatly within the existing aluminum frame thus avoiding the costs of a complete replacement and reducing the expense considerably: perhaps requiring only $50,000.

What does this all mean?

As we said, "The DR is only the beginning".

There is still much truth in a dictum some attribute to Benjamin Franklin: *They who fail to plan, plan to fail.*

Working Out a MAM Plan

First, it is necessary to keep in mind that essentially, the DR is a long-range planning document. It does not have to be "accepted" in any formal fashion by the strata council or at a General Meeting since it is the "opinion" of the Provider. Even though the law requires the DR to make valuations out to 30 years, trying

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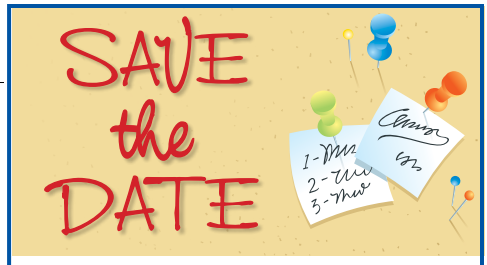

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May 24 - Courtenay
CROWN ISLE RESORT

June 28 - Victoria
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BOWEN CENTRE

November 15 - Victoria
COMFORT INN

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to estimate the cost of replacing or repairing a component beyond 10 years is crystal ball gazing. No one can predict the effects of the economy, the weather, a very good (or very poor) annual maintenance plan, changes in technology and building codes, etc.

Nevertheless, estimates for the 10 to 30 year period cannot be entirely dismissed. They will all eventually become more significant and there must be a dollar figure applied which is at the very least an *allowance* for future planning purposes that must be kept in mind for the long-range picture. Even the least of these, such as, perhaps the shelving in a storage room, requires such an allowance.

Realistically, however, businesses often plan in five year cycles and adjust the pricing of their goods and services in anticipation of generating income to meet – in part – their expected Major Asset replacement and repair costs (buildings, vehicles, machinery, etc.). This is true of a company making widgets or a rental apartment building owner when considering rental rates.

The strata corporation *is* a business and all owners must treat it as such. So they too must develop a MAM in five year cycles for at least the next 10 and possibly 15 years. The difference is, of course, that there is only one major source of income: the owners.

A DR makes it abundantly clear that owners must, at the very least, recognize what is wrong with their property and that they have an obligation to do something about it. However, owners must "tax" themselves to accomplish this, so they have to be very careful about what they can realistically fund and what might be postponed – though not ignored.

So the owners now have the task of conducting a careful analysis of every single component identified, along with the Provider's opinions, and making up their own minds as to:

1. Establishment of the *Must Do's, Should Do's and Could Do's* regardless of the timing. The roof replacement is a *Must Do* even if it is 15 years out (people don't like being permanently rained on!); refurbishing the lobby, even if it is "sooo 1980's", is a *Could Do* as long as the furniture and fixtures are in good shape (even though it enhances the property's visual appearance, people don't live in the lobby!)

2. Closer examination of *Must Do's* and perhaps *Should Do's*, especially those identified by the DR as requiring replacement in the next 1 to 5 years. This may require inspection by professionals (which will require funding in itself) to determine the actual condition of the components.

3. Determination of alternative treatments and their risks including immediate replacement (which may have options for each component - e.g. the "windows" replacement previously mentioned), as opposed to proper annual maintenance programs (e.g. regular inspection and recaulking of windows and doors or annual roof maintenance programs).

4. Preliminary current pricing estimates from well-qualified contractors on choices to determine what the "real" costs are likely to be (as opposed to the DR estimates which may be based on industry standards).

5. After considerable discussion amongst the owners, a final establishment of what will be replaced/repaired, in what year and for what estimated cost.

6. A determination of how funds are going to be raised to ensure that all the projects can be financed.

The result will be a Major Asset Management Plan. Note that, like the DR, it is a planning document. It should not have any "motion to adopt" which would force the council into a straightjacket: It should be a "living" document, reviewed annually (especially in

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conjunction with the annual budget), and generally accepted by the owners to allow for both planning purposes and flexibility.

Completing this complex process brings its "up sides" and "down sides". The up sides are that after due consideration, the owners will have a much better understanding of the components of their strata. With that knowledge, they will have been able to reduce what seemed to be an "alarming" number of "required" major replacements and repairs in a short period of time, and an "outrageously expensive" funding model recommended by the Provider, to something which might be more manageable.

The down side is that, because of "benign neglect" over the years, even those revised numbers might clearly indicate that the amount of money currently available in the CRF is pathetically low – especially if the strata has adhered to the "low strata fee" philosophy over the past many years – and that they are going to have to dig deep into their own pockets to cover the expenses they have identified as essential.

