



Vancouver Island Strata Owners Association

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VISOA Bulletin - SEPTEMBER 2009

President's Report

Just when you thought things could not get worse the government goes from providing a miserly nine million dollars to the leaky condo loan program to cutting the program completely. As the article in this issue describes, this will leave many owners, particularly the elderly and retired, to lose their homes. Joan Marr of Sidney is one of these unfortunates who at age 74 years is facing this devastating prospect. Joan is organizing a protest rally on the grounds of the BC legislature for August 25. I urge you, your councils and other strata associations to get behind this protest. Although this Bulletin may not reach you in time to participate in this rally, please keep an eye on our website for more news.

Despite the efforts of the government, strata living can be enjoyable. However, it is useful to be reminded of the responsibilities that are part and parcel of this lifestyle. In this Bulletin you will find a very thoughtful letter from one of our members, M. Piir of Courtenay. I thank Mrs. Piir for taking the time to write to us and I encourage you to read her letter and perhaps take a few moments to share your own experiences with us.

How many times have you heard strata owners say, "I wish I had known more about condo living before I bought"? Well, thanks to some hard work by VISOA member Brian Smith of Nanaimo, with help from your Board, there is now a website to

provide some of the answers: www.BeforeYouBuyACondo.com is up and running, and your feedback is both welcome and necessary.

Please remember to make a note of VISOA's upcoming seminar in Nanaimo. It's called the "Nuts and Bolts of Strata Council" and is aimed at those of you who are council members or may be thinking of joining council, or for any strata owner who wants to know more about how council should conduct themselves. Speakers will educate you on how to conduct meetings and record minutes, and how to create and enforce bylaws. It's all happening on September 20 at the Beban Park Social Centre.

- Tony Davis, President

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Editor's message

by Sandy Wagner, Bulletin Editor

Welcome to the September issue of the VISOA Bulletin.

In this issue, we have three new contributors, all related to new features launched in the last issue: "Talk to Us" and "Green Corner". "Talk to Us" asks you for your thoughts on the Bulletin, our services to you, or any comments on strata life - and member Miina Piir gives us an insightful account of her year on her strata council.

Our "Green Corner" presents "When it Rains it Drains" written by Adam Neal who is a summer intern at BCHAZMAT Management. You will learn about City of Victoria bylaws regarding parking lot drains. This bylaw will apply to most strata corporations in Victoria, but the information is important to protect our water habitats no matter which city or municipality you live in.

Another member, Marcus Murphy, has written a thought-provoking article about electric vehicles - not from a "green" point of view but rather from the viewpoint of the strata corporation that may be paying to charge batteries for drivers of electric vehicles.

Have you ever wondered if "stop the presses!" really happens? Your new Bulletin editor can assure you it does. As this edition's content was being finalized, the provincial government made a surprising decision to cancel the HPO loan program for owners of leaky condos - and Harvey Williams responded with a speedy article on the subject. Those of us fortunate enough to live in a "dry" strata building can't imagine the financial hardships caused by the leaky condo mess but Harvey enlightens us.

We always try to make the Bulletin relevant to issues you are facing in your strata, so please let us know what you think of these or any of the other articles. We have also been putting our heads together for a catchy new title for "The Bulletin" but haven't come up with one yet. If you have a suggestion, we'd love to hear from you at editor@visoa.bc.ca.

You asked:

Is there a limit to how much our strata agent can charge us for copies of strata records?

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:

I requested a copy of our strata corporation's bylaws from our strata agent and he said I would have to make an appointment two weeks in advance and pay \$25 per hour for staff supervision and 35c per page to photocopy it myself. This sounds expensive - is there a limit to how much owners can be charged for strata corporation records?

Answer:

Sections 35 and 36 of the *Strata Property Act* taken together require that owners have access to most strata corporation records within 15 days of a

request. Access to bylaws and rules must be provided within 8 days of a request.

Records that must be kept and made accessible to owners are minutes of annual and special general meetings and council meetings and the results of any votes, a list of council members, owners and their strata lot numbers and addresses or other mailing address if different, unit entitlements, and parking stall numbers, books of account, the registered strata plan and any amendments, bylaws and rules, resolutions relating to common property, written contracts to which the strata corporation is a party, judicial decisions and legal opinions, budgets and financial statements for the current and previous years, income tax returns if any, correspondence sent or received by the strata corporation or council, bank statements, cancelled cheques, and certificates of deposit, and other records.

