VISOA
Vancouver Island Strata Owners Association

- Box 601, 185-911 Yates Street, Victoria, B.C. V8V 4Y9
- Helpline: (250) 920-0222
- Toll Free 1-877-33-VISOA (877-338-4762)
- Web site: www.visoa.bc.ca
- Email: info@visoa.bc.ca or membership@visoa.bc.ca

VISOA Bulletin - September 2008

President's Report

Our last seminar in June was well attended. We used a different format this time: several short presentations going on simultaneously in separate rooms. Although there was a problem with sound transfer in two of the presentation areas, all in all the seminar was successful, and according to the feedback we received on our evaluation forms, most members left with a lot of information to take home to their councils.

This summer, as in previous years, the VISOA Board had a short break from meetings. However, a lot of frantic activity went on by email in regard to the planning of the upcoming seminar. John Grubb has accepted our invitation to be our speaker on September 23. As it is more than two years since he last spoke to our Nanaimo members on maintenance, we feel it is not to soon to repeat this popular subject, in particular as there are so many different aspects to strata maintenance.

We are revamping our website. Board member Tony Davis has been busy upgrading and improving what there was, with the help of our graphic artist and our computer technician. You should soon see some new items as well as reorganization of old material. Websites are of course areas that need frequent upgrading, and we are working to keep ours current. We hope you find it helpful and informative and that you will tell your friends about it.

For me as President it is a joy to work with our multitalented Board. We have been working together for several years, with the most recent member joining early in 2007. That means each one of us has found a comfortable niche in which to contribute to the considerable workload the VISOA Board carries. We presently have two openings on the Board. Are you interested in joining our team? The work is interesting and in actual hours per week or month not too demanding. You may find it rewarding and the company is great.

- Felicia Oliver, President

In this issue...

VISOA's upcoming seminar

~ Mark your calendar ~

Sunday, September 21, 2008
The Nuts & Bolts of Strata Maintenance - Register 12:30 pm
Beban Park Social Centre,
2300 Bowen Road, Nanaimo
No charge for VISOA members
$20 for non-members

Do you know where your reserve funds are tonight?

A cautionary tale for strata councils

by Harvey Williams, VISOA Board Member

In a previous column entitled When Two Signatures Are Not Enough, I described a case in which a strata corporation lost nearly $120,000 when their credit union cashed cheques that did not have the requisite two signatures. VISOA members will be interested in recent developments in the case.

The long-time strata treasurer had split with her partner, moved out of the complex, and was hired as a bookkeeper with her name as a signing authority for strata cheques. Her personal account was in the same credit union as that of the strata.

Unbeknownst to the strata council, she was addicted to gambling. To support her gambling habit, she soon devised a way to cash strata cheques with only her signature. She wrote cheques to herself on the strata account and deposited them in the instant teller where they were electronically credited to her account without the second signature. The strata treasurer handed the monthly bank statements over to her without opening them. Fabricated financial reports submitted by the bookkeeper were taken at face value by the strata.

By the time the scheme was discovered the strata's bank accounts were drained of $120,000. Since the bank had not been notified of the discrepancy within 30 days of the date on the bank statement, the funds could not be recovered from the bank. The former bookkeeper, now living and working as a bookkeeper in Alberta, was returned to BC for trial, convicted of misappropriation of funds and given a suspended sentence on condition she repay the stolen funds. It was now up to the strata corporation to recover upwards of $100,000 from a convicted felon living in Alberta; clearly, a case of mission impossible.

Unaware that Directors and Officers Insurance protects strata council members not strata funds, the strata corporation filed a suit against the treasurer aimed at recovering its lost funds. Proving negligence on the treasurer's part at first appeared to be an open and shut case. But insurance companies do not part with money lightly and the strata corporation, to its dismay, soon discovered that reality. It is now pitted in a bitter legal battle with its own insurance company whose lawyers have mounted a spirited defence and are engaging in what some might regard as unscrupulous tactics.