Finding the Funds – The Painful Realities

Of the three options available to a house owner (which we listed earlier) only one is readily available to the strata corporation.

Working in reverse order:

• The strata cannot "do nothing". Section 3 of the Strata Property Act requires that: *Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.* And Section 72 requires that: *the strata corporation must repair and maintain common property and common assets.*

• The strata cannot mortgage the common property. Although they may obtain a loan, there are only a few financial organizations providing them. The lenders will generally have "administrative costs" and their interest rates are much higher than those available to individuals. Moreover, there is the possibility that the lenders might attach liens against every individual strata lot. All of this has the potential to create a legal nightmare when a strata owner cannot or will not pay.

• The owners can make sure they contribute sufficient resources annually to the Contingency Reserve Fund to cover the anticipated costs. If there is insufficient funding from that source, their other recourse is to have special levies to make up any differences. At times there may be a necessity to have a combination of these two methods, and in extreme cases to have to take out a loan.

Regardless of the choices made,

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the reality is that it is the owners who must pay the entire bill one way or another.

How To Pay?

There are many who, while having recognized the need for the repairs and replacements, persist in a "pay as you go" program and prefer to raise the funds through constant special levies. Their arguments are:

• It is up to each owner to ensure they can cover such expenses one way or another, just as they should when they own a house.

Comment: That would be ideal. But the reality is that many house owners don't plan that way (as noted above) and what is more, although so many expenses are shared, many strata owners are under the false impression that the expenses will be less than those incurred in maintaining a house. That being the case, a "forced savings plan" is a better option for the majority of strata owners than their having to find the money instantaneously.

• The SPA only requires that the CRF be 25% of last year's operating budget so I don't think the CRF should be used for anything except "contingencies".

Comment: The size of the Operating Fund has almost nothing to do with the CRF as the DR so clearly demonstrates. That has been recognized in the modification implied in SPA Regulation 6.1 which states: *additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the Act.*

• I can't get my money back from the CRF when I sell so I would rather keep my money in my own investments and pay a lump sum when a project is necessary.

Comment: By what right does anyone live in a community and enjoy the common assets without paying their fair share of the anticipated upkeep? That they benefit from a solid roof, a secure building envelope, well carpeted hallways, etc. but have no intention of maintaining their own and their fellow "shareholders'" continued investment in a multimillion dollar corporation is unconscionable.

A special levy has several drawbacks:

• It may be used only for the identified project: it cannot be diverted if another emergency arises. (E.g. If $400,000 has been raised for balcony replacements, it cannot be diverted to a $300,000 re-roofing disaster which requires immediate attention.)

• Any rebates, if the project comes in under-budget, must be paid back to the individual owners (the owners cannot vote to transfer the balance to the CRF unless no one will receive more than $100). This is a mixed blessing: some will be happy getting a rebate, others would rather put it into the CRF so that the money can be used for another purpose without them having to contribute even more.

• It very often is raised over a very short period in order to handle an emergency situation which might have been avoided.

• Many people do not have the immediate resources (personal wealth, line of credit, loan, mortgage) to raise that sort of money in short order which puts them in a position which might force them to sell (often at a loss).

• Such difficulties can be aggravated if there is also a requirement to increase their contribution to the CRF (and maybe the Operating Fund) at the same time.

A strong CRF, on the other hand, has many benefits:

• Using the DR (amended every three years) for long range planning and especially the MAM as short-to-medium range flexible planning documents, contributions can be adjusted annually as some projects are completed and new ones (which have been more accurately budgeted by then) are undertaken.

• Expenditures from the CRF are flexible. Even though a MAM identifies what projects are to be carried out in any particular year, the MAM is a planning document: there is nothing in it that constitutes a decision written in stone. That money will not be spent until there is a resolution passed at an AGM or SGM for a specific purpose based on current, more accurate, estimates.

• A strong CRF also allows for flexibility in either combining projects or spreading them out to better capitalize on cost-cutting measures because there has been the opportunity to plan ahead and negotiate prices at an appropriate time.

• Moreover, if there is an emergency, the funds can be diverted from an intended purpose by a resolution in order to deal with the more critical task. Of course, other adjustments may have to be made to provide for the original (or any other) project's funding.

• Any unspent funds allocated to a particular project are simply retained

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in the CRF for use elsewhere.

• Although owners cannot receive any refunds of their contributions to the CRF when they sell their strata lot, the fact that they have made those contributions to ensure the good maintenance of the entire property enhances their "investment" as a shareholder in the strata corporation and is a positive point in the value of their strata lot since it gives a prospective buyer assurance of the prudence of the owners in planning ahead.