There can be no charge for access to these records, but a fee of 25c per page may be charged for copies. The strata agent may not charge an owner or other authorized person any fees in excess of those permitted by the *Strata Property Act*. The strata agent must build any other charges into the management fee that is paid by the strata corporation.

BULLETIN SUBSCRIPTION

VISOA provides five information-packed bulletins each year. Non-members may subscribe to these bulletins at the following rates:

**By email: \$15.00 per year and
by postal mail \$25.00 per year**

The Green Corner

This Month: Parking lot pollution

When it rains, it drains

by Adam Neal

Could your strata be a polluter? One of the largest contributors of contamination and pollutants within the Municipality of Victoria has come from residential parking lot operations. Much of this contamination is the result of leaky vehicles or minor vehicle accidents with residents who are not aware of the environmental impact of these small spills and are not equipped to stop the contamination from hitting the storm drains.

Storm drains lead directly into the ocean. The runoff is not treated. Therefore anything that enters your storm drain in your parking lot WILL eventually enter the ocean. Small oil leaks will be carried into the drains at the first rain; when it rains, it drains!

The City of Victoria has taken a proactive approach towards the preservation of our ecosystem and has taken a large step towards environmental stewardship. On August 11, 2005, the City of Victoria passed a new Storm Water Bylaw with the intentions of dramatically reducing the amount of contamination that enters the municipal storm water system. It applies to ALL properties that have

over 10 parking spots, both underground and aboveground. All properties that fall within this provision are required to register with the City of Victoria. The intent of this bylaw is to raise awareness of what enters our storm drains and how to mitigate the effects of contamination in the parking lots.

There are four main requirements that need to be met in order to reach compliance.

1. All properties require the implementation of a written spill response plan that outlines the steps required to safely and effectively manage spills of different sizes.
2. These properties are also required to have a spill kit on site in an accessible location, and for all residents to be aware of its location. A spill kit should contain: 20 absorbent pads, 1 absorbent boom, disposal bags, and gloves. Spill kits allow for the clean-up of most small spills and leaks at a cost of approximately \$50.
3. Catch basins must be inspected a minimum of once a year to ensure they are free from floating contami-

nation and solids. Catch basins must not have solids in excess of 75% capacity of the catch basins. Pumping out solids lessens the chance of contaminants entering the city system, and also greatly reduces the possibility of the property flooding during heavy rains.

4. An inspection port is required on all catch basins that lead directly into the City of Victoria Municipal storm water system. This inspection port acts as a monitoring point, which allows city inspectors to sample from inside the pipe itself in order to identify possible sources of contamination.

Since the implementation of the bylaw, there have been dramatically lowered amounts of contamination entering our oceans and streams. The implementation of this bylaw has been contracted to BC HAZMAT Management Ltd.

If you have any questions or concerns about the implementation of this bylaw or how it affects your strata, you may contact BC HAZMAT Management Ltd. at 250-656-3382.

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Leaky Condo HPO Reconstruction Loans Scrapped

by Harvey Williams, Board Member

Governments like to release bad news on Fridays before long weekends, when citizens are distracted. Thus it was Friday, July 31st before the August long weekend that Housing Minister Rich Coleman announced the scrapping of HPO reconstruction loans leaving thousands of owners of leaky condos high but not dry. The HPO loan program was funded from a \$750 levy on each new strata unit constructed but a shortfall in funds resulted from the decline in new condo construction.

The reconstruction loans -- they were loans not grants -- assisted owners of leaky condos with liquid assets of less than \$10,000 if under 60 and less than \$250,000 if over 60 and unable to raise funds in any other way to pay for remediation. The loans were to be repaid on the following mortgage renewal dates, normally

within three to five years. The only cost to the government was the interest on the loans, a pittance in light of the government's role in allowing the construction practices that caused the problem.

The HPO's Assessment of Future Demand for the HPO Reconstruction Program (2007) estimated that from 2008 through 2012 between 6,600 and 10,329 strata owners would require loans at a total cost of between 445 and 696 million dollars or 111 to 174 million dollars annually. Much of that cost would have been offset by loan repayments. The HPO's Assessment Study found that the average cost of strata reconstruction loans in 2007 was \$63,511 per unit and rising each year. For the past 9 years, an average of 1,695 loans per year has been approved.

