VISOA
Vancouver Island Strata Owners Association

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VISOA Bulletin - NOVEMBER 2018

Editor's Angle

David Grubb, Editor

We have some interesting articles for you in this edition most of which are topical at the moment.

By the time you read this, recreational marijuana (cannabis) will be legal and the provinces and municipalities are dealing with where it may be smoked or purchased. Stratas are required to abide by legitimate medical usage orders, but some stratas are requiring such people to smoke outside away from the buildings. Even so, some are asking why cannabis cannot be taken by such people through oils or food (the latter is currently not allowed in Canada apparently). As it has been suggested, despite the known negative effects which people don't want, perhaps the biggest issue is the smell of tobacco and marijuana which people are very aware of to their distaste. As the Times-Colonist editorial (17 Oct 18) said in part: "The provincial government has spelled out its rules on pot – which are not to be confused with federal rules or municipal rules or the rules at work or the rules at school or the rules in your apartment or condo. For a substance that is supposed to make us mellow, this all looks very stressful." Stay tuned!

There is a National Post article on the difficulties faced by condos about damages which can occur when there are short-term B & B type ventures being operated in them.

Also, the Supreme Court has now settled the issue of whether a strata can collect the balance of fees if the budget is passed at an AGM before the end of the fiscal year and requires adjustment right after the AGM.

Finally, there is an article from Ontario, which shows that good and bad councils exist everywhere, and it is up to all owners to ensure that the council you elect has good members who will serve the owners, not necessarily their own interests, first.

Looking forward, your Association is always watching out for keen Board members and volunteers. The "old faithfuls" all too often burn out and become ineffective, and so some turn-over is good to bring in new ideas and methods to the table. The Bulletin, too, is always looking for new ideas and articles from all our members (and another copy editor too – an extra pair of eyes and ideas is always useful). Business members are very welcome to contribute articles about the benefits of their services as long as there is little-to-no attempt to sell themselves; just the value of their particular product or service. From cleaning the drains

Continued on page 1

In this issue...

Editor's Angle
Continued from page 1

to crafting appropriate operating and reserve funds, owners need to know what their responsibilities for their investment are. We always give credit at the end of an article where required so that the writers may be contacted if they wish to be. We would love to hear also from individual members who have good ideas on dealing with any strata-related issues. Positive results are always welcomed!

Finally, from the Hi-Tech world, don't forget to follow us on Facebook and Twitter (and respond if you have, preferably constructive, feedback), as well as having a gander at the Blog on our website that we want to develop into a major source of ideas!

"We always hear about the rights of democracy, but the major responsibility of it is participation"

— Wynton Marsalis

PUBLICATION COLLECTION

1. A Practical Guide to Budgeting and Financial Reporting
2. Best Practices for BC Strata Treasurers
3. Depreciation Reports for BC Strata Corporations
4. Management of the Contingency Reserve Fund
5. New to Council
6. Sample Strata Residents Manual
7. Strata Insurance
8. *Strata Property Act*

This collection includes all seven of VISOA's Publications on a USB, so you have them all in one spot at a savings of 10% over individual prices. As a bonus it also includes the Strata Property Act and shipping. Available at https://www.visoa.bc.ca/?post_type=product

2018 SEMINARS/ EDUCATION

Mark your calendars

- **Sunday November 18**

Seminar - Strata Insurance, Everything You Need to Know. Guest Speakers Shawn Fehr of Seafirst Insurance Brokers Ltd; Vickie Kirk of BFL Canada Insurance Services Ltd; and Billy-Joe Checko of Waypoint Insurance.

- **Saturday November 24**

Workshop – Best Practices for Strata Secretaries. The Act is not prescriptive on many of the strata secretary duties, but this workshop will share best practices for record keeping, correspondence, minutes and more.

- **Pricing:**

Seminars FREE for VISOA Members who pre-register, or $20 for non-members who pre-register. Additional $10 if not pre-registered.

Workshops: $75 VISOA Corporate Members; $85 VISOA Individual or Associate Members; $95 Non-Members. All are full-day interactive workshops with plenty of time for questions. Lunch and handout material included.

YOU ASKED By VISOA Strata Support Team

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.

Smoking Bylaw Enforcement

Q.

Our Strata is going to be considering whether or not (and where) to control smoking. I understand that such a bylaw would require a ¾ vote. Further, I understand that if we decided just to control smoking on common property that could be done via a rule (subject to ratification at a general meeting by a majority vote.)

I'm looking for some clarification on the relation a strata such as ours (townhouse, in which backyards are part of each strata lot) and the *BC Tobacco and Vapour Products Control Act* (TVPC) and *Regulations* in particular. S. 2.3 of the TVPC states:

2.3 (1) Subject to subsection (2), a person must not smoke tobacco, hold lighted tobacco, use an e-cigarette, or hold an activated e-cigarette

(a) in any building, structure, vehicle or any other place that is fully or substantially enclosed and

(i) is a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry,

(ii) is a workplace, or

(iii) is a prescribed place, or

(b) within a prescribed distance from a doorway, window or air intake of a place described in paragraph (a).

Section 4.21 of the TVPC Regulations elaborates on this:

4.21 For the purposes of section 2.3 (1) (a) (iii) of the Act, the

following places are prescribed as places in which a person must not smoke tobacco, hold lighted tobacco, use an e-cigarette or hold an activated e-cigarette:

(a) common areas of apartment buildings, condominiums and dormitories;

(b) transit shelters.

How does this affect our Strata?

A.

Although TVPC, s.23.1, uses only the term "tobacco", one presumes that "marijuana" is, or will be, lumped either under "tobacco" or (if in liquid form) under "e-cigarette". So we will answer on that assumption.