• Although it appears to be a "forced savings plan", it allows those who have limited funding resources to plan the appropriate management of their finances. This is especially important for those who may not be able to raise money in a hurry to meet what should have been a foreseen expenditure in the first place. They will have already paid for the project before it occurs.

• Accumulated interest is non-taxable for most residential strata corporations (mixed use stratas and those who have some commercial activity such as rental of extra parking spaces may not qualify).

• Even if a special levy is required for a very substantial project (say a complete redesign of the building envelope) it might be foreseen as a final adjunct to funds already raised for several years in the CRF. This would lessen the amount to be raised, allowing owners to plan their own finances, while retaining the CRF's flexibility as needed if changes are identified in subsequent DRs or MAMs.

Many years ago there was a TV advertisement for an inexpensive Fram Oil Filter. An owner would not maintain his vehicle with regular oil changes which would include a new filter. Eventually the engine seized forcing the owner to buy a new engine. At the end of the ad, the mechanic says: "You can pay me now, or pay me later!"

How much more applicable is this to stratas?

All owners in a strata lose some of their individual rights to self-determination where the common property and assets are concerned. But in doing so, they owe, and are owed, the assurances that the property and assets are being properly maintained and that they must contribute to that maintenance – even if a particular part seems to be, or not to be, for their personal enjoyment.

The best way to guarantee those assurances is to plan ahead, through the consideration of the depreciation report and the development and constant monitoring of a Major Asset Management Plan which goes a long way to preparing to meet the financial obligations entailed in that maintenance.

The response to Franklin's dire dictum: *An ounce of prevention is worth a pound of cure!*

A Big Thank You to all VISOA's volunteers:

Alice Blasutig	Elizabeth Chase	Marlyne Smith
Ann Scott	Elsie Lockert	Martina McComb
Barbara Zimmer	Gloria Martins	Mike Dennison
Betty Taylor	Jen Nemeth	Nancy Stewart
Bev Grubb	Jill Davies	Pat Chern
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Diana Marsh	Malcolm Watkins	Sheri Hall
Diane Runnals	Margaret Lounds	Tony Davis
Don Luke	Marion Davis	Nico Lohman
		Lu Den

Why Every Strata Needs An Online Storage Solution For Its Records And Documents

By Carla Cacovic

If you're on a strata council, you likely know how easy it is to accumulate documents. Some are important records you need to safeguard; others just feel important. But they all need a home. Where do you store yours?

As a council member, you are responsible for the organization and accuracy of day-to-day records – which may include bank accounts, legal documents, depreciation reports, contracts with vendors, tax records and more (See Strata Property Act – Section 35). As a council member, you also have a responsibility to owners. Owners have the right to request and see – minus a few exceptions – most of your strata corporation's records (See Strata Property Act – Section 36).

Often, council members employ management companies to keep these records, or one member may store them on his personal computer.

And although we hate to think about it, sometimes, bad things happen. A fire destroys your building. A winter storm floods your neighbourhood. A council member dies. A council member moves to another province. An argument ensues between members.

When such events happen, property owners may find themselves scrambling to find important records – such as insurance documents. Records can, and often do, become temporarily (or in some cases, permanently) lost – adding stress to an already difficult situation.

An online storage solution can help strata councils prepare for emergencies and unforeseen events. It also helps in their adherence to provincial laws by ensuring sensitive legal documents are easily accessible and centrally located. And, it helps ease the transition for council members at election time.

When it comes to document storage solutions, many options are available. Some councils hire property managers who maintain and store files; others research and sign up for cloud storage; and many sign up with companies, like eStrata, who offer web-based strata solutions (including permission-based document storage and email notifiers when documents are uploaded).

Though it sounds weather-related, the term "cloud storage" actually refers to saving data to an off-site storage facility maintained by a third party. Instead of storing information to your computer's hard drive or to a local storage device, you save it to a remote database. Many services store data to the cloud, including email hosting, webmail services like Gmail and Hotmail and file storage services like Google Drive and Dropbox.

Cloud service providers don't always say where their servers are located. The location of data can change, and backups are usually stored at multiple locations. PIPA does not require private institutions to use BC or Canadian based servers to store their data (documents or emails), but if you opt to use cloud storage, you may want to notify residents, ensure adequate safeguards are in place, and look for a service provider that is deemed safe and that has strict security protocols.

Carla Cacovic is Partner and Director of Sales with eStrata.ca and can be reached at 250-414-2208. eStrata is a Service of Adedia Inc.

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. Questions may be rephrased to conceal the identity of the questioner and to improve clarity when necessary. We do not provide legal advice, and our answers should not be construed as such. However, we may and often will advise you to seek legal advice.