The company's lawyers have requested access to boxes of old and seemingly irrelevant records. They have aggressively questioned the strata president and other strata council members in a manner that leaves them intimidated and demoralized. It is an unequal contest between a 36-unit strata corporation most of whom are retirees, clerical workers, and mid-level civil servants and an insurance company with deep pockets that is part of an international conglomerate.

The outcome is predictable. The strata council, intimidated by the company lawyers and mounting legal costs, will settle out of court for a fraction of the lost funds.

The take-home message for strata councils is: follow the rules and don't trust anyone with your funds! A person not licensed to perform real estate services had signing authority on the strata bank account. No strata council member or other owner examined the bank statements.

The cardinal rule in protecting strata funds is for at least two strata council members who do not have signing authority to examine each and every bank statement within 30 days of the date on the statement even if there is a strata manager. Because bank statements can now be downloaded and emailed, this is easily done with little inconvenience.

Ramping up potential costs for BC strata owners?

by Sandy Wagner, VISOA Board Member

A recent decision by the BC Human Rights Commission could potentially have a huge financial impact for BC strata owners.

In Vancouver, BC, 86-year-old Mrs. H. had happily lived in her apartment-style strata for 30 years. As her health began to fail, she required the use of a walker for mobility and that is where the problems began. The elevator of her building is only reachable via a short staircase of three steps. At first, she would lift her walker to the landing above the top stair and, using the handrail, proceed to the landing under her own power. This became increasingly difficult and she asked the strata council if they would consider adding a ramp to make her passage easier. The council considered the request reasonable and took the question to an Annual General Meeting. A majority of the owners agreed – problem solved, wouldn't you think? No: the method of payment was the stumbling block. A payment from the Contingency Reserve Fund requires a ¾ vote, and although the majority agreed on the principle of installing the ramp, they could not agree on who should pay for it. Some owners assumed that Mrs. H. would bear the entire cost of the ramp; while others thought the strata should absorb the cost; still others thought it should be a 50/50 proposition.

Mrs. H.'s health continued to deteriorate, and after a few falls on the stairs trying to negotiate with her walker, she was unable to navigate on her own. She required assistance, and relied on friends or neighbors to help her up or down the three stairs then pass her walker to her. Once back on level ground, she was as spry as anyone else – it was just the stairs that were the impasse. Her daughter wrote to the strata council on her behalf, and the matter again went to an Annual General Meeting. The council was directed to obtain price estimates for the project, so that the owners would have a better idea of the costs. The owners still disagreed on who should pay for the ramp, but they decided that they could not properly vote without complete information.

The council found out that, because of the age of the building, the ramp itself would need to be built with much higher weight-bearing specifications than originally thought in order to comply with building codes. The construction estimates ranged from $30,000 to $63,000 and no decision was made. Mrs. H. was becoming more and more housebound, and her daughter, Ms. M., was becoming increasingly frustrated as the issue had now been unresolved for five years. Ms. M. applied to the BC Human Rights Commission for a hearing on her mother's behalf.

Mrs. H. as well as her daughter, doctor and friends all addressed the BC Human Rights Commission Tribunal. When it was the strata corporation's turn, they cited the high cost of the ramp, the fact that it would only benefit one owner, and the possibility of opening a "Pandora's Box" of similar cases.

In the decision, BC Human Rights Tribunal member Tonie Beharrell found in favour of Mrs. H. She said that the lack of a ramp was discriminatory, as there was no other access to the elevator. She also stated that a ramp would benefit all owners and visitors, not just Mrs. H. and so should be paid for with common funds. She ruled that the strata must pay the costs of the ramp, up to $63,000, and must have it completed in a timely fashion. If the cost exceeds $63,000 then the parties should engage in "Tribunal-assisted mediation" to resolve the dispute. If mediation fails, Beharrell said, she would make further orders.

The Tribunal member was careful in the wording of her decision not to imply that this would open a "Pandora's Box". She stated, "With respect to the floodgates argument put forward by the owners, I note that the issue of undue hardship is one to be assessed in all of the circumstances of each individual case. The situation with other facilities may differ in a number of ways from the facts of this case. This decision should not be taken as predetermining the outcome in other cases, where the surrounding circumstances, and evidence led, may be very different".

