

## VISOA Bulletin - NOVEMBER 2015

# Proposed Amendment to the Strata Property Act

*By Sandy Wagner*

On October 8, 2015, the following press release was issued by BC's Ministry of Natural Gas Development and Responsible for Housing, the ministry which oversees the Strata Property Act:

*A proposed change to the Strata Property Act will make it easier for owners to terminate a strata corporation by lowering the voting threshold from unanimous to 80%.*

*Owners may wish to terminate their strata corporation for several reasons. As older strata corporations reach the end of their life cycle, major building and common property components start to fail, resulting in expensive repair bills. In some*

*cases, strata owners want to sell the property to a developer who can put it to better or more profitable uses. For example, strata members living in a low-rise building on a large property may see the opportunity to have the land redeveloped into a larger building with more units.*

*Currently, a unanimous vote is needed to terminate a strata corporation. The proposed changes would allow termination by an 80% vote of all the owners, making it easier for a majority of owners to terminate their strata corporation, if they decide it's in their best interests.*

*In developing these proposed changes, the provincial govern-*

*ment consulted extensively with the British Columbia Law Institute Strata Property Law Project Committee, which includes: expert strata lawyers; representation from the Urban Development Institute, and the two major strata associations: the Condominium Home Owners Association and the Vancouver Island Strata Owners Association.*

*In 2014, the provincial government asked the BC Law Institute to review strata termination requirements. The proposed changes to the Strata Property Act are based on the BC Law Institute's recommendation to government and are widely supported.*

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The proposed changes may well have passed into law by the time you read this Bulletin. This is a significant change to the SPA. (Bill 40 – 2015)

Strata owners faced with the expense of significant renewals to aging buildings, versus what could be attractive monetary incentives from potential redevelopment of the site will now have a streamlined and well-balanced termination process. The chance of unanimous support was slim, but the proposed new process does give protection to dissenting owners and other registered chargeholders by requiring that the strata apply for a court order to authorize termination after achieving the 80 percent supermajority support.

As VISOA's representative on the BC Law Institute's Strata Property Law Project, I am proud to support this legislation.

Sandy Wagner  
VISOA President

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# 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.



David Grubb

## What Are The Rules On Unapproved Expenditures?

**Q:**

Our strata has a bylaw permitting council to spend up to 5% of our annual operating budget on unapproved expenditures. In our case, that 5% amounts to just over \$24,000. We recently had several

breakdowns in our common area washing machines – they are all over twenty years old and certainly showing their age. We had a chance to purchase several replacement washers for a total of \$9,000 and as we are nearing the end of the fiscal year and have that money to spare, we made the purchase. Now some of the owners are saying council had no authority to spend that much money without their vote. Can you tell us what the rules are?

**A:**

The SPA s.98 specifies how unapproved expenditures are to be handled, but admittedly can be hard to understand.

### 98 Unapproved expenditures

(1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.

(2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is

(a) less than the amount set out in the bylaws, or

(b) if the bylaws are silent as to the amount, less than \$2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

(3) The expenditure may be made out of the

operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

(4) A bylaw setting out an amount for the purposes of subsection (2) (a) may set out further conditions for, or limitations on, any expenditures under that provision.

(5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

(6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3).

The operating budget is what has been budgeted at the AGM for common expenses that usually occur either once a year or more often than once a year. This should be based on the regular expenditures which occur annually such as hydro, water, insurance, regular maintenance, janitorial work, etc. This can all be anticipated by looking at the last two or three years' actual budget expenditures, and calculating possible increases (e.g. to hydro, water, insurance, etc.). All those anticipated regular expenditures are tallied for a total. That is your annual operating budget, and you obtain the income to pay for those expenditures through each owner's annual contribution to the operating account based on unit entitlement. At the end of the fiscal year, any operating surplus should either be transferred to the CRF (recommended) or used to reduce the amount of strata fees for the year (see SPA s.105). Surplus funds should not be left in the operating account without a purpose since they become a temptation to the council to use as a "slush fund" under the guise of "necessary expenditure" in accordance with SPA s.98.

One appropriate use for a prior year surplus would be for items which will have to be paid "in full" before there are sufficient funds accumulated in the operating account at the beginning of the fiscal year.

*Continued on page 4*

An example of this would be the insurance premium which often comes in at that time and stratas like to pay the full amount to avoid any interest penalties.

You will note, however, that there should be a clear identification of the purpose of any surplus funds, just as there is for any other category of expenditure. It should not be left simply for “discretionary use” of the council.

Section 98, in my opinion, was put in place in order to give council a little “wriggle room” in case something important arose which couldn’t have been anticipated in the budget.