Who Should Maintain Dryer Vents And Hot Water Tanks?

Q:

We are in the process of adapting the VISOA residence manual to fit our Strata. As we adapt the section on Strata responsibilities for maintenance we have some questions.

Under "Vents and Exhausts" we feel cleaning should be the responsibility of the owners as several owners over the years have changed the Dryer exhaust vents to be much shorter and more direct, thus making it owner installed rather than that of the Developer.

Also, as all Hot Water tanks have been replaced over the years by the owners, should these now be their responsibility? We as Council keep track of how old the tanks are and require the owner to replace them if they are over a certain age. Recently six owners replaced their tanks at their own expense.

A:

Provided that you have appropriate bylaws, it might be argued that the owners who have rerouted their dryer vents can now be held responsible for their repair and maintenance rather than the strata corporation since it might appear that these ducts are not the "original fixtures" installed by the owner/developer and therefore no longer "insurable" under SPA s.149.

On the other hand, the definition of "common property" in the SPA includes the following:

*"**common property**" means*
(a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
*(b) pipes, wires, cables, chutes, **ducts** and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located*
*(i) **within a floor, wall or ceiling that forms a boundary***
(A) between a strata lot and another strata lot,
*(B) **between a strata lot and the common property**, or*
(C) between a strata lot or common property and another parcel of land

Note that there is no reference to when the duct was installed nor by whom.

The reality is that, regardless of any relocation, the duct exits the building to the exterior and it therefore is "located between a strata lot and the common property". So it can be equally argued that it remains as common property, which is the responsibility of the strata to repair and maintain under SPA s.72(1).

Your strata is an older one so I assume that you have made many amendments to your bylaws over the years and perhaps you now have such bylaws which place a heavier emphasis on an owner seeking written permission to alter both the strata lot and common property (other than what must be dealt with under SPA s.71) including indemnity agreements. But in the past, under the old *Condominium Act*, such permission was not required, so for many older stratas it has been a matter of playing "catch up" in the bylaws to cover such alterations for which the strata has no records.

Nevertheless, you are still facing a significant issue with respect to the well-documented fact of dryer vents being one of the major causes of fires in all sorts of buildings - houses, townhouses and apartment buildings - throughout North America. The strata corporation must insure the buildings.

Since the internal connection of the dryer to the fixed vent in the wall that exits to the outside of the building might be identified as being the responsibility of the owner while the fixed vent itself might be identified as the responsibility of strata, you might develop a bylaw which covers the responsibility of the owner vs. the strata corporation for the maintenance and repair of each segment. That way, during the annual inspection and cleaning, any maintenance or repair/replacement can be directed to the owner or the council as appropriate.

On the other hand, you might consider SPA 72(3) which states: *(3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.*

It might therefore be worthwhile to pass a bylaw which stipulates that

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the strata corporation must have all dryer vents and ducts professionally inspected and cleaned annually and the payment for such service must be included in the annual operating budget. By doing so, the strata can control the timing and quality of the service. Moreover, this makes good common sense and it is a valuable factor which could positively affect your insurance.

Likewise, with the hot water tanks. I congratulate your owners over the years for your tracking and replacement policy and trust that it is not just a policy but a bylaw in order for it to be enforceable. However, even though the developer installed the fixture, it has always been the owner's responsibility to maintain and repair, which includes replacement (just as a leaky toilet, a rusted out sink, a faulty ceiling light fixture or a baseboard heater would be the owner's responsibility to replace) since these fixtures are part of the strata lot, not the common property.

Where the confusion may lie is in the "responsibility to insure" under SPA s.149. If the original tank leaked, or if it were damaged through some other incident (earthquake, fire, etc.), and an insurance claim resulted, then the strata's insurance policy would probably cover the replacement.

Whether owner initiated or the result of an "Accident", no matter why a new tank is installed, once replaced the maintenance and repair would still be the responsibility of the owner, but would no longer be insured under the strata's policy. Moreover, in the event of another external catastrophe which damaged the tank, if that owner had installed an "upgraded" tank, the strata's insurance policy would cover only a replacement of a tank of similar capacity and quality as the one installed by the developer.

[I won't go into how to handle repairs when the costs are less than insurance policy deductible and the owner can be held liable for the damage and sued under SPA s.158(2)]. Although it is a corollary, that topic needs to be discussed with a lawyer and your insurance agent.)

Once again, I hope that you have a bylaw (not just a policy) which requires the strata corporation to keep records of the age of the tanks, perhaps to have them professionally inspected at a specific time prior to their stated "expiry" date, and to mandate that the owner replace the tank either at the expiry date or at such other time as required by council.