All of a strata plan belongs to the owners as private property of "The Owners, Strata Plan XXXX". The property is split into "common property", in which all owners hold a share according to their unit entitlement, "limited common property" which has been designated to a particular strata lot (or lots) for their exclusive use but which still belongs to all the owners as common property, and the "strata lots" which belong to individual owners as described in the SPA.

Common property in a strata is *not* a city's "common area" in the sense that a sidewalk is. Nevertheless the TVPC and Regulations, in particular Regulation S. 4.1, include "apartments, condominiums and dormitories". I suspect that the designers of the TVPC didn't look at the SPA for a definition, but all "stratas" are "condominiums" in BC.

Thus, for the purposes of the TVPC, the "enclosed" spaces , and the "windows, doors and air intakes" they describe will include "condominiums" (i.e. stratas). This will affect apartment type stratas more than townhouses when it comes to "enclosed space" such as common hallways, and I think most of those types of stratas obey the law (or try to).

The TVPC doesn't affect townhouse stratas as much, although there may be some enclosed common areas which are affected.

If there is no bylaw, then people are at liberty to smoke out on the lawn or the parking lot (i.e. away from the buildings.)

But when it comes to someone's front door in a townhouse, the door is (a) common property, and

Continued on page 4

(b) "within 7 meters of a door". So a narrow interpretation would require The Law to be enforced by someone! (Council? City bylaw officer?) (This would not affect bare land stratas.)

In considering patios and balconies, it is legal to smoke there, provided that the person is 7 meters away from the various openings. This is likely to create problems for people with balconies because they will be close to the balcony door (or the neighbor's door) and possibly nearby windows or air intakes. But patios can be different if they are big enough that a smoker can be far enough away from the building, whether townhouses or ground floor apartments.

That is why the owners in any strata need to have specific bylaws as to what is permitted and what is not. And of course, the owners have to take into account those with bona fide medical problems which are mitigated by the marijuana (can they ingest it by mouth, or must they inhale it), and people who are legally classified as "addicted" to tobacco. Both are such that the HRT could find that the strata corporation must allow these individuals to smoke. With that come the measures to be taken to reduce the spread of the smell and effects of the smoke to others.

This is going to be an on-going development, certainly about marijuana, for some time as all levels of government make their adjustments on its use, production, the number of plants, etc.

But specific to your problem, unless there are bylaws controlling the production and use of marijuana in townhouses, there are no restrictions about smoking in gardens or on the common property, because they are not "enclosed", and as far as enforcing the 7 meter rule, a complaint would have to be made to the police or the municipal bylaw officer to have it enforced. The same goes for growing even the allowed number of cannabis plants in a home.

If you don't have a specific bylaw, owners could use SPA Standard Bylaw 3(1) to have an owner cease an activity:

Use of property

(SB) 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.

Continued on page 5

However, if you do have a bylaw which incorporates such prohibitions, as they can with Standard Bylaw 3(1) too, the council could take action under SPA s.135 as a contravention of a bylaw.

It crosses one's mind on occasion that, even with the obvious health problems caused by the second hand smoke of tobacco and maybe marijuana and e-vape products, people are more bothered by the smell of tobacco and marijuana smoke than the substance itself (e-vape smoke seems generally composed of "pleasant" smells which seldom bother people if it is detectable). If people couldn't smell the tobacco or cannabis, they wouldn't know it was in the air, nor would they be so conscious of its effect on the smell of clothing and furnishings, etc. However...

Interestingly, the comment by Jack Knox, in a 9 Oct 18 Times Colonist article, in general terms can be applied equally to a similar measure in a strata:

In practice, these smoking-law penalties exist in theory only, just like black holes, an alternative to the Malahat or the Canucks' play-off chances. Since April 1 [2018], bylaw officers have issued 15 verbal warnings, and 16 written ones – but no actual tickets – most of them involving tobacco. Nobody has been fined [the $100 allowed by the CRD].

For this is the reality; The law depends less on the Smoking Police than on voluntary compliance combined with peer pressure.

Even so, a $200 strata fine for contravening a bylaw is definitely a stronger deterrent than the TVPC!

YOU ASKED
Who Is Responsible for Garage and Front Door Locks?

Q.

Are the locks and mechanisms of garage doors, as well as front door locks (especially in townhouses) common property, LCP or private property?

A.

This is a recurring question because garage doors and front doors face the exterior and, despite SPA s.69, there is a problem of deciding where the boundary of the interior is in relation to the common property to the exterior because it is the cladding of the building which the strata is obliged to maintain and repair.

The sticking point, really, is the lock mechanism itself and possibly the door-raising mechanism of the garage door. The resident always controls the lock with a key or a fob and, to put it to rest, residents are not required by the SPA or any Act (we think) to give such keys or fobs to anyone else.

But what about the lock fixture on the door? What about the raising mechanism? Who is responsible for repair and maintenance?

The answer can be found in a recent CRT decision as part of a decision pertaining to a Vancouver strata: *Generalov v. The Owners, Strata Plan BCS 2498*, 2018 BCCRT 516 (Sept 11, 2018) (This strata corporation has an apartment building as well as townhouses.)

83. I find that the townhouse garages front onto the common property. The strata argues that the townhouse garage doors are LCP and used exclusively by the townhouse owners so they must pay. I do not agree. The garage doors form part of the townhouse building envelope along with the cladding and windows.