But, Ms. Beharrell's words

Continued on page 8

Editor's comment

by Harvey Williams, Bulletin Editor

If you have noticed a reduction in the number of typos and grammatical errors and a general improvement in the quality of composition in the last two issues of the Bulletin, **it's because VISOA Board Member Sandy Wagner** is now proof-reading all of our articles.

Strata owners should keep their eye on this one. As the rental housing market tightens, municipal governments are casting covetous eyes on strata units as potential rental housing. According to the Vancouver Sun (June 24, July 8), the City of Vancouver is actively lobbying the provincial government to enact legislation banning strata rental restrictions in order to free up more strata units for rental. Similar mutterings are heard from time to time from individual Victoria city councillors.

While one sympathizes with those in need of rental housing, clearly such a prohibition would be grossly unfair to strata owners, especially owners in smaller strata complexes. The absentee landlords of the rental units collect their rent while the resident owners look after their investment for them. The strata councils made up of resident owners manage the strata finances, create the budgets, collect the strata fees, enforce bylaws and rules, and not the least, settle differences among residents, including renters. Moreover, the Human Rights Act and the Landlord and Tenants Act prevail over the Strata Property Act in ways that create special privileges for tenants that strata owners do not have.

It's no accident that the last item on the Form B Information Certificate required in all strata sales is about the number of rental units in the complex.

Island Strata Property Managers Disciplined

Cornerstone Properties Ltd and Baywood Property Management Ltd, Victoria strata management companies, have been disciplined for professional misconduct by the BC Real Estate Council according to the April Report form Council.

Cornerstone was disciplined for allowing an unlicensed person to serve as a strata manager over an 18-month period from January 1, 2006 to about June 12, 2007. The Real Estate Services Act (RESA) classifies strata management as a real estate service for which licensing is required.

Cornerstone Properties Ltd and its managing broker, J.R. Middleton were required to pay enforcement expenses of $750.

Baywood Property Management Ltd. was reprimanded and required to pay a discipline penalty of $2,500 for professional misconduct. The professional misconduct consisted of making false statements in its license application, failure to manage trust accounts and records in accordance with the requirements of RESA and failure to follow instructions of a client regarding the disposition of funds.

The Council required Baywood and its managing broker, William Kenneth Carter, to pay enforcement expenses of $750.

"Nearly all men can stand adversity, but if you want to test a man's character, give him power."

— Abraham Lincoln

Obtaining access to strata corporation documents

by Shawn Smith, Cleveland & Doan L.L.P.

Recently I was asked by one of your fellow readers to write on the issue of privacy legislation and how it impacts on an owner's ability to obtain documents from a strata corporation. I thought that was a great suggestion since it is a topic that is (or at least should be) of interest to everyone who lives in a strata corporation and an issue, which seems to be arising more often as of late. I will also address the issue of access to documents in its broader context, not just in relation to privacy laws.

The basic framework for access to documents is found in Sections 35 and 36 of the Strata Property Act (the "Act"). Section 35 and the associated Regulation 4.1 set out the types of documents, which the strata corporation must keep, and for how long. Section 36(1) of the Act provides that:

(1) On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,

(a) an owner,

(b) a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or

(c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).

Pursuant to Section 36(3) the documents must be provided within 2 weeks of the request (except in the case of the bylaws which must be provided within 1 week). The strata corporation may charge 25 cents per page for copying. Neither the strata corporation nor its strata manager can charge the person requesting the documents for the labour costs involved in supervising access to or assembling and copying documents.

What if an owner requests copies of all the documents listed under Section 35 of the Act? Must the strata corporation comply? In the writer's opinion, the answer is no. The documents must certainly be made available to the owner, but where countless hours would be spent copying documents which are clearly part of a "fishing expedition" the strata corporation would undoubtedly be justified in inviting the owner making the request to view the documents and identify those particular ones he or she wishes to have copies of. Some support for this is found in Kayne v. The Owners, Strata Plan LMS 2374 (Oral Reasons July 26, 2007 Vancouver Registry S072740) wherein the court stated: "Section 36 requires that those documents be made available to a member of the strata corporation within 14 days of the request."