As an alternative to all this bookkeeping, some stratas, again using SPA s.72(3), inspect and replace all their tanks at one time. In addition to ensuring protection of the strata as a whole, replacement can be done "in bulk" at far less cost and can be planned for and included as an expenditure every 8 years in the Depreciation Report and Major Asset Management Plan.

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YOUR PAGE

Letters to VISOA

Dear VISOA:

I have become an individual member recently. I became a member because your organization provides a most valuable service to all levels of strata participation. I was most impressed by the assistance that Evelyn provided at the office.

Keep up your valuable work,
Mr. A. F., Victoria

Dear Mr. A. F.:

Thanks for your kind words about our organization and we are glad to hear you are finding it useful. And thanks for recognizing our office administrator Evelyn! We agree she is a gem!

Email us at editor@visoa.bc.ca
Write us at:
306 - 620 View Street, Victoria BC V8W 1J6
Please include your name, strata number and telephone number. Letters and emails may be published on-line.

Privacy Matters

The Personal Information Protection Act (PIPA) applies to everyone in BC, strata owners and others. Since its passage in 2003 and coming into force in 2004, VISOA has noted that some of the provisions of the PIPA are having unintended adverse affects on transparency and accountability in BC strata corporations. A Special Committee of government will be reviewing the ten-year-old PIPA and we brought your concerns to the Committee.

THE MAIN CONCERNS BROUGHT FORWARD WERE THESE:

• Strata owners are denied access to information under the guise of "privacy". Sections 35 and 36 of the Strata Property Act are quite clear about specific information that strata owners are entitled to, but strata councils (whether deliberately or through misunderstanding the PIPA) sometimes deny owners' requests. VISOA recommended to the Committee that the PIPA should specifically identify SPA s.35-36 as being exempt from PIPA.

• Strata council minutes omit important information for fear of violating the PIPA. When faced with the choice between violating SPA s.35-36 (which has no penalties) or non-compliance with PIPA (which can carry significant penalties) strata councils are becoming less transparent and accountable. Information which could affect a strata lot's sale is not always visible in the minutes.

• There is no "Freedom of Information" enforcement mechanism for strata owners who are denied the information to which they are entitled. The Office of the Information and Privacy Commissioner, when contacted by an owner, can only advise the strata council that specific information *may* be supplied. We hope this can be expanded to include an order that the documents or information *must* be supplied.

We gave the PIPA Review Committee many specific examples of strata councils and strata managers withholding information under the guise of "privacy" and we hope that these real examples will show the unintended adverse affects highlighted above. The Committee will be considering submissions from VISOA and other stakeholder groups in the months ahead and we will keep you informed of any changes to the legislation.

This is a regular column, where we will answer your questions on privacy-related matters on your strata. If you have any questions email us at editor@visoa.bc.ca

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YOU ASKED – Why Sign An Indemnity Agreement?

Q:

My strata corporation is demanding that, before I renovate my kitchen including new sink and taps, I sign an indemnity agreement which a future purchaser must also sign.

It seems that it may be viewed as an encumbrance by a future purchaser to be asked to be a signatory to an agreement made by a previous owner who has done nothing more than to upgrade his property. There are already enough rules and regulations hampering the sale of condominium properties without adding another layer.

I have already purchased an insurance to cover "betterments" so what on earth can the purpose be of an indemnity agreement in a circumstance like this?

A:

While the owner is responsible for the repair and maintenance of his strata lot, which includes such things as replacement of sink and taps, there is also the matter of what the strata corporation must insure.

In accordance with SPA s.149, the strata must obtain insurance on *(d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.* That includes plumbing fixtures such as the original toilets, sinks, bath tubs, etc.

When an owner replaces such a fixture the strata does not have to insure it and they need notification of the change. Moreover, the strata has no control over the installation of such fixtures. So if the new fixture is of poor quality or the installation is improperly done and leaks result, the strata should not be burdened with the expenses related to the resultant damages. Even then, it is the strata's insurance (less the deductible if the proper bylaws are in place to enforce SPA s.158(2)) which pays if the damage extends to the structure of the building, etc.

Since the SPA is not very clear on these matters, and considering that it is unfair to have your neighbours pick up the tab for the consequences of poor installation and replacement of your renos - or conversely, for very expensive fixtures which the strata should not be required to replace where insurance is concerned (hence the need for your own additional coverage for improvements) - many stratas have adopted the requirement that when there are any alterations to a strata lot involving original fixtures (including renovations involving any fixtures - floor coverings, counter tops, toilets, sinks, etc.), the owner must sign an indemnity agreement whereby the owner, and his successors in ownership, are responsible for the installation, maintenance, etc.