84. In fact, the strata plan shows what parts of the townhouse buildings are LCP. The LCP does not include garage doors. There is no evidence that the strata has created additional LCP areas as permitted under section 74 of the SPA. LCP for townhouse type strata lots includes yards, patios and terraces. Townhouse garages are not shown separately from the strata lots. I find that they are therefore part of the strata lot and share the same exterior. Strata bylaw 8 makes the strata responsible for the repair and maintenance of common property that is not designated as LCP, which I find the townhouse garage doors and related operating mechanism to be. Even if this were LCP, the bylaw makes it clear that doors on the exterior of the building or that front on the common property are the responsibility of the strata, not the strata lot owner. I order the strata to maintain and repair the townhouse garage doors, including their operating mechanisms, as necessary, on an ongoing basis.

85. For additional clarity, I exclude from this order any garage door fobs or transmitters since they are not part of the door or its attached mechanism. The fobs

Continued on page 6

and transmitters will remain the responsibility of the individual townhouse strata lot owners.

This would apply to apartment type stratas (wrongly called "condominiums") which, as well as other kinds of parking, have external single parking garages assigned to various strata lots.

The adjudicator makes it plain that, because the operating mechanism is essential to the door, the strata corporation is responsible for raising and lowering the garage door even though the mechanism is inside the garage.

What is not directly identified, but certainly implied, is the entire fixture itself. Are you allowed to change it without permission?

Our thoughts are that since the owner is completely responsible for the key or fob, then the tumbler (for keys) or coding (for key fobs) within the lock itself also belong solely to the owner. Thus owners can change them, when needed, without permission from the council.

However, they cannot change the rest of the fixture itself without the permission of the council. If the change is not one that is at the directive of the strata, the owner may have to pay for the installation itself and to sign an indemnity agreement with respect to payment and insurance of the installation.

One recognizes that over time, manufacturers change models and their appearance so that it may not be possible to replace the original style. Permission should normally be given, though council must be aware to keep the appearance similar to the rest of the strata lots' exteriors.

However, the strata corporation must acknowledge the new fixtures and paraphernalia as being legitimate items of the strata's corporate inventory because they are actually common property, so repair and maintenance after installation are the responsibility of the strata corporation.

YOU ASKED – Can a Proxy Be Passed to a Second Person?

Q. We are so often given to understand that a proxy issued by an owner in accordance with SPA s.56 stays with the proxy holder and cannot be passed on to another person, since the proxy is an agreement between the proxy giver and the proxy holder. But is it possible for the proxy holder to pass the proxy on to another person?

A. The Strata Property Practice Manual seems not to be in favour of such a practice, stating in Section 6.35: *It is doubtful that a proxy can appoint a further proxy, even if the original appointment authorizes the proxy to do so, since the further grant cannot be signed by the person entitled to vote.*

However, there is a note of disagreement from another lawyer who has stated that, *Generally speaking an agent (i.e. a proxy holder) cannot delegate the authority that has been given to them, unless the document appointing them allows for that (which a proposed new form of proxy will, if the government passes it). However, there would need to be a second document, signed by the first proxy holder which confirms their inability to attend and appoints the replacement. Both documents would be needed to allow the new person to vote.*

For the time being, it is better that a voter ensures that their proxy holder will actually be at the meeting, so that the chair is not put to any test about allowing such an arrangement since it could seriously affect some particular votes.

Strata Alert: Civil Resolution Tribunal Issues an Injunction Against an Owner with Mental Illness

By Paul G. Mendes, Partner, Lesperance Mendes

Strata councils and strata managers must occasionally deal with owners who are mentally ill. The BC Human Rights Code prohibits discrimination on the basis of a disability, and therefore, strata must take the Human Rights Code into account when enforcing their bylaws against mentally ill owners and tenants. Once an owner establishes that he or she has a disability, the onus shifts to the strata to accommodate that owner's disability unless doing so would impose an "undue hardship" on the strata corporation.

But how do strata accommodate the mental disability of an owner who is disruptive and abusive to the other owners?

In the case of *The Owners, Strata Plan LMSXXXX v. DB, 2017 BCCRT 117* it was undisputed that the owner had a mental disability. The evidence showed that the owner's mental illness had caused her to have "episodes of outbursts from time to time" and that she is "loud, noisy or irrational due to her mental illness and other factors". The owner relied on her diagnosed mental illness as a mitigating factor and asked the CRT for leniency particularly with respect to the $3000 in fines that the strata had imposed on the owner for her behavior.

The Tribunal Member observed that although the Human Rights Code requires strata to accommodate a person's disability, it would be unreasonable to require the strata to accommodate this owner's mental disability. The Tribunal member wrote as follows in the decision:

"[W]hile I acknowledge the owner has a mental disability that causes her to have loud outbursts, I find her disability… did not outweigh the owner's right to quiet enjoyment of their property. I am satisfied that the owner's conduct has significantly disrupted the lives of the other owners in the strata. It would be unreasonable to require those other owners to continue living with that conduct."

Although the strata's bylaws and its bylaw enforcement procedure was having an adverse impact on the owner's disability, the Tribunal Member concluded that the strata had a "bona fide and reasonable justification" for enforcing its bylaws against this owner and that there was no reasonable way for the strata to accommodate her disability. In this case, the "adverse impact" of the bylaws was that the owner's behavior had actually worsened once the strata started enforcing its bylaws.

In the end, the Tribunal Member granted the strata corporation an injunction type order requiring the owner to comply with the bylaws and ordering her to pay fines totaling $2000 plus $225 to reimburse the strata for its CRT fees. If the owner refuses to comply with the injunction order, the strata will still have the option of going to the BC Supreme Court to obtain an "eviction" order.

This case will be helpful to strata dealing with disruptive owners who also have the mental illness. It had previously been an open question as to whether an owner's mental disability could limit the strata's bylaw enforce-

Continued on page 8

Continued from page 7

ment efforts against an abusive or disruptive owner. The answer from this case seems to be no, provided that there is no reasonable way to accommodate the owner's mental disability.