Many leaky condo owners had

already suffered shabby treatment when in the weeks prior to Minister Coleman's most recent announcement they were told that their applications had been approved. On the basis of the approved loans, their strata corporations signed contracts for remediation. After weeks of being left in limbo waiting for the funds to be released, they were told there was no more money for the program leaving their strata corporations no choice but to place liens on their strata units so they could sell them to pay for the remediation.

Only after media reports and desperate letters by owners to MLAs did the government advance \$9 million so the HPO could disburse the approved loans.

How many strata owners will lose their homes because they are unable to finance repairs to their leaky condos?



Strata Property Act Responsibility has been Relocated

In mid-June there was an obscure Order in Council passed by the BC government moving responsibility for the Strata Property Act from the Ministry of Finance to the Ministry of Housing and Social Development. This means that your concerns about deficiencies in the strata legislation should now be directed to the Honorable Rich Coleman, Minister of Housing and Social Development. His postal address is Room 128, Parliament Buildings, Victoria, BC V8V 1X4. His email address is rich.coleman.mla@leg.bc.ca.

Defining misconduct by strata agents

by Harvey Williams, VISOA Helpline Chair

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What does it mean to be “Resident” in a Strata Lot?

by Joyce Johnston, Attorney

What does it mean to “reside” in a strata lot? This will be a question of fact in each circumstance, but the 2009 Court of Appeal case of *The Owners SP NW 499 v. Louis* sheds some light on the question.

The question arose in this case in the context of the application of an age-restriction bylaw. The strata corporation passed their Age Restriction Bylaw in 2002, restricting residence to those 55 and older. Residents who did not meet that age requirement, and resided there at the time the bylaw was passed, were grandfathered as exempt from the bylaw, pursuant to section 123(2) of the SPA.

Mr. Louis sometimes stayed in a strata lot, previously owned by his mother. His mother had died in 1999. The strata lot remains registered in the names of Mr. Louis’s brother and the executrix of the estate; presumably Mr. Louis had not registered the half interest left to him under his mother’s will. Mr. Louis, at the time of the court proceedings, was not yet 50.

Mr. Louis says he was residing in the strata lot in January 2002. The strata corporation’s position is that while he was at the strata lot at times in that period, he was not residing there. The lower court had concluded that Mr. Louis was not residing in the strata lot at the time the bylaw was passed. The Court of Appeal accepts the facts as found by the lower court. However, on their legal interpreta-

tion of the meaning of “residency”, they come to a different conclusion than the lower court.

The lower court looks at the dictionary definitions of “resides” and finds the following “to dwell permanently or for a considerable time; to have one’s regular home in and or at a particular place.” The lower court finds this definition accords with the intention of s.123 of the SPA.

The Court of Appeal holds that the above reasoning puts too narrow an interpretation on the words “resides” and “resident” and quotes a source that indicates the word “residence” has a variety of meanings, depending on the position in which it is found.

The Court says that it is not uncommon for people to have more than one residence. They may have a house that is their primary residence plus a waterside summer place or a condo in a warmer climate, the latter being places to which they retreat for rest and recreation for one or more periods of time per year, however lengthy or brief. The Court holds that in the context of the *Strata Property Act*, it cannot have been the intention of the Legislature that a person who owns two properties, and spends 6 months of the year in each, is resident in neither.

The Court goes on to say that they agree with the lower court that there is an element of permanency to the meaning of the words under consideration. However, they go on to say

that for a person to reside at a place does not require the place to be the person’s exclusive or even primary abode.

Mr. Louis maintains a residence at Riverview Hospital, as he is a person with mental health difficulties. Mr. Louis pays rent for this residence, but the Court notes that the nature of the facility suggests it is retained for treatment purposes. After his mother’s death, Mr. Louis maintains two residences. He has paid strata fees since the year 2000. The other owners could not say how much time he had spent at the strata building in 2002 – only saying that he was at the building from time to time. The Court concludes that Mr. Louis was not a casual visitor or sojourner during the critical period in 2002. The strata lot was his permanent second residence. He was therefore entitled to the exemption from the bylaw granted by section 123(2) of the SPA.