It is becoming more significant now with the advent of the strata having to have a depreciation report, since that report must include not only the common property, but those fixtures in a strata lot which the strata may have some responsibility for.

As for future purchasers, I am not sure that the strata can require that they sign such an agreement, but if the agreement is properly written and the bylaws are as well, the agreement is attached permanently to the strata lot file and must be included with Form B, sub-para (c) when the strata lot is sold.

(c) Are there any agreements under which the owner of the strata lot described above takes responsibility for expenses relating to alterations to the strata lot, the common property or the common assets?

❒ *no* ❒ *yes [attach copy of all agreements]*

Thus the prospective buyer should be fully informed before making the purchase.

There are so many changes in strata living (including an exponential growth especially in the Lower Mainland and Greater Victoria), even in the last 10 years, which were never contemplated by the creators of the SPA. These changes have required strata corporations to take measures to protect themselves through additional complex bylaws including items such as requiring the indemnity agreement.

You Asked – Can An Owner Be Evicted?

Q:

I am looking for my first home and am considering a strata apartment. But I just read about a man in Vancouver who was evicted from his condo, and that scares me because the strata corporation is selling his home out from under him! What do I need to know about it?

A:

The case in question was a long-running dispute over parking. The gentleman had consistently parked in a stall reserved for guests, and would not pay his fines; in addition he frequently went to court with the strata over the parking issue.

As a potential strata owner, you first need to understand why stratas have bylaws - for the most part they are there to ensure the property runs smoothly. Bylaws are not meant to be

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a source of income (fines) for the strata corporation - the objective of bylaw enforcement is to have the offending owner change their behaviour, not to "cash in" by collecting fines.

In considering a strata purchase, it is crucial that you review the bylaws of the strata before your offer is final, and make sure you can live with them. If, for example, there is a "No Pets" bylaw, then don't think you can sneak Fluffy in, or that an exception can be made. If any of the bylaws are a deal-breaker...then don't buy in that complex. It's that simple.

On the other hand, once you are an owner you may find support among your fellow owners for changing a bylaw. A petition of 20% of the owners requires the strata council to call a Special General Meeting to vote for a proposed bylaw amendment. At that SGM, though, it takes 3/4 of those attending (in person or by proxy) to change a bylaw. Be aware, though: Regardless of the result, it is a democratic process which strata owners must accept.

Similarly, a bylaw could be passed that you just can't live with. If support to change the bylaw cannot be gained and you are in the minority, it may be time to consider moving. (There are a few cases where owners can be "grandfathered". For example, a new "no pets" bylaw is not applicable to pets in residence at the time the bylaw is passed.)

In the Vancouver-area case, the parking stall was problematic because of a bylaw revision, legally passed, forbidding owners from parking their vehicles in "Guest" stalls. The affected owner disagreed with the bylaw, but because it was properly voted, passed and registered he had no choice but to abide by it.

The moral of the story?

Be sure you can live with the strata's bylaws before you buy, and be sure you can live in a democratic society where you may not always get your own way.

You Asked – How Are Bills Divided In Bare Land Stratas?

Q:

My husband and I are looking at purchasing a home in a bare land strata.

We understand that the road is common property as are the services: sewer, lights, etc. Could you tell us, if there is a major sewer problem on the BLS, how would the situation typically get resolved?

Are the owners in the BLS responsible for contacting the appropriate authorities/contractors to fix the problem and then, how is payment handled? For instance, if the bill was $125,000 how is payment (from 6 owners) collected – are we all invoiced individually? What if one owner cannot pay?

A:

You are smart to ask lots of questions before buying a bare land strata home. Unless the developer has some other long-term contracts or agreements that are still valid, the strata council is responsible for any repairs to common property. In a strata of 6 units, each unit has one representative on council and one vote for any repairs. The bill is almost always divided evenly in a BLS (not evenly divided in other types of stratas).

It is the strata as a whole which pays the bill; not individual invoices. Each owner contributes in one of two ways. The first is a "special assessment" – each owner writes a cheque to the strata corporation, which can be used only for the purpose intended, and a single strata corporation cheque issued for payment. The other possibility is to use the Contingency Reserve Fund (CRF) if each owner has been contributing enough all along to the CRF to pay for the project without special assessment. The second is regrettably uncommon in a bare land strata, as there are few BLS who have large enough monthly strata fees to build up any sort of CRF. In the case of a special assessment, and one owner couldn't pay their share, the strata would have to resort to legal means to collect it from them.

If you are considering buying any strata (bare land or not) you should ask about the size of the Contingency Reserve Fund, and ask to see the Depreciation Report (DR). Many bare land stratas don't have a DR, but if they do it will identify all common property; estimate the future date and cost for its replacement; and offer various funding models to show how the strata might pay for them. The reason most bare land stratas don't have a DR, is they don't "get it" that the roads/sewers/etc will have to be replaced "some time in the future".