WHAT WE DO: Lesperance Mendes advises strata corporations on all aspects of bylaw enforcement including owner and tenant "evictions" from strata. If you need help with a bylaw enforcement issue, contact Paul G. Mendes, partner, at 604-685-4894 by email at pgm@lmlaw.ca.

B.C. Law Institute - Post-AGM Make-up Strata Fees

Adjustment to strata fees "paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge": BC Supreme Court

24 September 2018
By Kevin Zakreski
Staff Lawyer, BC Law Institute

In *625536 B.C. Ltd v The Owners, Strata Plan LMS4385*, 2018 BCSC 1637, the Supreme Court of British Columbia took on the issue of whether an "adjustment" to strata fees to bring them into line with amounts approved in a budget passed after a strata corporation's fiscal year end is a valid practice. The issue had been considered in two decisions of the Civil Resolution Tribunal—*The Owners, Strata Plan NW 2729 v Haddow*, 2018 BCCRT 37, and *The Owners, Strata Plan KAS 1459 v Leonard*, 2018 BCCRT 159—which concluded that the practice amounted to a retroactive assessment of strata fees that isn't authorized by the *Strata Property Act*. Now the BC Supreme Court has "disagreed" with the tribunal's conclusions and upheld the practice in a case involving a "commercial development" located in Surrey.

As the court noted, the significance of this decision likely goes beyond the dispute at hand, because it touches on a practice that is widespread and of "general importance" to the strata sector and the strata-management profession:

It is commonplace for a strata corporation to hold its AGM after its fiscal year end. If the AGM is held prior to the end of the fiscal year, financial statements must be prepared and circulated to the owners in advance of the AGM (s. 103). Then, within eight weeks following the AGM, updated financial statements must be circulated (BC Regulation 43/2000 s. 6.7(2)). By holding the AGM for a given fiscal year after the previous fiscal year end, the requirement for two sets of financial statements is averted.

This case focused on budgets passed in 2016 and 2017. The 2017 budget increased strata fees, with the following effects for the petitioner:

At the 2016 annual general meeting of the Strata held on August 25, 2016, the owners unanimously approved the 2016–2017 annual budget (the "2016 Budget"). Pursuant to the 2016 Budget, the petitioners were assessed the following monthly strata fees for their respective units:

a) Unit 205: $315.49;
b) Unit 101: $265.83;
c) Unit 102: $295.04; and
d) Unit 110: $274.59.

Continued on page 9

The Strata charged the petitioners these amounts for the 12 months commencing October 2016.

At the 2017 annual general meeting of the Strata held on August 29, 2017, the owners unanimously approved the 2017–2018 annual budget (the "2017 Budget"). Pursuant to the 2017 Budget, the petitioners were assessed the following monthly strata fees for their respective units:

a) Unit 205: $396.57;
b) Unit 101: $334.15;
c) Unit 102: $370.87; and
d) Unit 110: $345.16.

The Strata commenced charging the petitioners these amounts in October 2017. It did so by sending the petitioners (and presumably all other owners) an invoice dated October 1, 2017 setting out the new strata fee for the unit together with a lump sum adjustment representing the difference between what had been paid for the months of July, August and September 2017 and what would have been paid for those months had the 2017 Budget been approved prior to July 1.

As the court noted, this dispute primarily turned on the interpretation of the act, particularly section 103:

The question for determination is whether the words of the Act, read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature, giving such fair, large and liberal construction and interpretation as best ensures the attainment of the Act's objects, authorise a strata corporation to do what the Strata did in this case.

In the court's view, there was nothing in the strata corporation's approach to strata fees that placed it offside the act:

In my view, a subsequent "adjustment" to the fees paid in the period between the end of a fiscal year and the passing of the budget for the next fiscal year, is not a retroactive charge. I note that there have been at least two decisions of the Civil Resolution Tribunal that found such charges were retroactive: The Owners, Strata Plan NW 2729 v. Haddow et al, 2018 BCCRT 37 (CanLII) at paras. 37–47; The Owners, Strata Plan KAS 1459 v. Leonard, 2018 BCCRT 159 (CanLII) at paras. 27–28. The Leonard decision followed the decision in Haddow without analysis.

In Haddow, the Tribunal based its determination in large part of the notion that the strata fee information required to be disclosed in a Form B or Form F would be inaccurate if a prospective purchaser of a strata unit obtained those forms (a Form F remains "current" for a period of 60 days after it is issued: Act s. 115(2)) prior to the approval of

Continued on page 12

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Continued from page 9

a new budget. The buyer would be led to believe that the seller's strata fee payment obligation was up-to-date when in fact it was not.

With the greatest of respect to the Tribunal, I disagree. An owner's strata fee obligation does not arise until it is approved at the AGM. The Form F (and indeed the Form B) will have been accurate when issued. The Tribunal in Haddow appears to have begun its analysis based upon the conclusion that the fees had been imposed retroactively. In my view they were not.

There is no requirement in the Act that strata fees be paid in equal installments. Plainly, the schedule of strata fee payments can require equal monthly installments, or installments that include adjustments to make up a deficit between what was paid and what would have been paid had the budget for the current fiscal year been in place at the commencement of the current fiscal year. Fees for one month may be different than for other months.

The Strata could easily have included the adjustments as part of the fee schedule included in the 2017 Budget materials which were sent to the strata owners and approved at the AGM. Instead, it merely set out in the materials a schedule showing what each strata unit's monthly fees under the 2017 Budget would be, based upon the unit entitlement. Alternatively, the Strata could have convened a meeting to approve a special resolution imposing a special levy for the adjustment: Act s. 108.