Quite obviously, s.98(3) deals with emergencies which must be taken care of for the safety and security of the building and therefore permits council to automatically spend funds from the operating fund (if there are sufficient funds) or the CRF.

Section 98(2) is slightly different in that it allows council to spend money annually up to a limited amount from the operating fund only. The intent, as far as I am concerned, is that such expenditures are for relatively minor items since the subsection indicates either \$2,000 or 5% of the operating budget (even though the strata may change that in their bylaws). \$2,000 is 5% of a \$40,000 operating budget which indicates a strata with very few expenses - perhaps a modest sized townhouse complex. But possibly

the owners might want to increase it - say to \$5,000 - through a bylaw to allow council a little more latitude considering the current cost of living.

Note that regardless of the amount, that money is *not* in the annual budgeted operating funds. It would be in addition to those funds, or at best, an expenditure which can be covered in the operating budget by foregoing other expenditures which were previously identified (including any surplus funds whose purpose was identified in the budget as I indicated above).

Your bylaw which has resulted in potential expenditures up to \$24,000 annually (presumably 5% of a \$480,000 annual operating budget) seems excessive. If there is a genuine need for a large expenditure that is not essential, the council should call an SGM to discuss it and get approval for an appropriate amount from the CRF.

As to the expenditure for the laundry equipment, as stated above, the intention of SPA s.98 is to provide some “wriggle room” within budget lines – not for the purchase of previously unanticipated articles. You must also read SPA s.82 to understand this distinction:

### **82 Acquisition and disposal of personal property by strata corporation**

- (1) The strata corporation may acquire personal property for the use of the strata corporation.
- (2) The strata corporation may sell, lease, mortgage or otherwise dispose of personal property.
- (3) The strata corporation must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting of an acquisition or disposal of personal property if the personal property has a market value of more than
  - (a) an amount set out in the bylaws, or
  - (b) \$1,000, if the bylaws are silent as to the amount.
- (4) This section does not apply to the acquisition or disposal of an investment instrument referred to in section 95 (2).

The laundry equipment is, in fact, a common asset which, in the “definitions” section of the SPA, includes “personal property”:

Continued on page 5

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“common asset” means

(a) personal property held by or on behalf of a strata corporation...

Therefore the new washers should not have been purchased under your unapproved expenditures bylaw. As you now realize, that bylaw, read in conjunction with both SPA s.82 and s.98(2), is for expenses which might have been included in the regularly budgeted items except they were unanticipated.

In order to put the strata back into conformity with the SPA, I would suggest that you call an SGM, explain the dilemma your misunderstanding places the council in, and ask the owners to ratify the \$9,000 expense with a 3/4 vote.

**YOU ASKED:**

These questions, both on Form B, were answered by David Grubb.

**How Much Financial Information Should We Give Out?**

**Q:**

As Secretary of my strata, I am responsible for supplying Form B's and other documents when units sell. When we receive a request for financial information with regards to the sale of a property within our Strata, we normally supply the information as requested in Form B, and a copy of our budget (one sheet), as approved at the last AGM.

We now have a request from a realtor for Financial Statements. Isn't what I have supplied

sufficient? We have monthly strata fees as income, and cheques are written for our expenses. Where in the *Strata Property Act* may I find the requirements on this type of information distribution?

**A:**

The information you ask for is covered in SPA s.36 and therefore also, s.35.

You should note that a Realtor cannot demand anything unless the selling owner has given them written authority to do so in accordance with SPA s.36(1)(c). Council is entitled to see such authority before releasing any information, and normally, this is a courtesy, but the seller's Realtor should be taking care of these details.

Although the strata corporation must retain a lot of financial information, and you don't state what specific financial information the Realtor is asking for, I would suggest that you give him the last year's financial statement as presented at the AGM, and possibly statements for a couple of years before that if they ask for them (council must keep such information for at least six years).

If they ask for copies of deposited cheques, I would say No because there is likely to be a privacy issue. However, they might ask for bank statements (as reconciliations), which would be legitimate.

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Please be aware also that, under SPA s.36(4), you are entitled to charge a fee - in advance - of up to 25 cents per page for copies of any documents, and this including photocopying to a “thumb drive”.

## How To Explain Our CRF Clearly?

### Q:

Our CRF was wiped out by a perimeter drain failure two years ago and we have only a minimal amount in the CRF account now. As we have an excellent DR, we have a 5-year Long Term Maintenance Plan and asked the Owners to approved all of Year One at the AGM as part of the Budget, \$44,000 worth. It was passed unanimously. However, we only collect around \$3,000 a month in CRF contributions. I have prepared a forecasted financial statement for the end of our fiscal year April 2016 that shows that we can afford the \$44,000 over the year and end up with a better balance than the amount in April 2015. But – when I’m filling out a Form B, to answer question (f) honestly, I have to state the amount in the CRF now, minus the rest of the \$44,000 expenditures planned for all year, leaving a dismal amount that I am sure would turn off any buyer.