You Asked – What To Do About Pot Smoking Neighbours?

Q:

The neighbours directly next to me smoke pot on a regular basis – it is in the privacy of their unit but with windows open there is a non-stop stink coming into my home. The only solution, according to my strata council, is to close my patio door and stay inside! I can't believe I have to live like this and not enjoy my beautiful patio, which overlooks ponds and beautiful trees. Is there nothing that I can do?

A:

Strata owners have a right to enjoy their property without unreasonable interference from another owner.

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You should write a complaint to the strata council stating that the occupants of unit X are contravening Standard Bylaw 3 (or your strata's equivalent):

Use of property

3 *(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that*

(a) causes a nuisance or hazard to another person,

(b) causes unreasonable noise,

(c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

(d) is illegal, or

(e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

The first step in solving the problem should be a request from the council to the other owners, asking them to shut their windows when smoking. You can remind the council that they must enforce the bylaws as ordered by SPA s.26:

Council exercises powers and performs duties of strata corporation

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

In addition, you may have to phone the police to register complaints. It may not be a high priority but they will pay the neighbors a visit.

You Asked – What Are the Rules for Automatic Debits?

Q:

My strata wants all owners to sign a form giving the management company authorization to take money out of our personal bank accounts "as invoiced". We already have a signed form for our monthly strata fees but this new form would be for fines or special levies. Is this permitted?

A:

We checked with several local management companies and none of them use pre-authorized withdrawal for fines or levies. Only monthly fees are most often handled this way. The signed forms must specify the exact monthly amount and are retained by the managing broker for audit purposes. The owner must be informed prior to any change to the amount such as an increase after the annual budget has been passed.

A separate form for a single pre-authorized withdrawal could be drawn up for your signature, for a one-time expense such as a special levy – but it would be a large administrative task to coordinate, and so would be unlikely to occur. Most strata managers simply issue an invoice with a request for a cheque.

As for a requirement that you sign an "all-encompassing pre-authorized withdrawal" form - if the strata wishes to handle fines and levies this way, there should be a bylaw on file permitting such an action. There is nothing in the *Strata Property Act* to prohibit this, however it strikes us as most unusual.

If you have no bylaw on file, the answer is to refuse to give the authorization.

You Asked – Who is Responsible for Repairing Skylights?

Q:

We moved into a townhouse and noticed immediately a draft coming from the skylight. Upon questioning other residents, we were told that they too experienced this problem, but had to fix the problem themselves, as it was "not the responsibility of the strata corporation."

I believe this is wrong. Our bylaws state quite specifically that "the strata corporation must repair the following, no matter how often the repair or maintenance ordinarily occurs:

(D) doors, windows, skylights, on the exterior of a building or that front on the common property;"

Am I correct in my assumption, or do I have to pay a contractor to repair the skylight in order to stop this draught?

A:

You are correct. As you indicate, since it seems that your strata has not amended the bylaws in this respect, Standard Bylaw (SB) 8 requires the strata corporation to repair the skylights regardless of whether they are considered part of the limited common property [SB 8(c)(ii)(D)] or the strata lot [SB 8(d)(iv)].

The only exception might be if a skylight has been installed by an owner under SB 5 (Obtain approval before altering a strata lot) or SB 6 (Obtain approval before altering common property), where "the strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration". This may include a requirement for the owner to sign an indemnity agreement which might also cover repair, maintenance and insurance, and which could adhere to any subsequent owner.

If this were the case in your unit, you should have received a copy of the Indemnity Agreement as an attachment to the Form B when you made the offer to purchase.

Working for Properly Built Homes

by Deryk Norton, VISOA Board Member

Canadians for Properly Built Homes (CPBH) is a national non profit organization now celebrating its 10th anniversary in working for new home buyers, including buyers in BC. It is the only organization of its kind in Canada. Since 2004 CPBH has been working to ensure healthy, safe, durable and energy efficient residential housing. Its mission is to:

- Increase consumer awareness of residential building industry standards and regulations and related issues;

- Work with municipal, provincial, territorial and federal governments to promote greater consumer protection legislation and better standards and practices in relation to the residential housing industry in Canada; and

- Influence positive changes in residential building codes across Canada.

While there are good builders in Canada, there are also marginal builders and poor builders. Currently there is no reliable, objective means of knowing who the good builders are. CPBH has found that across Canada there is more consumer protection for an electrical appliance than there is for a newly built home.