Instead, the Strata simply sent the petitioners (and the other owners) an invoice which included the adjustment in question. The strata fees that were invoiced were precisely those that had been approved at the AGM. Because the Strata's invoices for the months of July, August and September 2017 were based upon the previous fiscal year's fees, the October 2017 invoice simply included the deficit that had not been invoiced for those earlier months. The Strata could not have invoiced for the deficit any earlier than it did because the new fees had not been approved until the AGM. The deficit only became due and payable after the AGM as a result of the 2017 Budget being approved.

In my view, a full answer to the petitioners' argument is this: the 2017 Budget did not establish a new fee schedule for only the period after the AGM—it established a new fee schedule for the entire fiscal year, commencing July 1, 2017. The October 2017 invoices did nothing more than require payment of the fees that were approved by the owners.

I agree with counsel for the Strata that the petitioners' argument undermines the objects of the legislature and the intentions of the Act, namely to ensure that strata corporations, which are responsible for the payment of the expenses associated with the strata development, are able to fund those expenses by way of an operating fund contributed to by the individual strata unit owners in proportion to their unit entitlements.

In the result, the petition was dismissed, with costs awarded to the strata corporation.

INTRODUCING NEW BUSINESS MEMBERS

VISOA is pleased to welcome another new Business Member.

See our website for more details on all our Business Members

GREENLIGHT TOTE SANITIZATION – Once your waste is picked up, we arrive at your home with our state-of-the-art cleaning vehicle. Your bins are placed into an enclosed unit and exposed to high-pressure hot water cleaning. Our environmentally safe cleaner kills 99.9% of bacteria. Finally, we apply an odour eating enzyme that feeds on microscopic residue and leaves your bin smelling fresh and clean. All waste water is reclaimed in our unit. Our system is 100% environmentally friendly and fully self-contained. We only use water heated at 185° so there is no harm to the environment in the way manually cleaning does. Following the cleaning process, the hydraulic lift returns the container to the curbside. The technician will sanitize both inside and outside the tote or can to ensure they are fresh, clean, and ready to be returned to your property.

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 corporation.

Boards of Directors

Ontario Condo Info Cente

Note: The following was taken, with permission, from an article of the Ontario Condo Information Centre, and has references to the Condominium Act of Ontario. So references to "declaration", "bylaws" and "rules" will have different connotations. Nevertheless, the duties of a Board (Strata Council), and other terms such as Condo Act (Strata Properties Act), should not detract from the import of the constitution and behaviour of Board Members (Strata Council members) in ensuring a well-run strata. (https://condoinformation.ca). Editor.

All condos have a board of directors or an equivalent group by any other name, such as a council, depending on the province and territory.

WHAT ARE BOARDS' DUTIES?

Boards of directors run condo corporations on behalf of owners: They **represent owners**. As an entity, they are responsible for making all major decisions regarding the maintenance of buildings and grounds, condos' finances, and must uphold and enforce the *Condo Act*, the declaration, by-laws, and rules.

It is a prime board duty to ensure that rules and the declaration are applied uniformly and not just from time to time as suits directors or management.

Boards cannot refuse to enforce rules just because only one owner complains that a particular rule is not followed.

Failure to enforce rules fairly and consistently (and follow them) generally leads to problems down the road. These can result in a lowering of the standards of comportment in the building, degradation of civility and property, maltreatment of staff, abuse of power on the part of one or more board members, as well as financial problems—all potentially lowering the value of owners' units on the real estate market.[1]

Boards of directors plan and oversee the fiscal health of the corporation and are responsible for hiring a management company to carry out the tasks associated with their duties and day-to-day work.

Boards have to ensure that the staff is humanely treated, is qualified, and actually works; that the management company collects all fees from owners in a timely fashion; that invoices are paid, proper records are kept, the budget is duly prepared, contracts are awarded after a tendering process, and adequate insurance is maintained. Reserve funds have to be sufficient, and annual general meetings carried out. Boards are also responsible for the reliability of status certificates.

Boards have to address residents' legitimate complaints, make sure that their needs and rights are respected, and that they can enjoy their units peacefully, as per the Act. Boards are also responsible for communicating with residents, and particularly owners, so that owners are informed and feel empowered.

Boards should not turn into exclusive social clubs protecting directors or managers who fail in their duties. Rather, board members owe their allegiance to their condo, the Act, the rules and by-laws. **Boards do not represent themselves nor the management: [They must remove their owners' hats, put on their Directors' hats, and realize that] they represent owners and should be accountable to them.**

It is the duty of boards to maintain dignity, respect for others and property, and general civility in a condo building or townhouse complex.

Since this website has been posted, countless letters of complaint have been received from owners and many board members regarding abuses on the part of various boards and particularly presidents. [….] As well, numerous complaints have been received about managers who refuse to help owners get in touch with their board. It is imperative that there be a special

Continued on page 14

email address or mail box that allows owners to contact their board in each condo. Boards cannot refuse to be contacted. Furthermore, **boards should allow owners to make reasonable complaints without threatening them with legal action.**

A GOOD BOARD:

1. Communicates with owners and residents on a **regular** basis, explains its decisions, openly discusses problems and victories, has a policy of transparency and truthfulness. Postings on bulletin boards accessible to all residents are key in this respect. Information meetings may take place occasionally.
2. Addresses residents' legitimate complaints/concerns/requests and respects useful suggestions.

Lack of communication and disregard for owners and condo assets are at the root of most condo problems. It's the main red flag and it is reflected below in many problems in the section on what constitutes a "bad" board.