So my question is – how to clearly communicate our true financial picture to a potential buyer?

### A:

You have asked an interesting and complicated question. Your question is interesting because you have noticed something “unusual” about the Form B Information Certificate.

Concerning the re-sale of a strata lot, the *Strata Property Act* differentiates between the information disclosed by the owner of a strata lot and the information disclosed by the strata corporation (as represented by the strata council.)

The *Strata Property Act* permits owners, certain tenants, or a person authorized in writing by an owner, access to all of the records and documents that the strata corporation must prepare and keep under sections 35 and 36 of the Act, including the bylaws of the strata corporation and the minutes of annual and general meetings and council meetings.

Therefore, all of the records and documents referred to in sections 35 and 36 of the Act are available only to an owner, not to a purchaser, although it is common practice for an owner to authorize a real estate agent to obtain strata corporation documents from the strata corporation.

The Form B Information Certificate includes the strata’s Rules but not bylaws because Rules do not apply to strata lots. Rules are adopted by council (and later ratified by owners by majority vote) and only apply to common property, whereas bylaws are adopted by owners by 3/4 vote for the regulation of all property, including strata lots and are available from the Land Title Office as public documents.

The records and documents referred to in the Form B Information Certificate are directly available to a purchaser or a person authorized by a purchaser as provided by section 59 (1), as copied below:

### Information Certificate 59

(1) Within one week of a request by an owner, a purchaser or a person authorized by an owner or purchaser, the strata corporation must give to the person making the request an Information Certificate in the prescribed form.

The information requested on a Form B is directly available to a purchaser, whereas additional strata corporation documents must be obtained by the owner from the strata corporation.

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The information disclosed on the Form B is legally binding on the strata corporation and on the person requesting the information. So it is important that it be as accurate as possible.

As you acknowledge, the information disclosed on the Form must be current to the date on the Form B. But you may certainly include a notation as to the anticipated amount in the CRF at your fiscal year-end if you feel that is necessary information. The purchaser might or might not see and understand the AGM minutes where the year's CRF plans were discussed, and your addition of those details will be helpful indeed.

Please see the article on page 13, by Laurie McKay with respect to providing significant information along with the depreciation report (which is also required by Form B), since it will assist a buyer in understanding the current state of the CRF.

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# Privacy Matters



## DOES YOUR STRATA HAVE SECURITY CAMERAS?

### DEAR VISOA:

I am new to my building and recently discovered in a casual conversation that we have “hidden cameras”. It turns out that my building has 9 security cameras, 4 of which are visible to owners “live” by viewing a specific Shaw cable channel.

I was horrified to discover that my comings and goings are visible to other owners and so I sent in a complaint to my council. I have nothing to hide, but I felt that my privacy was violated, and this made me very uncomfortable. I found out that the cameras were installed in 2005. All 9 cameras, which cover our building’s exits

and the elevator, record to a hard drive, which is stored in a locked room and council members have access. The main entrances including the front doorbell are the ones viewable with the “live feed”. The council say they were aware that the building is not compliant with the current privacy standards but were afraid to disconnect the live feed, because they think owners will feel less safe. I agree with the live feed to the main doorbell camera but I don’t think the others are needed.

What are the rules on this?

### ANSWER:

In short – your strata should have a bylaw authorizing the use and operation of the cameras. If you were unaware of the cameras’ existence then it is doubtful you have such a bylaw. My recommendation to your council would be to immediately turn off the “live feed” until such time as the owners have a chance to vote on a bylaw to properly authorize their usage. The council should never be afraid to follow the law!

The Office of the Information and Privacy Commissioner’s (OIPC) privacy

guidelines for strata corporations and strata agents have this to say about video surveillance:

*Strata owners, tenants and guests have the right to feel and be secure in their daily lives, but they also have the right to be free from excessive and unwarranted intrusion. PIPA (the Personal Information Protection Act) does not prohibit the use of video surveillance by strata corporations, but because of their inherent intrusiveness, video surveillance systems should only be used after other less privacy-intrusive measures have failed to address a serious problem.*

*Before installing or operating either a video surveillance or an access control system, the strata corporation should pass a bylaw authorizing its installation and operation. In the alternative, if the strata corporation does not pass such a registered bylaw, then it should ensure that all owners consent to its use. In all cases, a strata corporation should have a comprehensive written privacy policy in place that governs the use of such systems and the personal information they collect.*

OIPC Order P09-02 (known as the “Shoal Point” case) was the first, and perhaps most well-known test for video cameras in stratas. In this case, the original installation of the cameras for “security reasons” had changed over time to include the strata council using the cameras for evidence of bylaw infractions.