In conclusion, although residency must be judged from the circumstances in each case, it can be taken from the Louis case that a strata lot need not be the primary residence of a person to be a residence under the *Strata Property Act*.

Joyce Johnston practices law in Victoria. She may be reached at 250-382-0300. This article is intended for information purposes only. Nothing in it should be viewed as the provision of legal advice.

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Charging for charging: How should older strata buildings cope with the electricity demands of the plug-in cars of the future?

by Marcus Murphy

TV and the newspapers are full of stories about the coming of the electric plug-in car and the battery-dependent hybrid. These vehicles are not yet with us in any significant numbers but it is time for every Strata Council to think about the implications for their buildings.

Newer buildings have usually installed power outlets at dedicated parking spaces already wired to the BC Hydro meters of individual suites, but what about the older building which may have just a few power outlets in a garage? These were originally put in to help owners vacuum their cars or to trickle charge their batteries.

Such usage for trickle charging has not been a significant cost to the Strata and so any cost has been absorbed in the common bill. But what about a car that requires a 6 or 7 hour charge every day to keep it on the road? What happens if several cars are being charged and the power outlets are on one circuit without enough capacity? What happens if, with improved design and range, battery-driven scooters become such an attractive alternative to a car that 6 or more such vehicles charge up batteries daily from the common outlets?

General Motors, regarding the launch of their VOLT car has commented that it will cost the same to keep charged as running a water heater. It runs on a 16 KWH lithium-ion battery needing between 6 to 8 hours to charge. Mitsubishi's i-MIEV is due in 2010 and Nissan is developing its EV-01. Add to this the ZENN as well

as a range of newer cars which use gasoline but also need considerable electric input and one can begin to see that just having a few power outlets billed to the strata common costs will just not suffice.

There is no way to tell just when these newer technologies will become popular, but a Strata Council which has not thought ahead may be at a disadvantage. Each building will have its own differing circumstances to cope with. In response to an enquiry, BC Hydro recommended contacting them at 1-877-520-1355 for wiring and voltage information.

Here are some questions which Strata Councils should be thinking about:

1) Does the garage/parking area have sufficient electrical capacity to cope with several cars and scooters being charged simultaneously? Are the existing common power outlets wired to a single circuit breaker? What is its maximum amperage?

2) Are parking spaces owned by individual suites or are they Common Property allocated annually under Section 76 of the *Strata Property Act*? Are owners re-allocated from time to time from one parking place to another for reasons of incapacity or simply ease of parking and unloading? Are the power outlets in the right places?

3) If parking spaces are assigned to specific suites, is it practical to

wire outlets back to an owner's BC Hydro meter and at what cost?

4) What about looking at simple meters owned by the Strata and attached to outlets? These would record usage and allow the Strata to bill individual owners based on usage while leaving the common BC Hydro meter in place.

If these recording meters are used (look at, for example, the website www.powermeterstore.com for a whole range of these), can they be secure so that readings cannot be erased? Can they be protected so that only one person can use it? How will that work in unlocked parking area without security or weather protection?

The problem is still on the horizon but that may change quickly. It may well be that in Victoria the challenge will not be about large all-electric cars, but from bigger, better-designed electric scooters which will be mini-vehicles for local driving.

Whatever developments take place, it makes sense for each Strata Council to designate someone to follow and understand all new developments in this field so that the building can be ready to meet its specific needs.

Marcus Murphy is a forward-thinking member of VISOA who owns a strata unit on Dallas Road.

NEXT SEMINAR

Nuts and Bolts of Strata Council

*The seminar is aimed at current council members
and those who might be considering running for council.*

Topics to be covered include

- Meetings 101 – the basics of running meetings
- Council Meetings and Minutes – the details of strata meetings and the all-important minutes
- Bylaws – the good, the bad and how to enforce them

SUNDAY, SEPTEMBER 20, 2009 1:00 – 4:00 P.M.

Registration begins at 12:30 p.m.