3. Follows and enforces condo rules consistently and for everyone: Board members have to follow rules themselves if they expect others to follow them and should not show favouritism.
4. Exercises due diligence regarding contracts for repairs, maintenance, and staffing. In other words, a good board seeks tenders. When maintenance problems arise, a good board not only seeks advice from non-interested parties (to avoid conflicts of interest), but also asks if there is a better and less expensive solution than the one suggested by contractors.
5. Is constituted of members who have no axe to grind or a vested interest or a personal agenda.[2]
6. Always respects a condo's finances, assets, and owners' monies.
7. Makes certain that the premises are well maintained and that the staff is competent and hard working.

In contrast,

A BAD BOARD:

1. Rarely communicates with owners on **substantive** issues and prefers to inform them as little as possible. This seems to be a key ingredient in a lowered quality of life in condos and is reflected in the many other problems that seem to accompany this issue.
2. Responds dismissively or angrily when owners justifiably complain to them about problems (such as noise and broken rules) and lack of services (such as repairs, cleanliness, garbage, recycling, and odours) or unnecessary expenditures.
3. Or yet, simply ignores owners' concerns.
4. Threatens owners with legal action when they complain justifiably or make suggestions; or yet when owners complain about management, staff, and contractors.
5. Mistreats, harasses, threatens, or refuses services to owners who have justifiably complained or made useful suggestions.
6. Rubberstamps decisions made by the manager, administrator, superintendent or contractors without independently studying the issue. Does not get quotes for projects or services.
7. Spends monies for upgrades just to suit themselves, contractors, or managers.
8. Refuses owners' requests to view corporation records and documents.
9. Does not supervise the manager and staff sufficiently. As a result, the work and services may be of lower quality or very little work may be accomplished. Or, yet, the manager or staff is actually the power in the condo.
10. Forms a clique, often with management, against owners, and fails to understand that a board represents owners and not themselves nor the management/staff.

WHAT TO DO ABOUT A "BAD" BOARD?

Very often, there is not much that owners can do because there

Continued on page 15

is no independent institution that regulates the implementation of the *Condo Act*.[3]

1. Owners can try to requisition a meeting to discuss the issues.
2. If this fails, they may requisition a meeting to replace the board – a more difficult step because of the difficulties in getting votes, especially if condos have a high percentage of owners who live elsewhere.
3. When a board fails in many of its functions, especially in terms of not following the Act and misusing monies, owners can attempt to get a court order of compliance, under Section 134 of the *Act* [or Section 165 of the *Strata Property Act*] . The problem resides in finding a condo lawyer who will be willing to take the owners' case; owners will not be able to count on the corporation's lawyer because he or she will likely side with the board.

[1] The next paragraph was deleted. Strata cases must be taken to court in Ontario, to date, deterring owners because they can be very expensive. However, BC now has the Civil Resolution Tribunal, which cuts down extremely the task of the Supreme Court, and the fees are definitely not the same, amounting most often to just $225 (Ed.)

[2] This may be almost impossible given that all BC councils are composed of owners, and many do have their own opinions and even agendas. But it is important that they do their best to repress their agendas in favour of what is best for the whole strata corporation. (Ed.)

[3] In BC, of course, if there is no possibility of resolving a problem within the strata, much of this is now handled inexpensively, without lawyers, by the Civil Resolution Tribunal. (Ed.)

Secretly Re-renting Condo on AirBnB Proves Costly for Toronto Tenant Ordered to Pay $4000 for Damage

The decision illustrates how difficult it can be for a landlord to learn that something like this is happening, to do anything about it, and to recover compensation

National Post, August 8, 2018, by Joseph Brean

A tenant who secretly rented out a downtown Toronto condo on Airbnb has been ordered to pay more than $4,000 to compensate for damage done to the floors, shower and kitchen by hundreds of short-term renters.

The case between the landlords, Sanda and Aco Jovasevic, and the unnamed tenant is the latest example of Canadian courts and tribunals trying to sort out the rights of owners and renters as the online room-rental service establishes itself in a tight real estate market.

After making an exhaustive list of broken stove knobs, stained carpets, gouges in the floor boards, an unhinged door, busted blinds, an improbably advanced mildew problem in the shower, and a strange substance that looked like dried glue on the floor, an adjudicator decided the tenant must pay for 80 per cent of all this damage, which led to a final figure of $4,407.87 in the July 24 decision.

The hearing of the case in May followed an acrimonious period last year during which the landlords discovered the tenant had never in fact lived in the condo on Front Street in Toronto's entertainment district, but rather, had rented it out "dozens if not hundreds of times to travellers as if it were a hotel room."

The scheme was so established and professional that the landlords even found cleaning schedules indicating the condo was being maintained on a near-daily basis.

The decision of Ontario's Landlord and Tenant Board il-

Continued on page 16

lustrates how difficult it can be for a landlord to learn that something like this is happening, to do anything about it, and to recover compensation for any damage.

The Jovasevics originally applied for an order to evict the tenant, but were given permission to withdraw this request, which the adjudicator believed is part of a legal strategy to sue the tenant in another forum.

The case was the subject of a CBC News investigation that linked the tenant to a Toronto property management company. At the hearing, the tenant did not attend, but was represented by an agent who gave testimony that adjudicator Ruth Carey decided was "demonstrably untrue." As a result of finding the agent "not a credible witness," Carey decided that wherever the landlords' testimony conflicted with the tenant, the landlords would be believed.

Sanda Jovasevic, who spoke to the CBC, declined an invitation to comment further. She told CBC she had spent thousands of dollars fighting to evict a tenant who had never even moved in.

But it is hardly the only case in which a tenant has secretly sublet a residence via the Airbnb online service, and a landlord has struggled to be compensated in a quasi-judicial system that is designed to protect the rights of tenants.