The complainants said: “The common areas are where we gather to socialize, where we play

*Continued on page 9*

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bridge, where we exercise, is like a family space. Although we do not expect the same level of privacy in our shared space, we do expect to be free from unwanted monitoring or surveillance, whether overt or covert, by the Strata Council. In common property areas, residents should not have their associations with other residents or family members monitored by council members. People react differently to being under surveillance. They feel self-conscious and nervous. They may feel humiliated, and certainly many are intimidated. There can be a sense of personal violation. The psychological impact of feeling under constant observation can be enormous, incalculable. It causes people to alter their social behaviour. Casual behaviour can no longer be casual – the person viewing the camera is not anonymous; it is a neighbour or the concierge who is most likely to be monitoring the

DVR.”

The OIPC Adjudicator had this to say: “I also find the use of video surveillance footage, in general, for the enforcement of strata bylaws to be problematic.” And “I do not consider it reasonable to scan footage to find evidence of incidents that no one has noticed.” The order required Shoal Point “to comply with s.14 of PIPA by discontinuing the use of the video surveillance system for strata council bylaw enforcement.” and “to comply with s.14 of PIPA by discontinuing the use of the video surveillance system to provide access to residential units via their television cable system.”

I urge your strata to do the same.

The OIPC’s Privacy Guidelines for Strata Corporations and FAQ’s are available at

<https://www.oipc.bc.ca/tools-guidance/guidance-documents/>



## VISOA 2016 Planned Seminar Dates

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**SHAWN M. SMITH, STRATA LAWYER:** Although Cleveland Doan LLP assist clients with a wide variety of legal issues, Shawn practices almost exclusively in the area of condominium law assisting strata corporations, strata managers and owners. Having been called to the bar in 1999, he has extensive experience drafting bylaws, assisting in the enforcement of bylaws, providing legal opinions on the application of the Strata Property Act, collecting unpaid strata fees and representing client's in disputes. He has appeared as counsel in Provincial Court, the Supreme Court and the Court of Appeal on a variety of matters. He regularly writes and lectures on strata issues for a variety of organizations, including VISOA. Shawn and his team would be pleased to assist you with any strata related issues you may have. Contact Shawn at shawn@clevelanddoan.com or 604-536.5002.

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*Change is the law of life. And those who look only to the past or present are certain to miss the future.*

*-John F. Kennedy*

# Pet-Friendly Housing - A Guide for Strata Councils

By Amy Morris, Policy and Outreach Officer, BC SPCA



The BC SPCA frequently receives calls from frustrated condo owners and tenants unable to bring a pet into their home. We recognize both the need for pet-friendly housing, and for responsible residents who acknowledge the privilege of having pets in their homes. We have created a toolkit to help strata councils prepare for residents who have or want to have pets, discuss options with them, and better understand the complexities of this issue.

## THE PROBLEM

Pet-friendly housing is considerably limited in British Columbia. Landlords and stratas can choose whether they will permit pets. They can also restrict the sizes, kinds or number of pets.

Winston the beagle and Pepi not the miniature schnauzer were not accepted at most houses and apartments in Vancouver. These two dogs were adopted from the

SPCA after having been abandoned in an apartment on moving day. Serving as companions for each other, their guardians agreed to pay \$400 more per month in order to have a home for their family.

Not all guardians of dogs and cats can afford to pay more to keep their family members. Across the province, about 20% of companion animals surrendered by their guardians are for a lack of available pet-friendly housing. This represents about 1,500 pets yearly.

One restriction that is not based in scientific evidence is limiting the number of pets to one so that no pets can serve as companions to each other. Another unscientific restriction limits the height or weight of dogs or all pets. These policies have no grounding in research and cause unnecessary distress and conflict for owners, tenants, occupants and visitors.

Eighty percent of BC residents favour legislation that allows pet guardians the right to keep companion animals, according to a 2008 poll (McIntyre & Mustel). The BC SPCA believes that if more strata councils were aware of the significant benefits of

pet-friendly housing, they would be more inclined to offer it.

## BENEFITS OF PET-FRIENDLY HOUSING

With pets comes increased security for the building, as pet guardians are the eyes and ears of the neighbourhood during late-night and early-morning dog walks. The dog also stays behind to protect the home when his or her guardian isn't there.

