



Vancouver Island Strata Owners Association

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VISOA Bulletin - SEPTEMBER 2010

President's Report

Our Treasurer, Daryl Jackson, has notified us that he will be resigning from the board sometime this fall. We have been fortunate to recruit a new Treasurer, Reg Crone, and Daryl has kindly agreed to stay on the board to ensure a smooth transition. Reg has a Bachelor of Commerce degree and is a non-practicing Chartered Accountant. He also has considerable strata experience including 5 years on the strata council at Arbutus Ridge (VIS 601) - 2 years as Treasurer and 3 years as President. In addition he has served on the council of strata VIS 4843 (King Coho) in Comox for six years, all 6 years as President and has been Treasurer for the past three years.

At our last AGM your board made a commitment to increase its presence north of Victoria in order to provide better service to all Vancouver Island members. We now have board members in Nanaimo (Marlene Smaill) and Comox (Reg Crone) which I hope will improve VISOA's presence on the Island.

Looking ahead, our next seminar will be in Nanaimo on September 19. The seminar will be a repeat of a very popular one given in Victoria last fall. It is "Reserve Fund Studies: Who needs it, Who reads it?" by Rudy Wouts, CSCE, P.Eng. This seminar is essential information for us all now that the SPA will be requiring us to plan for long term maintenance based

on depreciation reports. Check our website for more details.

Looking even further ahead we are planning an interesting seminar for November 21st in Victoria. We have signed up a speaker to enlighten us on privacy requirements and are negotiating for an additional speaker on human rights and stratas. Our website will be updated with more details as soon as speakers are finalized. We are trying out a new locale for the Victoria seminar and we will be holding it at the Edelweiss Club.

I hope you can join us for our Nanaimo Seminar, and please mark your calendars for November 21st in Victoria.

- Tony Davis, President

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SPA Copies for Sale to Members

A current unofficial consolidated version of the **Strata Property Act** (includes the Regulations) is available from the Queen's Printer for **\$35.53 - includes GST and shipping.** To order directly from the Queen's Printer, phone **1-866-236-5544.** VISOA made a bulk purchase of these and will have them for sale for \$25 at our seminars while quantities last.

Depreciation Reports: Planning for the inevitable

By Deryk Norton, VISOA Board Member

The *Strata Property Act* (section 94) permits a strata corporation to prepare a depreciation report. A depreciation report estimates “the repair and replacement costs for major items in the strata corporation and the expected life of those items to assist it in determining the appropriate amount for the annual contribution to the contingency reserve fund”.

Because it is optional many strata corporations neither prepare nor maintain a depreciation report. As a result, for such strata corporations the annual contribution to the contingency reserve fund is often insufficient to accumulate enough funds for major repairs. This means a “special levy” in reaction to an immediate need for a major repair - a special levy that can be financially crippling for some strata owners. Furthermore, the absence of a depreciation report obscures the financial condition of the strata corporation from a would-be purchaser of a strata unit. Some purchasers have faced large special levies soon after buying a strata unit. A large special levy, soon after making the down pay-

ment needed to qualify for a mortgage, has devastated some purchasers.

The government’s recently passed Bill 8 (the *Strata Property Amendment Act*, 2009) will soon change section 94 to require a strata corporation to prepare a depreciation report. (Please note that this change does not include anything to prescribe how the annual contribution to the contingency reserve fund must be determined.) The new requirement will be brought into effect by new regulations to be developed in the next few months, hopefully based on public consultation with strata owners.

Even though Bill 8 will enact this new requirement it also provides for a strata corporation to exempt itself from the requirement, if it passes a resolution by a $\frac{3}{4}$ vote at a general meeting of owners. Bill 8 also provides for exempting a member of a “prescribed class” of strata corporations from the requirement, with such a “prescribed class” to be described under the new regulations.

Some strata owners are concerned about the potential cost of preparing a depreciation report and may be inclined

to support a resolution exempting their strata corporation. Until we see the new regulations we will not really know how much work is involved or what it will cost. The new regulations will describe who is qualified to prepare a depreciation report as well as the information required in the report. If the regulations permit only a licensed professional to prepare a depreciation report and require a lot of complex information, then the cost could be very high indeed. On the other hand, if the regulations permit one or more reasonably qualified strata owners to prepare the report based on a few straightforward forms, then the preparation cost could be quite low.

I encourage strata owners to make their case to the Minister of Housing and Social Development and to VISOA for what they would like to see or not see in the new regulations. I also encourage them to consider the effect on their property’s resale value and saleability if their strata corporation does not have a depreciation report while others do.

Editor’s message *by Sandy Wagner, Bulletin Editor*

Welcome to the September issue of the VISOA Bulletin. I hope you will find this edition to be as informative as always. Here are some of the highlights:

We are introducing five new Business Members, bringing our total to 20. We do hope you will mention VISOA when you contact any of our Business Members so they know how you heard of them. We are getting quite a variety of businesses – see the updated listing on the last page of this bulletin. One of our Business Members, Jennifer Childs of Houle Electric has written an article for you on Electrical Preventative Maintenance.