Kayne is also an important decision in that it gives some further direction as to the nature of the documents to be kept and produced under Sections 35 and 36. The court made three general findings:

1.1. The Act mandates no particular form in which the documents are to be kept and no particular level of detail that is to be contained in them. (In other words, there is no standard format for minutes);

2.2. While the Act provides that the strata corporation must maintain a book of account showing money received and spent by the strata corporation, it does not have to produce underlying documents such as receipts and cheques to an owner; and

3.3. Correspondence to and from the council means official correspondence and does not include notes and email between council members.

Many owners who request to see documents (particularly correspondence) are now being told that they cannot see those documents because of privacy laws which prevent the strata corporation from doing so. In the writer's view (for reasons which will be explained below) this is not necessarily the case and is being used as an excuse to simply deny those owners access to documents.

The legislation that strata corporations are relying on to take this position is the Personal Information Protection Act ("PIPA"). PIPA is provincial legislation and came into effect on January 1, 2004. In brief, it requires an "organization" (which includes strata corporations) to have a person's permission (either express or implied) to collect, use and disclose their personal information. To do so without their consent is a serious matter and the legislation provides for potentially severe penalties for doing so.

Strata corporations, often on the advice of strata managers, have increasingly been taking the position that any document (i.e. a letter) that contains personal information (i.e. a name and unit number) cannot be disclosed. It appears, however, that Section 18 of PIPA is being ignored or overlooked. That section provides:

Continued on page 6

Continued from page 5

that "An organization may only disclose personal information about an individual without the consent of the individual, if the disclosure is required or authorized by law."

Arguably Section 36 of the Act is "disclosure required or authorized by law". Another piece of legislation (being the Strata Property Act) clearly authorizes certain documents, which may contain personal information to be made available to certain persons who request them. As such, permission of the person(s) who created or are referenced in the document to disclose the same is not required. Practically this makes sense. Owners should be entitled to know what is going on within the strata corporation since they have an ownership interest in it. The argument against disclosure, if taken to its fullest, produces an absurd result. Section 36 of the Act is effectively stripped of any purpose or effect. An owner who is accused of breaching a bylaw would not be able to see the letter(s) of complaint against them and would be precluded from mounting a proper defense to the same. Surely this is not what the drafters of PIPA intended.

Some support for this position is found in a decision of the Information and Privacy Commissioner (the person charged with overseeing the implementation of PIPA). In Order P06-01 the Commissioner was required to consider whether or not letters from the College of Dental Surgeons in response to a complaint against a dentist could be produced or not without the complaint's permission. In deciding that they could the Commissioner stated:

"…s.18(1)(o) [of PIPA] applies, as the College's rules authorized the organization to respond to the applicant's complaint."

This would seem to be no different a case than under s.36 of the Act.

Even if Section 18 of PIPA were not applicable, the production of documents cannot be flatly refused. The proper course would be to redact the documents and remove any reference to "personal information" contained in them. A blanket refusal to permit an owner access to documents is not justifiable. The debate, however, will continue until the court finally resolves the matter.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is Honourary Legal Counsel for the Pacific Condominium Association and is a partner with the law firm Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@cleveland-doan.com.

SMALL CLAIMS JURISDICTION IN STRATA MATTERS

by Joyce Johnston, Attorney

The Supreme Court of British Columbia is the court that can hear any dispute unless legislation has specifically mandated that they cannot hear that type of dispute. On the other hand, the Small Claims Court is a division of the Provincial Court of B.C., and the jurisdiction of this court is only as granted to it by legislation.

One limit on the jurisdiction of Small Claims Court is a monetary one – the Court can only hear matters involving claims for $25,000.00 or less.