Companion animals have even greater benefits to society at large. They assist children with development of language skills, empathy, responsibility and self-esteem. Studies have also shown that companion animals help reduce feelings of loneliness, anxiety and stress.

*Continued on page 12*

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## CHALLENGES

Strata councils volunteer their time to take on a sizable workload. In some cases, one animal guardian who is unaware or doesn't care about fellow residents will cause conflict for all the residents, creating unnecessary repair costs or discomfort due to noise. Although there are owners and tenants who will not respect policies, a preventative approach can be taken to create a culture of respect before problems occur. The BC SPCA has provided guidelines below that will help to mitigate this conflict and ensure all residents have peaceable enjoyment of their property. Thank you for doing your part to realize the positive benefits of pets and ensure their place in your community!

## BC SPA RECOMMENDS THAT STRATA OR RENTAL BUILDING BYLAWS:

- Permit the same amount of pets as regulated by the municipality.
- Mandate a registry of owned and frequently cared for animals in the building so that any reported issues can be easily resolved.
- Encourage pet guardians to spay or neuter their pets, as evidence has shown that this can reduce conflict and aggression.
- Mandate annual licensing with the municipality.
- Mandate permanent identification for cats, dogs, and rabbits.
- Mandate all waste in common areas be immediately removed and the area cleaned.
- Mandate vaccination and flea control program appropriate to the type of pet.
- Provide owners and tenants with information about their

rights and responsibilities related to noise.

- Encourage pet guardians to provide their pets with regular exercise and use dog walkers or daycares for dogs who experience anxiety being left alone during the day.
- Mandate regular grooming and nail trimming to limit the sound of scratching on the floors.
- Ensure the information of a caregiver for the pet is available, should the guardian be away for an extended period of time.

A complete sample strata pet policy is available at [www.spc.bc.ca/petfriendlyhousing](http://www.spc.bc.ca/petfriendlyhousing).

The BC SPCA Policy and Outreach Team can be reached at [advocacy@spca.bc.ca](mailto:advocacy@spca.bc.ca) or 1-800-665-1868

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# Sellers Take Note - Your Strata's DR is Important

By Laurie McKay, VISOA Board Member

Having just sold a condo in a townhouse complex where potential sales had been falling apart with heart breaking regularity, perhaps my experience might help other VISOA members.

We had our Depreciation Report (DR) done at the end of 2013 and presented to the owners at the AGM at the end of April, 2014. The DR provider did an excellent job as far as I can tell. However, in dealing with our particular council, I think the provider didn't realize that when he said the DR was a guide and our strata's to interpret and implement as we wanted, that our council would take this to mean they could go ahead and do nothing. For more than 18 months this council did nothing. There

wasn't even a mention in our council minutes of making a plan based on the DR.

Buyers saw that and ran. There were about five or six units listed in our complex over this time not counting ours. Four sold below assessed value after lowering their prices (2 reduced by more than \$100,000, 1 at \$25,000 lower and one at \$20,000 less.) There were three on the market including ours when we sold and one besides ours has sold since - all this in an 18-unit complex in less than one year.

What this has underlined for me is that the pundits were right: When buyers can clearly see that long term maintenance and planning have not been done as a result of the DR, they will not even look, let alone

buy.

In my opinion, all strata councils should be getting the message out clearly and in writing so owners, realtors and potential buyers will see their progress on implementing their DR plans. This needs to be a current and regularly updated summary report on the strata's progress with the DR, and the long term planning that goes with it.

For example, "At the two year point into our Depreciation Report, we have completed our 30 year financial plan which we are able to adjust as projects are completed and if unexpected emergencies arise. Working together over the last two years, we have increased contributions to the contin-

*Continued on page 14*



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gency reserve fund which now stands at \$XX,XXX and will reach \$XXX,XXX by the end of the year.

We have completed the first two priorities of our DR plan and have the money in the contingency reserve fund to complete the next three priorities this fiscal year. In addition, we are organizing power washing of the building, re-painting of the trim on the building and upgrading of the landscaping on the common property as part of our regular five-year plan to maintain and update the complex. As usual these funds will come from the contingency reserve fund but will not interfere with preparation for the other items listed in the DR.

Beyond this year, the strata will decide at the AGM in January whether the contingency reserve fund is healthy enough to bear the cost of replacing the boiler as is recommended in the next fiscal year; or to fund it either by a further increase in CRF assessments, or consider a one time special levy. Please contact Suzie Smart at (250) 999-9999 with any questions.”

When selling a unit, the positive things that have been done and are being done should be the focus of any discussion on maintenance and repairs. Councils need to clearly indicate so in minutes and can even attach a short note to the Form B, such as the example from “Suzie Smart” above.