The purchase of a home is the largest investment made by most Canadians. Construction defects, inadequate inspections and inadequate new home warranties make it a gamble for too many purchasers. Although there are variations between provinces, many Canadians live in homes that do not meet the minimum health and safety standards set in building codes, as local inspectors are often not enforcing these codes. Often homeowners are fearful of speaking up about such problems due to the litigious nature of some builders or the fear of negatively influencing their home's resale value. Furthermore, homeowner insurance policies generally exclude claims resulting from defective construction.

CPBH has been successful in drawing the attention of media and the construction industry to the need for better construction standards. The most frequent construction defect reported to CPBH is Heating, Ventilation and Air-Conditioning (HVAC). CTV's W5 exposed the HVAC problem in a segment that first aired in March 2012, which was the impetus for the Canadian HVAC industry to step up and support CPBH to protect consumers by raising the bar in HVAC design, implementation and inspection.

CPBH operates strictly as a volunteer effort, and has approximately 40 volunteers in different parts of Canada. It receives no government funding and counts on donations from consumers to cover its operating costs. CPBH volunteers travel to BC and other provinces, as their budget permits, to gather information, establish relationships and conduct their business.

Most recently, two CPBH board members traveled to Vancouver in July 2014, and met with key BC stakeholders, including VISOA. Four of CPBH's Advisors are from BC: Alvin Epps, John Grasty, Martin Martens, and Neil McManus. It is important to strata buyers that CPBH continue to advocate for buyers of new homes. In BC over 80% of all new homes are strata properties or condominiums.

You can learn more about CPBH at their website www.canadiansforproperlybuilthomes.com There you can sign up for a free e-mail newsletter and arrange to follow CPBH on Twitter, and provide feedback on your warranty experience.

President's Report

Sandy Wagner

This issue of the Bulletin has several "You Asked" – many more than usual. We try to include one or two "You Asked" in each Bulletin, but recently we have received so many interesting questions that we wanted to include as many as possible. Two are from non-members – prospective strata purchasers – and their questions are very timely and apply to current strata owners as well. We hope you enjoy reading these columns.

Speaking of prospective strata owners, part of VISOA's mandate in our Constitution and Statement of Purpose is: "To promote strata living as a desirable way of life." Over the last few years, we have sent speakers to various groups, and presented a short workshop entitled "Is Strata Living Right For You?" Because of our presentation, although it wasn't our initial intention, we "convinced" some people that strata life is NOT for them. In our 2015 fiscal year we hope to present these workshops in a larger more public forum and so in our budget we will be asking your approval to expend funds for at least one seminar or workshop, open to non-members only, on this very topic. We are telling you about this so far in advance so you have time to consider it – a seminar for non-members seems counter-intuitive as a use of members' funds. However, for those who don't understand the realities of strata life and would become unhappy strata owners, we feel it is important to give them the information so they may make the choice NOT to purchase a strata home. More importantly, though, we believe that potential purchasers who have good information to make informed decisions will choose a particular strata for the right reasons and become positive owners who will make a constructive and effective contribution to their condo community.

You have no doubt noticed our cover story – an update on the Civil Resolution Tribunal by the newly-appointed Chair, Shannon Salter. It does seem as though we have been giving you updates for quite some time, saying the CRT will be here "soon" – and we hope you haven't given up waiting. Even given the immense difficulties of melding entirely new "online" computer technology with the complexities of both Strata and Small Claims law, Ms. Salter is determined that the CRT will open their (virtual) doors in 2015. Both VISOA's David Grubb and I are members of a strata working group which is assisting Ms. Salter to help get the CRT up and functioning as soon as possible. We will keep you informed, through Ms. Salter, as the opening date approaches.

In other news, VISOA reps recently met with the BC Seniors Advocate, Isobel McKenzie, who has been on a lengthy listening tour of the province meeting seniors and hearing their concerns. We passed along strata-specific issues raised by our members and Ms. McKenzie, a former strata owner, was most receptive.

Finally, I wanted to share a short news story from the past which I thought would be a good illustration for those among you who may be new strata councilors, perhaps afraid of making a mistake in some of your strata corporation decision-making. In 1980, Texaco began drilling for oil from a new rig in the middle of a 1300 acre lake in Louisiana, Lake Peigneur. All the water drained from the lake, sucking eight tugboats, nine barges, a mobile home, and two oil rigs into the abandoned salt mine beneath the lake. Texaco, in hindsight, may have felt that the moral of the story was "Check Before You Dig!" But for strata councilors, the moral is still "exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances" (SPA s. 31a) and don't be overly worried about disaster striking. Chances are, you'll do just fine.

As always, if you have any comments for us, do email me at president@visoa.bc.ca

Sandy Wagner,
VISOA Board President

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