The jurisdiction given the Small Claims Court under the establishing legislation is:

• Claims involving debt or damages, the recovery of personal property,
• Specific performance of an agreement relating to personal property or
• Services, or relief from opposing claims to personal property. Libel, slander, or malicious prosecution are expressly excluded from Small Claims Court jurisdiction.

Small Claims court has somewhat simpler rules and procedures than higher levels of civil court, and this makes it an attractive forum for strata lot owners and strata corporations. Possibly conflicting court decisions leave some doubt about which matters can be brought in Small Claims Court. As matters presently stand, the following criteria apply:

• The matter falls within the 25,000.00 monetary limit.
• It is a claim for debt or damages, or for performance of an agreement relating to personal property or services (includes contract and tort).
• It is not a libel, slander or malicious prosecution claim.
• It is not one of the matters set out in the Strata Property Act where the Supreme Court has jurisdiction.

If all these criteria are satisfied, the matter should be able to be brought in Small Claims Court.

Making the Strata Property Act more owner-friendly

by Deryk Norton, VISOA Board Member, Government Relations

On May 2, VISOA released its report *Beyond the Sales Pitch: Ensuring Transparency and Accountability in BC Strata Developments* describing the deficiencies in the Strata Property Act identified by strata owners. Since that time, VISOA has attempted to publicize the report and obtain public support for a review of BC's strata legislation. To that end, VISOA has:

• provided a News Release on May 5 to virtually all newspapers, TV and radio news departments on Vancouver Island and the lower mainland;

• appeared on Joe Easingwood's call in radio show on CFAX radio (1070AM) on June 6 and July 25 in Victoria;

• communicated with the editors in chief of both the Vancouver Sun and the Victoria Times Colonist in an attempt to find out why neither paper has published news stories on based on information provided by VISOA;

• written letters to the editors of the Victoria Times Colonist and the Vancouver Sun raising the issue of the, as yet unmet, 2003 government commitment to review the Strata Property Act;

• met with the presidents of the mainland based Pacific Condominium Association and the Canadian Condominium Institute Vancouver Chapter who are very supportive of our efforts and will be making our report known to their members; and

• in a letter dated July 1, asked the new Minister of Finance, the Honourable Colin Hansen about the legislation concerns of strata owners and the unmet 2003 commitment of his predecessor.

Media coverage of our concerns as a news story has occurred only on the Joe Easingwood program on CFAX radio, the Christy Clark show on CKNW radio 980AM, and local papers in Nanaimo, Parksville/Qualicum and the Comox Valley. So far as we can determine, there has been no coverage of this news story in any Victoria or Vancouver newspaper. Although we do not know why these papers have not covered the story, it is hard not to notice that the real estate industry advertises heavily in them.

To hold the provincial government accountable for its unfulfilled 2003 commitment and to publicize the need for strata legislation reform, VISOA is asking strata owners to:

• Write to the Times Colonist or the Vancouver Sun including the question about why that paper has not covered this news story,

• Write to the Honourable Colin Hansen, Minister of Finance, P.O. Box 9048 Stn Prov Govt, Victoria, BC V8W 9E2,

• Send a copy of their letters to their local MLAs; and

• Refer other BC strata owners, by e mail or otherwise, to the report under Legislation Issues at www.visoa.bc.ca

Strata legislation will not be improved until many more voters take the time to make their concerns known to their elected representatives and the media.

Should strata owners be concerned about title fraud?

by Patrick Lockert, Strata Owner

Recent media reports of title fraud are causing concern among some strata owners. The fraud works with one person posing as the owner of a property, working in cahoots with a phoney buyer who takes out a mortgage on the property as part of the purchase deal. The true owner only learns that his home is mortgaged when a notice of imminent foreclosure is received from the bank holding the fraudulent mortgage.

While this fraud has met with some success in Ontario, BC title legislation is much more stringent. According to the BC Land Title Office (LTO), in the past 18 years, over 15 million title transactions have occurred and only 14 claims of title fraud have been filed. Ironically, clear title homes are more vulnerable than homes with mortgages because the sale of mortgaged property has an additional level of supervision.