## Income of Strata Corporations: How Not To Lose Tax-Exempt Status

*By Jonathan Wright*



*Jonathan Wright*

In addition to managing strata assets and common areas, strata corporations (called “condominium corporations” elsewhere in Canada) sometimes generate income on the side. For example, strata corporations will often operate coin laundries, rent out party rooms or receive license fees for cell towers or solar panels.

Many strata corporations simply assume that they qualify as non-profit organizations (“NPOs”) under the Income Tax Act (the “ITA”) and thus do not need to pay tax on their income. However, NPO status is not automatic. Care must be taken that the activities of the strata corporation do not cause the corporation to lose this status.

The purpose of this update is to consider some of the requirements for a strata corporation to maintain its NPO status and discuss what sort of income-generating activity might either cause a strata corporation to no longer be tax exempt or result in tax for the strata lot holders themselves.

### Basic Requirements

In order for a strata corporation to obtain tax exempt status as a NPO under the ITA it must meet certain requirements. These include, in paraphrase:

1. the strata corporation must

be organized and operated exclusively for any purpose except profit; and

2. no part of the strata corporation’s income may be payable to any member of the strata corporation.

In addition, a strata corporation must file a T2 corporate tax return annually. If the assets of the strata corporation exceed \$200,000 or meet certain other criteria, it must also file a Form T1044 with its T2. Many strata corporations do not file either of these forms, leaving them potentially open to penalties.

### Profit

As noted above, strata corporations often earn income over and above strata fees (which are not considered income under the ITA). Some income generating activities which could put a strata corporation off-side the NPO requirements include operating a golf course or renting out a caretaker suite owned by the corporation to third parties. In these circumstances the Canada Revenue Agency (the “CRA”) has said that the strata corporation would no longer be organized and operated exclusively for any purpose except profit.

Importantly, under British Columbia’s Strata Property Act, the common areas in a strata are owned by the strata lot owners as tenants in common and not by the strata corporation itself. Thus,

*Continued on page 15*

income from rentals of common property areas (such as roofs for cell towers or party rooms) might be considered income of the strata lot owners rather than the strata corporation. If so, the result of this would be that the rental or leasing activity would not jeopardize the NPO status of the strata corporation, but a proportionate share of this income would have to be reported by the strata lot owners in their personal tax returns.

Another risk comes from the use of the income. Often such income is used to reduce strata fees. If the income belongs to and is reported by the owners, this is not an issue. However, if the income belongs to the strata corporation, the result is that a portion of the strata corporation's income is payable to members of the corporation, thus putting the corporation off-side the NPO requirements and potentially leaving the NPO open to revocation.

As one example, the CRA has said that income from a cell tower would either be income of the strata lot owners or, if not, might cause the strata corporation to no longer be tax exempt because the income is used to reduce strata fees.

### **Incidental**

Not all income-earning activity puts a strata corporation off-side the requirements above. Both the CRA and case law confirm that a NPO may earn a profit so long as this profit is incidental to and arising from activities directly connected to its non-profit ob-

jectives. As a result, unlike running the golf course, operating a coin laundry for owners and tenants would be incidental to its activities as a strata corporation and thus permissible under these rules.

The CRA has also stated that it is prepared to consider income from common areas owned by the strata lot owners to be tax-free income of the strata corporation where this income is "incidental" in the manner discussed above. This is a significant benefit, but care must be taken to determine whether the income-generating activity truly is incidental and whether it arises from activities directly connected to the non-profit objectives of the strata corporation.

### **Going Forward**

It is important to seek professional advice before a strata corporation or other NPO begins activities which might put it off-side the NPO requirements. Often such issues can be resolved with careful tax planning.

In circumstances where it is too late to plan ahead, there is another option. The CRA has a "voluntary disclosures" program which, if the requirements are met, permits the CRA to waive any penalties owing if the entity comes forward voluntarily and outlines its errors or omissions.

*Jonathan Wright is a lawyer at Wright Legal, specializing in tax, tax-exempt entities and corporate law. He can be reached at [jwright@wrightlegal.ca](mailto:jwright@wrightlegal.ca) or (604) 678-4459.*

## Quotes for change

• *The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking.*

-Albert Einstein

• *Any change, even a change for the better, is always accompanied by drawbacks and discomforts.*

-Arnold Bennett

• *Change is inevitable. Change is constant.*

-Benjamin Disraeli

• *When you're finished changing, you're finished.*

-Benjamin Franklin

• *The world hates change, yet it is the only thing that has brought progress.*

-Charles Kettering

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# When Should We Update Our Depreciation Report?

by *Laureen Stokes*



*Laureen Stokes*

In December 2011, Depreciation Reports became mandatory for Strata Corporations in BC. For many Strata Corporations, they obtained their first report in 2012 and the three year anniversary is fast approaching.