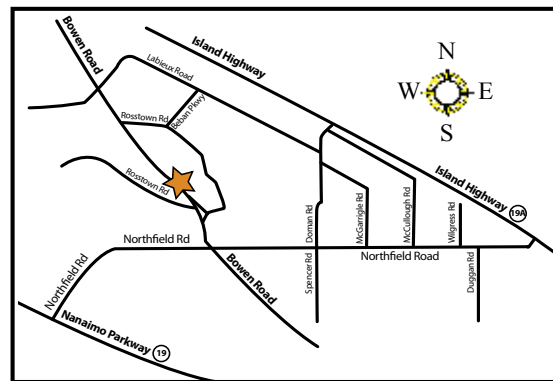
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Is it a condominium or a strata?

by David Grubb

Is it a Condominium or a Strata? The answer is “Both”.

“Condominium” comes from Latin. Domus means “house”; dominum is the “lord or owner of the house”; therefore dominium signifies “power” or “ownership [of a house]”. Con means “with”. Hence condominium means “ownership [of a house] with”.

“Strata” is also derived from Latin, but its origin is a little more obscure. Originally, stratum meant “stretched out” or “spread”, but by the time we see it associated with condominiums in English, it was perhaps borrowed from geology where it is used to describe a layer in a rock formation. The plural of stratum is strata : “layers”.

Apparently the Australian (New South Wales) legal profession adopted “strata” in 1961 to cope with a new form of co-ownership of apartment blocks since such buildings have two or more “layers” or “strata”. So an owner of a Lot and undivided co-ownership in the common property was granted a “Strata Title”.

A few years later (1967?), British Columbia appropriated the term and much of the legislation from Australia, naming the first act the Strata Titles Act. This is why our system has consistently named such complexes “Strata Plan No. XXX”. Like the Australians, the term “strata” was extended to include townhouse type and bare land developments. (*Interesting to note that in this context*

“strata” has become a singular noun, much to the annoyance of inadequate grammar correction systems in word processing programs!)

During the 1970s, this concept of housing became increasingly popular throughout North America, but all the other provinces and states decided to call them “condominiums” to better describe the variety of possible combinations of dwellings. (Do you realize there are also condominium garages and storage facilities?)

B.C. decided, in revising its act, to call the new version the Condominium Act (1978) in conformity with the rest of the continent. Then again, around 1999, the government chose to revert to “Strata” – hence the *Strata Property*

Act.

Perhaps this was because so many of the legal definitions in the former acts continued to refer to “strata” – Strata Plan, Strata Lot, Strata Corporation – so “condominium” became incongruous and confusing.

Maybe they were also influenced by a popular perception, sometimes enhanced by the media, that “condo” somehow refers strictly to an apartment. Ironically, then, in B.C. a “condominium” is now often thought to be a “layered” (stratified) building in defiance of its Latin origins, while a “strata” is not necessarily “layered” at all!

Isn’t this where we started? The answer is “Both”? In B.C. at least, in general terms condominium is synonymous with strata.



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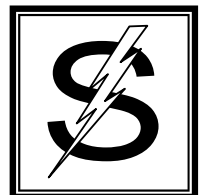
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My year on strata council

by Miina Piir

I wish to provide a comment on having been a member of a strata council, as this is often a thankless task. I volunteered to be on my strata council because there were issues that our strata had to deal with. I started out as the Vice President, but early on the President had to resign due to health reasons, and I had to take on the job. I had an excellent team to work with, but we had our challenges.

First, I learned that I had to be conversant with the *Strata Property*

Act (SPA) – the SPA was my bible. I have learned that stratas have difficulties because we are self-regulated. Owners will often follow the SPA when it is to their convenience, but when it is not they will ignore it. Some owners complain that the SPA is too difficult to understand, and others just do not take the time to understand it. Councils that do try and follow the SPA also encounter grief from owners who accuse them of being militant. As a result I firmly agree with VISOA's stance on

two issues: One is the lack of a publicly available source of legislation interpretation to enable strata owners to operate their strata corporations according to the law. Two is the lack of access to an inexpensive dispute resolution mechanism.