Strata units receive some protection because of "due diligence" on the part of the strata corporation in completing the Form F when the unit sells. One cannot register a conveyance at the LTO without a Form F. However, Form F can be delivered without the knowledge of the owner. Two signatures of council members or one signature of the management company is all that is necessary. The signature of the owner is not required, so strata officials could, unknowingly, be abetting a fraud.

In the case of fraud, once the true owner's title is re-established, the owner may soon discover that his property has a mortgage on it. Litigation to free the owner of the responsibility of this mortgage can take a long time and be costly.

The Vancouver Sun cites a BC Supreme Court decision restoring title to a property that had been fraudulently transferred, but allowed fraudulently obtained mortgages on the property to stand. One can only imagine the costs of obtaining justice in this case.

Some insurance companies sell insurance against title fraud. This insurance will fund the victim of fraud for legal and court costs in re-establishing the victim's entitlement and dealing with the mortgage. The cost for this insurance is around $400 for coverage which lasts for as long as an owner has title.

Another way to protect against title fraud (if you have clear title) is to obtain a duplicate certificate of your title from the LTO which becomes the "master" or "original" title. The cost is around $50. If you do this, it is extremely important to keep the certificate in a very safe place, such as your bank safety deposit box, because it will be needed when you sell the property or pass it on to heirs.

For further information on title fraud, go to the website below.
http://activerain.com/
blogsview/570502/B-C-home-owners

Ramping up potential costs

Continued from page 3

notwithstanding, there is a potential for similar cases to come before the Human Rights Commission. What if you are injured or become ill, and lose strength in your arms? Could you still open the front door of your building? Would your strata be obliged to install a push-button entranceway? Or what if your no-elevator building made you a literal prisoner in your home in your senior years? Would your strata be required to install an elevator?

Should all of the owners pay for an amenity that may benefit only one owner or is it a human right for those with physical challenges to have the same access as they do in public buildings such as hotels and restaurants? Should an existing strata complex be required to adapt to accommodate a prospective purchaser?

As we often tell you, we at VISOA are not lawyers and cannot give you legal advice.

Veronica Franco, a lawyer with Clark Wilson LLP in Vancouver stated, "It is always important for strata corporations and their councils to be open minded when receiving a request for accommodation under the Human Rights Code. Human rights claims have taught us that the bylaws must be enforced and decisions must be made in a reasoned manner. By contrast, blindly enforcing the bylaws without looking at the consequences of that enforcement and the individual circumstances can lead to a finding of discrimination, even if it is unintentional. By keeping these points in mind, strata corporations can avoid most human rights complaints from owners."

This case raises many more questions than it answers, and only time will tell what rulings may follow.

The Roof
The "universal" common property - Part 2

by John Grubb, SMA, RPA, RRO

There is one building system that, no matter what you live in, Townhouse, Condominium or any other Strata Property (bare-land excepted, unless there is a common facility or building), the roof is a portion of the Common Property that most owners are aware of, and understand to be a major replacement expense.

In the first part of this 2-part series, we examined various aspects of sloped roofing. In this second part, we look at flat roofing.

Where sloped roofing keeps buildings watertight through the use of gravity and "persuasion" to direct the flow of water across the surface of the lapped shingles to the gutter system, flat roofing systems are actually designed to be able to hold water.

This will sound odd to many readers but it is important to understand that the membrane on a flat roof must be able to act as a complete waterproof "liner", and we hope this clearly indicates the difference between the two roofing types.

We should also note that while there are "dead flat" roofs, the structure and/or roof assembly design for most buildings (and by BC Building Code, all new buildings) will have a slight slope towards their drains. The point, however, is that a membrane system installed on a flat roof must be able to accept areas of standing water without leaks, and this is why careful attention to its installation by knowledgeable and experienced roofing contractors is so important.

It is also why regular inspections and maintenance are critical to the continued operation of the membrane. Where plugged drains of a sloped roof's gutter system will cause water to overflow at the edge of the roof, a plugged drain on a flat roof will cause havoc when the water reaches the level of the open flashing assemblies or the top of the lowest roof penetration (plumbing stack, chimney, etc).