Our clients have asked when they should start preparing for the update report – essentially when is 3 years up?

There are several dates associated with a Depreciation Report: the date of the site visit, the date the draft report was issued, and the date the final report was issued. There may be as many as 6 to 8 months between the site visit and final report.

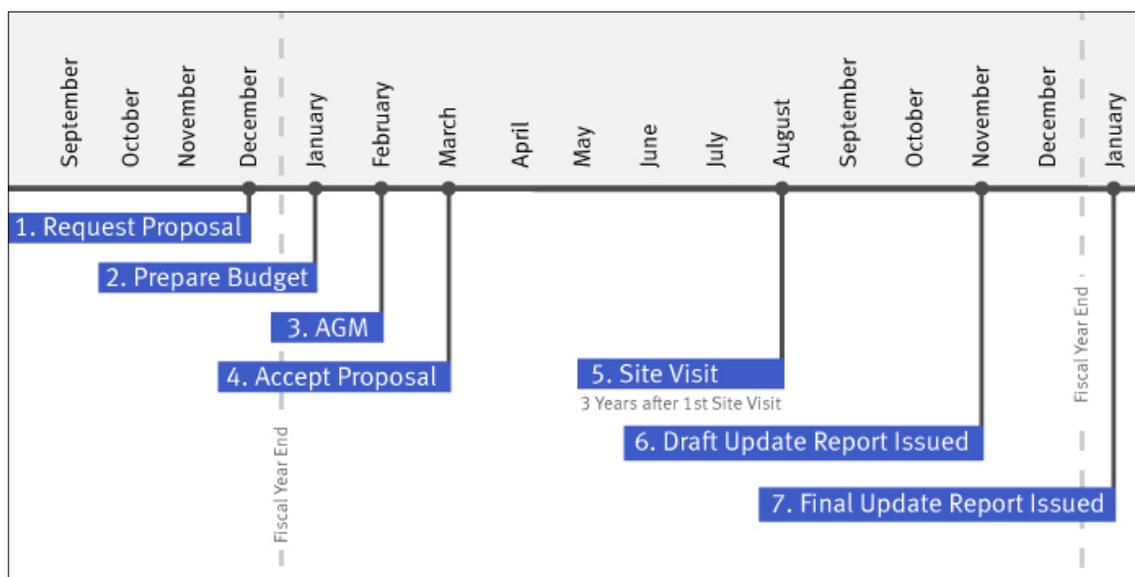
The site visit is used to establish the current condition of the assets and is the basis for forecasted renewals and maintenance. If the Strata Corporation plans for the site visits to be approximately 3 years apart, then the timing of the draft and final updates should follow approximately 3 years after the initial study.

If Strata Corporations need to include an allowance for a Depreciation Report Update in their annual budget for approval at their AGM, then most Strata Corporations will need to begin planning for the update more than a full calendar year before the 3-year anniversary of the final report.

The graphic on page 17 shows one way of planning for the update. It assumes that the fiscal year end falls on December 31 and the site visit for the first Depreciation Report happened in late summer of 2012. The fiscal year for many Strata Corporations will not align with the calendar year. The timeline should be updated based on your fiscal year. Here's a brief overview:

- 1.** In order to prepare the annual budget, the Strata Corporation asks for a proposal roughly two months before the date of their AGM.
- 2.** The council prepares the proposed budget for 2015 (which includes the proposal for the update) for approval at the AGM.

*Continued on page 17*



3. The budget is approved at the AGM.
4. The Strata Council accepts the proposal from the Depreciation Report provider.
5. The provider schedules the site visit for the summer of 2015.
6. The Draft version of the report is issued for the council to review and comment on.
7. The Final version of the Updated Depreciation Report is issued.

To start the planning process, look at the current Depreciation Report and determine when the site visit took place. (If the date is not clearly listed, contact the company who provided the initial Depreciation Report.)