Second, I learned that that term "Maintenance-Free Living" is not true. Someone has to do the work. I may not need to mow a lawn, fix a fence, or clean the gutters, but someone still has to take the time to make the phone calls and obtain quotes from contractors, and then council has to choose a service provider. Once a contractor is found, someone has to do the quality control and liaise with the contractor to ensure that the work is completed, and done to the standard agreed upon. Please remember to thank those who volunteer on your council – it is because of these volunteers stepping up to the plate that you enjoy "Maintenance-Free Living". This is especially true of self-managed stratas. If some maintenance is done by owner volunteers to help keep down the costs, be especially grateful for these people,

as the cost of contracted labor is very expensive and these individuals are saving you money.

Third, I learned that if you think strata bylaws or rules are too stringent and believe that owners should be allowed to do as they like, maybe strata living is not for you. I now realize why bylaws may allow only "white curtains" or "green furniture on patios or balconies". It is difficult to enforce a rule that has too many exceptions. Sometimes for the sake of ensuring ease of enforcement the rule must be strict. It is also important to remember that you share the strata property with others and to take into account that your personal tastes may not reflect those of other owners.

Fourth, I learned that alteration agreements are important. Why? It is to protect all owners from future liability. If alteration/improvements fail they must be repaired and all damage caused must be made right. Ultimately the owners are all financially responsible in proportion to their unit entitlement, if an individual cannot be held responsible. Sometimes insurance may be

Continued on page 11

TALK TO US



This page belongs to you.

Have you read something in our Bulletin or our Website that left a lasting impression on you?

Or perhaps you've followed some advice that you got from the Bulletin or the helpline and would like to share the results with other members?

Or would you like to comment on an article that really "hit the spot"?

We welcome letters and email from Bulletin readers.

This is your Bulletin and your Letters page. Speaking to Vancouver Island strata owners like you is our mandate - hearing from you is our pleasure.

This month's letter is from Miina Piir of Strata VIS5938.

Email us at editor @visoa.bc.ca

Write us at Box 601, 185-911 Yates Street, Victoria BC V8V 4Y9

Please include your name, strata number and telephone number.

Letters and emails may be published on-line.

My year on strata council

Continued from page 10

in effect to cover losses, but the deductible will be the responsibility of the owners.

Fifth, if I ever buy in another strata, I have learned to recognize that low strata fees may not necessarily be a good thing. I now know that the amount set aside in fees for the CRF is critical. I would rather pay more in fees now and know a greater portion went to the CRF, than have a levy in the future where I may be forced to have another mortgage. Yet I also know that in the long run what I pay really is not that much. The difference is that in a well run strata we are

planning for the future, whereas if I owned a single home and did not do regular maintenance, I might be forced to get a loan if I had not planned ahead by saving for a rainy day.

Finally I have learned that it is our responsibility as owners, not just strata council, to be familiar with the SPA. I feel that many of the nightmare stories about councils occur because we as owners do not take the time to be conversant with the SPA, or owners pick and chose from the SPA what best fits their personal wants.

I had my critics who were not on council. It


was interesting to observe that when our AGM came around, some of the owners who were the more persistent critics were unwilling to step up and serve. Some owners would rather sit back and criticize and let others to do the work instead of getting up and offering a helping hand.

My sage advice to anyone who lives in a strata is: take the time to serve on council and understand the challenges. Then you will also understand the costs involved in running a strata, and the importance of compromising individual interests for the sake of the other owners in the strata. Take

the time to read the SPA. It is one of your responsibilities as an owner. If you find that the rules of strata living are too strict, maybe strata living really is not your cup of tea.


I do not regret the time I have served on council, because it has helped me to get to know other owners better, and to know those owners who truly care about their strata. I know I am not the only one who wants to ensure that we continue to be well-managed.

Miina Piir is a VISOA member from Courtenay, BC



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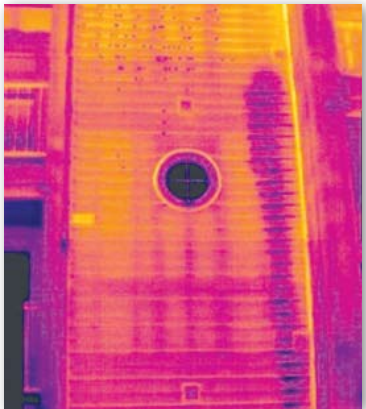
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Right is a photo taken at a condominium. The dark (cool) streak is water in the wall from a leaking washing machine on the third floor. Water was detected in the basement. The camera showed the source.

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