Many flat roofs will have overflow drains routed through a parapet wall (the perimeter wall around the top of the building) in a location where, if water starts to flow through it, it will drop down at a place where noticing it is unavoidable, and will warn the residents that something is wrong on the roof.

Membrane Types

Many of you will be familiar with the traditional Tar & Gravel, Built Up Roof (BUR) membrane, a system that has been in use for well over 100 years. While the technology and science behind roofing materials has improved performance and longevity, the basic application methods have not changed significantly in that time.

The membrane consists of several layers – generally four but sometimes more – of asphalt impregnated felt rolled out, layer by layer, into a mopped bed of hot roofing bitumen (tar). The last felt layer receives a heavy "flood coat" of hot tar, and a layer of gravel ballast is raked over and embedded in while it's still a semi-liquid.

This system is still in common use in most areas across North America but, in general terms, its service life is generally shorter (20 yrs +/-) than a number of other membrane system types that have been developed in the last 40 years.

The most common flat roof system now in use on the West Coast is the 2-ply SBS (Styrene-Butadiene-Styrene), often called a "Torch-on" roof because of the propane torches used to melt the layers of modified bitumen in order to "weld" two layers (plies) of material together to create a single waterproof membrane.

There are many different choices when it comes to roof sub-assemblies including vapour retarders and insulation types, as well as the methodology of installation but, in general terms, the membrane itself is the same.

Another common membrane type is a "rubber" EPDM that some of you may know better as a pond liner for garden pools and fish ponds. This material comes in large sheets up to 50' wide and 200' long and can be glued down to a roof deck or substrate, or held in place by gravel ballast.

This single-ply material is more common to commercial buildings and is not a system that most residential roofers are familiar with or have the skills to install.

A third membrane type is called TPO (Thermoplastic Polyolefin), a plastic compound closely resembling flexible PVC. This material is applied using similar methods as EPDM but has yet to be seen as a common membrane type.

All of these systems have their pros and cons but, for the most part, the SBS assemblies are likely the best choice as a replacement to the Tar & Gravel assemblies found on many flat roofed Strata buildings.

Once again, we must point out that all roofers are not equal, and this is particularly important when dealing

Continued on page 12

You asked:

Can the annual budget be approved at an AGM with a single vote?

by Harvey Williams

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.

Question:

Can the annual budget be approved at an AGM with a single vote?

Answer:

While the Strata Property Act does not explicitly address the budget voting process, Section 92 of the Act require two separate funds, an Operating Fund (OF) and a Contingency Reserve Fund (CRF) which must be kept separate. While making a distinction between the two funds, it refers to them collectively as budget.

It should be remembered that owners do not vote on fees at the AGM. The OF is approved on the basis of planned operating costs for the year and owners must be notified of fees for the operating fund within two weeks of the AGM. A simple majority vote is required to approve the operating fund.

The requirement for approval of a contribution to the CRF is quite different. The contribution to the CRF is a fixed amount of money, say $10,000, or whatever, from which the fees are calculated. Approval of the CRF contribution depends upon the relationship between the balance in the CRF at the AGM and the OF fund.

Regulation 6.1 requires that if the balance in the CRF is less than 25% of the previous year's OF, owners must contribute an amount equal to 10% of the OF whether they want to or not, without a vote. Let's call this Case 1.

If the balance in the CRF is greater than 25% and less than 100% of the OF, it can be approved by a simple majority vote. Let's call this Case 2. But if the balance in the CRF is greater than the OF, a 3/4 vote is required to approve any additional contribution. Let's call this Case 3.

Only in Case 2, can the amount of a contribution to the CRF be approved by a simply majority vote. In Case 3 a 3/4 vote is required and in Case 1, a contribution is required without a vote. In Case 3, if the budget passes by less than a 3/4 vote, then the strata corporation could not legally collect the CRF contribution. And of course, CRF funds cannot be spent with less than a 3/4 vote except in an emergency.