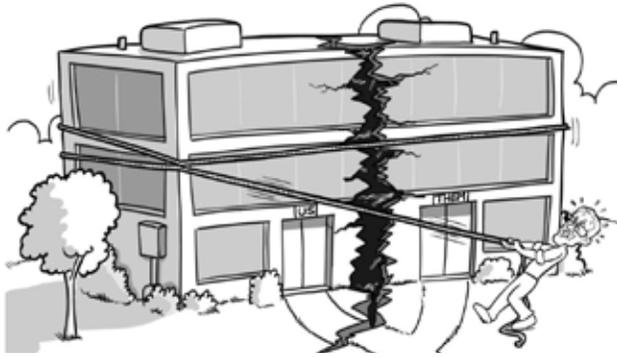
The 3-year anniversary of the site visit will help you determine which fiscal year your update study will occur and when to obtain a proposal. If the date of the site visit is within 2 to 3 months of your AGM, you may need to approve a Depreciation Report Update before your AGM. Talk to your Strata Manager for options if this is the case.

*Lauren Stokes is a Project Manager in the Maintenance and Planning (MAP) Department at RDH Building Engineering. She oversees the work of Maintenance and Planning Technologists in the preparation and review of Depreciation Reports. You can reach Lauren at 604-873-1181 or find your local RDH office at [www.rdh.com](http://www.rdh.com)*



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# President's Report



Sandy Wagner

Sharp-eyed readers will notice a little change in formatting style with this Bulletin.

One of our members pointed out, after our last issue, something we had completely missed – although the vast majority of our readers read the Bulletin online, we were still formatting it for the benefit of print viewing. Those subscribing to the printed version will likely not notice, but for our online readers, we hope the flow is easier to browse. And thanks to member Kelly K for bringing it to our attention!

In our last Bulletin we told you about our planned workshop for non-members. “Before You Buy a Condo” was a great success and with the help of some publicity (thanks CFX and CBC radio, and Saanich News & Oak Bay News!) we had a full house. We know that the attendees all left with a greater appreciation of what strata life is all about, and will “look before they leap” – look at the bylaws, minutes, financial reports and depreciation report and hopefully understand a bit more of what they are reading.

At the time of this Bulletin, we are just reviewing our 3rd quarter financial reports and will shortly begin planning our 2016 budget. Membership fees have not gone up for several years and we intend to maintain them. We hope to present even more workshops, as these continue to be a popular benefit for our corporate members, while holding the admission fees at current prices; and of course our regular seminars will carry on with no charge for members. If you have any suggestions for new workshops or seminars, please email me at [president@visoa.bc.ca](mailto:president@visoa.bc.ca)

All on-line workshop and seminar registrations will

now be handled by EventBrite (instead of by emailing our office). We first tested it for “Before You Buy a Condo” and the process was simple and seamless – in fact they even send a “reminder” email automatically, two days before the event. This will free up time for our office staff, Evelyn and Donna. You can still register by phone if you do not have a computer; however, according to a study conducted for the Civil Resolution Tribunal, 92% of 17-64 year olds in BC are online daily, and 69% of those over 74 years old are online daily. So we hope you’ll agree that EventBrite is the way to go.

And speaking of the Civil Resolution Tribunal – yes we know you are anxiously awaiting its opening. The Chair of the Tribunal, Shannon Salter will be the guest speaker at our Annual General Meeting, February 28, 2016. Ms. Salter will give us much more detail about the CRT and how it will work for the average strata owner or strata councilor. She will also share the most current projected opening date for the CRT– and may even have an exact date to convey to us. The date is getting close, that is for certain. Eighteen tribunal members have been appointed; and three executive staff are on board; with hiring of case managers and support clerks to happen early in the new year. Watch the CRT implementation website [civilresolutionbc.ca](http://civilresolutionbc.ca) for more details.

In this Bulletin you will find the dates of all our planned seminars for next year. It has been my pleasure serving as your president again this year, and I look forward to even better services in 2016.

Sandy Wagner  
VISOA Board President

## ~ DISCLAIMER ~

*The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.*

## STRATA ALPHABET SOUP

<b>BCREA</b> – British Columbia Real Estate Association	<b>LTSA</b> – Land Title Survey Authority
<b>CMHC</b> – Canada Mortgage and Housing Corporation	<b>OF</b> – Operating Fund
<b>CRF</b> – Contingency Reserve Fund	<b>OIPC</b> – Office of the Information and Privacy Commissioner
<b>CRT</b> – Civil Resolution Tribunal	<b>PIPA</b> – Personal Information Protection Act
<b>FAQ</b> – Frequently Asked Question	<b>RECBC</b> – Real Estate Council of British Columbia
<b>FIGOM</b> – Financial Institutions Commission	<b>REDMA</b> – Real Estate Development Marketing Act
<b>HPO</b> – Homeowner Protection Office	<b>RESA</b> – Real Estate Services Act
<b>HRT</b> – Human Rights Tribunal	<b>SPA</b> – Strata Property Act
<b>LCP</b> – Limited Common Property	<b>VISOA</b> – Vancouver Island Strata Owners Association