In 2016, for example, a Toronto landlord tried to evict a tenant from a two-bedroom condo being rented on Airbnb, in which guests had sprayed a fire extinguisher in a hallway and set off a false fire alarm, which led to a municipal fine. But an adjudicator refused to kick out the tenant, because the landlord waited more than 60 days to file the application after learning about the unauthorized Airbnb use.

That same year, a tenant was evicted from a small bachelor apartment in a non-profit co-op and ordered to pay more than $3,000 because he did not turn over the profit he made to the co-op.

"In this case, the offence is serious," the adjudicator in that case ruled. "Profiting from renting out subsidized non-profit housing is fraudulent conduct."

In another case, a tenant was evicted and ordered to pay more than $3,000 after an apartment was rented out on Airbnb with an advertisement saying smoking cigarettes and marijuana "is welcome," despite clear building rules against it.

Other cases have led to simple orders for tenants to stop using Airbnb.

[It is fortuitous that power in BC has given to stratas to regulate or prohibit such short term usage as businesses – not rentals – and that the SPA Regulations, as of November 31, 2018, will permit stratas, if they have an appropriate bylaw, to fine such operations $1,000 per day. Editor.]

YOUR PAGE Letters to VISOA

GET INVOLVED IN YOUR HOME! LISTEN UP! TAKE CARE OF YOUR INVESTMENT!

I volunteered for Strata Council when I saw that almost everyone else was remaining silent and studiously examining their shoes. That just isn't fair, I thought, we are all owners. No, I didn't have "experience", nor was I totally familiar with the *Strata Property Act* and *Regulations*. But I can read, I can learn, and I can get help from those who do have that experience and knowledge (thanks, VISOA!)

It has been, and continues to be, a steep learning curve. I have still a great deal more to learn. After my first term on Council of a self-managed strata, here are some of my observations.

Many owners who do come onto Strata Council go to great lengths to be knowledgeable about the *Strata Property Act* and *Regulations*, attend seminars on their own time, and do their best to operate in accordance with the requirements of the *Act* and the strata's Bylaws in the best interests of ALL the owners.

However, it seems that most of the other owners are not well informed at all, although many of them fail to realize it.

In terms of upkeep, some owners want to hijack the general agenda to suit their own personal preferences. Stratas are effectively small communities: the people are neighbours. Yet some owners are too frequently confrontational and "demanding" in their demeanor. They must remember that council members have an equal obligation to ALL owners. This is particularly true when it comes to maintaining the property in the kind of attractive state, both physically and financially, that would allow an owner wishing to sell to do so with relative ease.

Owners in many stratas want to be self-managed, to save costs. However, some want all costs to be rock bottom but are the first to complain if the result of the service they receive is also rock bottom. Also, there seems to be a perception that it's essential to keep strata fees low; very low, and that this attracts new buyers. This is doubtful and it would be naïve to buy (or to have bought) on that basis. Haven't they heard of "inflation"? With little capital in the reserve fund, the thought of the alternative in the form of future special levies would be worse!

Although there is no obligation in law to follow any plan suggested by a depreciation report or any variation of it, if the owners do not accept any such plan, and vote to not increase contributions to the CRF, this information will be blatantly obvious when any owner is in the process of selling

Continued on page 18

Continued from page 17

his unit. Minutes of Strata Council meetings as well as AGMs together with the depreciation report itself will tell the story. New buyers would likely be even more averse to buying if there is a clear indication, from lack of significant contributions to the contingency reserve fund, that there will be a requirement in future for special levies for upkeep or repairs. Not knowing if extra funds will have to be planned for could be a big risk for them. I think some owners wishing to sell would then be put in an unfair situation with regards to potential sales as a result of such actions (or lack of them) of other owners, and this could lead to legal issues. But I don't think owners in general understand or even want to understand the significance of it all.

Self-management doesn't mean a few dedicated ones do all the work all the time. Managed stratas are in the same situation and should not rely on the "faithful few" since all owners should be involved. While such stratas may pass some of the regular duties to a strata manager, the council is always responsible for the operation of the strata and cannot try to pass those responsibilities on to others. Regardless of the manager, as they say, "every strata is self-managed."

Some owners are quick to criticize but disappear when it comes time to help. Many owners take for granted the commitment and the time involved on the part of those owners who do volunteer to be on council. And those many owners don't seem to take their own responsibilities and their obligations as owners seriously enough. Just because some owners are retired, that doesn't mean they have lots of free time to spend on Strata matters: retired people have lives and responsibilities too that other owners may not be aware of. If some owners need to go out of town frequently they must understand that council meetings can be arranged to suit their schedule, it's not a valid reason for not volunteering. Perhaps they could start communicating with Strata Council on an ongoing basis throughout the year, at the very least to thank the council for improvements, and making suggestions where they see improvements could be made. And if they would take the time to go to: https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing AND READ the relevant pages, it would make a strata council's job a great deal easier.

Thank you to VISOA for being there! From a strata owner who cares!

Email us at editor@visoa.bc.ca
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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.

~ 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.

So You Want an Administrator?

Two Opinions

Some stratas become so dysfunctional that some owners feel there is no choice but to go to the Supreme Court and ask for an Administrator to straighten the mess out.

One former court-appointed administrator has said that not only is this an expensive undertaking, but all too often, when the administrator has cleaned up the complaints and left, other problems and disagreements continue, so the work of the administrator is hardly worth it.

More recently a lawyer opined:

My experience with Court ordered administrators is that you want to avoid the appointment of one at all costs.

Speaking of which, the last two I have dealt with cost the Strata Corporation between $30 and $50 thousand a year in their fees and another $20 to $30 thousand in legal fees.