Separate CRF and OF votes and reports in simple language consistent with the requirements of the Strata Property Act are more easily understood by the owners than when the two are combined.

Relevant sections of the Strata Property Act are:

Section 95 (1) requires separate accounts and reports for the CRF and the OF

Section 103 (1) requires a majority vote to approve the budget with no mention of the CRF. If this were to include the CRF it would make Regulation 6.1 null and void.

Section 92 (b) requires expenses less often than once a year in CRF and separate from OF expenses which are once a year or more often.

Section 93 establishes the CRF contribution as separate from OF contribution

Section 96 requires a 3/4 vote to approve CRF expenditures

Section 99 (1) requires CRF fees calculated from the approved owners contribution separate from OF fees calculated from the approved operating budget.

BUSINESS MEMBERS

Empress Painting
(250) 383-5224 • 1-888-788-5624
office@empresspainting.com
www.empresspainting.com

Focus Tax & Accounting Ltd.
Income Tax, Accounting and Bookkeeping Services
(250) 656-9797

Island Basement Systems
Foundation Waterproofing Specialists
(250) 882-1061 • 1-877-DRY-BSMT (379-2768)
sales@islandbasementsystems.ca
www.islandbasementsystems.ca

Sterling Fire & Safety Services
Fire Safety Services & Fire Alarm Upgrades
(250) 478-9931
sterlingfire@vicbc.com • www.sterlingfire.vicbc.com

Top Coat Painting
Commercial & Residential Painting
(250) 385-0478
saldat@islandnet.com • www.topcoatpainting.ca

Unity Services Corporation
Strata Maintenance Planning & Consulting
(250) 616-9298
john@unityservices.ca • www.unityservices.ca

Seafirst Insurance Brokers
(250) 656-9886
jmccutcheon@seafirstinsurance.com
www.seafirstinsurance.com

Strata Various Handyman Services
Improvements & Installation • Repairs & Maintenance
(250) 208-7160
goodhound@gmail.com

Coastal Community Insurance Services
Business Insurance Expert including
Commercial Property and Liability
(250) 386-7737
shawn.fehr@cccu.ca

All Points Home Inspections
Specializing in Home and Property Inspections
(250) 213-6700
tony@building-insection.ca • www.building-inspection.ca

For more information regarding Business Memberships please contact **Daryl Jackson at 250-920-0222 or membership@visoa.bc.ca.** (Please note that VISOA does not guarantee or warranty the goods, services, or products of their business members.)

The Roof, Part 2
Continued from page 9

with flat roofing. A perfectly competent slope roofer becomes a serious liability to a Strata Corporation if he has no training in the application of 2-ply membrane systems.

Roofing is a recognized trade requiring a similar four year program of training and apprenticeship as a carpenter or plumber. A Trades Qualified (TQ) roofer, although s/he will spend time learning slope roofing techniques, will have spent the majority of this apprenticeship time training on flat roofing application.

It is extremely important that a Strata preparing to have their flat roof replaced takes the time to do the due diligence and ensure that the chosen contractor really does have the qualified and experienced roofers to complete the work, and the track record of successful installations to show for it.

It is not unreasonable to consider engaging a Roofing Consultant to assist in the development of an appropriate design, and oversee the installation to ensure the materials and workmanship will meet the requirements of the material manufacturer's warrantees. This is normal and accepted practice throughout the commercial property management industry, and there is no reason that a Strata Corporation should treat such a project any differently.

Green Roofs

At some risk of over-simplifying, but to dispel some of the mysteries surrounding green roofs, they are really no more than a specialized system of growing media and plants laid down over a membrane assembly almost identical to the ones described above. They are NOT the place to start planting your vegetable and flower gardens, or trees and shrubs.

John Grubb SMA, RPA, RRO is a Facilities Maintenance Consultant and VISOA Business Member and welcomes Member inquiries at usc@shaw.ca or www.unityservices.ca/

NEXT SEMINAR

Mark your calendar:
Date: Sunday, Nov. 16, 2008
Location: Trafalgar/Pro-Patria Legion, Victoria

~ 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.