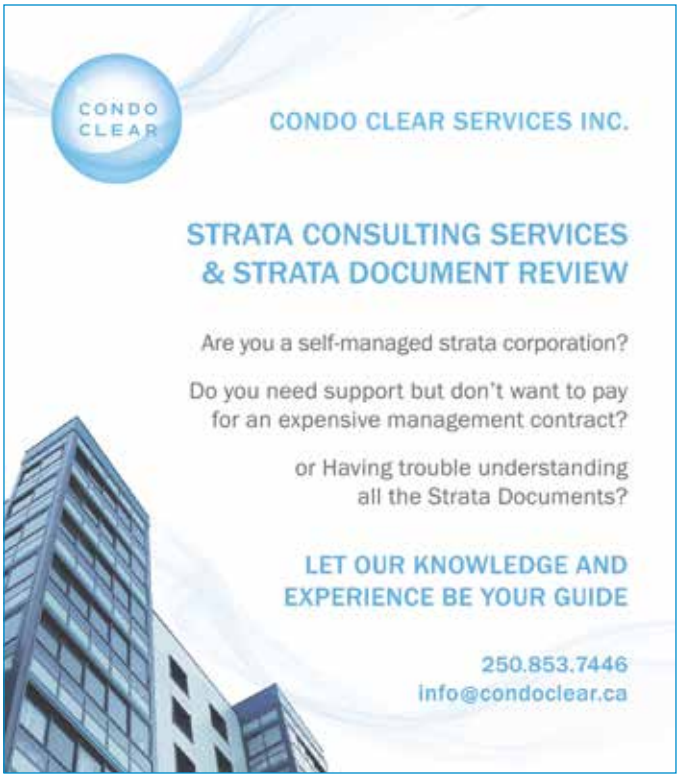
Plus once appointed they tend to find ways to justify their continued appointment. It's like an old Greek city state appointing a tyrant during a war. When the war is over, the tyrants rarely gave up power willingly.

I have twice had administrators appointed and will never seek to do so again.

So, for strata owners at their wits end, asking the court for an administrator might get you what you want fixed, but at a considerable price for all the owners. Maybe you should first consider either:

a. Moving; or better,

b. Stepping up to the plate by removing the current council and ensuring that you and your like-minded owners form the new council to straighten things out for everyone! Hard work, maybe, but this is your very large investment!



President's Report

It's hard to believe it's November – where has the year gone?

As you read this Bulletin, we will be preparing for our November 18th seminar in Victoria, a repeat of September's "Strata Insurance – Everything You Need to Know" seminar in Nanaimo. We try not to repeat seminar topics often, but strata insurance is so important and at the same time, so confusing, that we know there is high interest. If you missed the last one, this is your chance, and I hope to see you there.

We are also beginning to plan next year's seminars and workshops. Your board is considering implementing a small fee to attend the (until now free) seminars. A nominal amount to help cover the venue costs. We'll discuss that at our AGM in February. If you have ideas for seminar or workshop topics, I'd love to hear from you at president@visoa.bc.ca

For those who haven't attended both, seminars are short, 3 hours, and free for members who register in advance, with a small fee charged to non-members, and to members "at the door" if not registered. With attendance of usually 100, you may not get your personal question answered but will be sure to learn a lot. Past topics have included earthquake preparedness, bylaws, depreciation reports, and dealing with difficult owners.

On the other hand, our workshops are a full day including lunch and reference materials, and are deliberately kept to small groups of 20 or fewer, which allows plenty of time for interaction and questions. Popular topics are those designed for new council members, treasurers, or strata secretaries, as well as working with a strata manager, dispute resolution, and managing your CRF.

Although VISOA's AGM date is not yet confirmed (likely on February 17 or 24) we have our agenda planned. We will have a bylaw revision to present, based on the recent changes to the Societies Act; then our guest speaker will be a representative of the Civil Resolution Tribunal (CRT) talking about the ABC's of the CRT – how to give your dispute the best chance of success.

At the AGM we need to elect new board members, as usual, and that's a good segue to introduce a new board members appointed in September. Kevin Hilgers has owned rental strata properties in Victoria for many years and is now residing in Victoria. As CEO of a media/marketing company, and very active in Rotary International, Kevin still finds time to sit on strata council at one of his stratas. He says VISOA is just the sort of opportunity he is looking for – to increase his own knowledge, and to give back to our members. Welcome Kevin!

Have you had a chance to read and send your feedback on the BC Law Institute's Consultation on Strata Insurance? The paper is considerably shorter than the BCLI's other consultations, as strata insurance is one defined topic within the *Strata Property Act*. The consultation paper has 10 tentative recommendations for reform, which address issues such as expanding the legislative mandate on strata corporations to purchase insurance and expressly allowing a strata corporation to decide to charge back to an owner an amount paid for an insurance deductible, if the owner is responsible for the loss or damage that gave rise to the claim that resulted in payment of the deductible. The consultation paper also contains one more open-ended question for discussion, concerning whether British Columbia should adopt the standard-unit concept, which is a feature of the law in other provinces. The consultation paper, a response booklet, a backgrounder, and a link to the survey are all available at https://www.bcli.org.

The BCLI's previous consultation, on strata governance, has ended. This consultation received the most feedback in BCLI's memory, and I know it's partly thanks to VISOA members. The committee is now finalizing the report, amending some recommendations after taking your feedback and comments into account, and then the entire package will be forwarded to the government for consideration. With luck and good timing, you may see some amendments to our Act by this time next year. It felt terrific to be part of the committee and knowing that I have helped, in a small way, to effect legislative change. And those of you who sent in your responses should feel equally gratified.

— Sandy Wagner

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