While surfing the internet late one night, I happened upon an article on BC Hydro’s blog with an intriguing title: “An accidental binner embraces the

rejected at Vancouver strata”. It made some great points on recycling and made me smile, and I thought you would also enjoy reading it. Rob Klovance, the managing editor of bhydro.com gave us permission to reprint it for you. It is this month’s “Green Corner” article.

One of our members shares her strata’s experience with a less-than-competent Strata Management Agent. Her letter appears in our feature “Your Page”. Another of our members gives us his advice to “Follow the SPA and Save Money”.

I receive the Business Examiner at my workplace, and read a thought-provoking editorial in its May issue entitled “Information, Misinformation, It’s Your Choice” written by editor Martin Hunter. It reminded me that so often, disputes and misunderstandings in stratas are the

result of misinformation or disinformation. My “stratified” version of Martin’s thoughts is included in this issue.

Our Helpline team answers an average of five queries a day, and one of our most popular columns “You Asked” highlights questions and answers from those Helpline calls. Harvey Williams has headed this column for many years, and now each of our Helpline Team members will be answering questions here. You can direct a question to them anytime through our usual Helpline email address or telephone number, or if you specifically want your question answered in the Bulletin, email me at editor@visoa.bc.ca. In fact, please email me any time you have a comment or suggestion on the Bulletin. I invite your comments.

Green Corner - This Month: An accidental binner embraces the rejected at Vancouver strata

Presented by Rob Klovance

As a veteran of strata living, in both apartments and townhouses, I've become acutely aware of our diverse attitudes toward recycling.

And for the most part, I've found Vancouverites to be divided into two main categories:

- The Believer, who not only takes great care to recycle as much as possible, but also rinses oily containers and always tries to place recyclables in the right bins. The Believer knows the rules and adheres to them, to the point of seeking out the local paint or electronics recycling facility.

- The Flinger, who only half pays attention to the recycling rules, probably doesn't make any purchases based on the type of packaging the product comes in, tosses juice boxes in the paper bin, and leaves cardboard boxes, uncrushed, above the cardboard recycling bin. The Flinger helps out, but figures there are enough Believers around to deal with their mistakes.

But there is a third, fortunately far less common species I'll charitably call The Pretender. And it is this sorry animal who unwittingly – always unwittingly – has turned me into an accidental binner.

The Pretender may oc-

asionally place the right recyclable in the right bin, but on many occasions, he/she will either dump an unsorted collection of organic matter and recyclables in the garbage bin or – egad! – in a recycling bin. The Pretender is simply too busy, too important or too distracted to even care about getting it right.

One person's trash...

That's where I come in. As a Believer, I will take a few minutes to transfer an errantly thrown tin from the paper to the container recycling bin, or carefully grab a bag full of organics and toss it into the garbage bin. I may even crush an extra box or two and slide it through the slot in that enormous cardboard recycling bin.

And on occasion, I am rewarded for my efforts.

In the past few months alone, I've plucked from the recycling bins:

- One unbroken, perfectly fine large black umbrella with wooden handle;
- Two pristine, probably new, one-litre Sigg aluminum bottles – one black, one with a camouflage pattern;
- One enormous roll of wrapping paper, adorned with penguins and snowballs in a winter scene.

It's not like I'm dumpster diving here. I'm not even digging around. I'm just taking a quick peek each time I drop off my assortment of newspapers, plastics and paper in the strata's communal recycling room.

Who would chuck a couple of \$25 bottles into a paper recycling bin? And what sense does it make to toss a functioning, flawless umbrella into the actual garbage bin? My wife spotted the umbrella, because it was open and sitting on the top of a heap of organics and non-recyclable plastics.

So far, the giant roll of wrapping paper has covered 10 or so different kids gifts, and there's probably enough left to wrap another 10 or 20.

Even if you got a chic new umbrella for Christmas, wouldn't you leave it outside the bin so someone else might use it? And if you grew to despise the never-ending roll of penguin wrapping paper, wouldn't you leave it for someone else?

Why recycling matters

An excellent piece on landfills in *Maisonneuve Magazine* states that Canadians created 35 million tonnes of garbage in 2006, an amount eight per cent higher than two years earlier.

That same piece, titled "Talking Trash", delves into the possible long-term effects of "gasification technology", which uses intense heat to convert municipal garbage into synthetic gas that's then used to generate electricity. It sounds like a good idea, but it also cites an environmental consultant's concern that long-term contracts to supply gasification plants could actually act as a disincentive for cities to promote recycling.

My guess is that the three Rs – reduce, reuse, recycle – still amount to the best answer to the ridiculous amounts of garbage we create. And it's with that belief that I have quietly ventured into a quiet form of recycler activism.

Twice in the past five years, I've outed Pretenders. In both cases they were boneheaded enough to not only drop bags of garbage – complete with coffee grounds, bones and other non-recyclables – into a recycling bin, but to leave envelopes addressed to them in the bag.

The next step was to post a message, accompanied by the addressed envelope, on the strata common area bulletin board: "Mr. Jones, Suite 1201, please stop tossing garbage in the recycling bins!"

I think it worked.

Rob Klovance is managing editor of bchydro.com. This article was reprinted with permission. Originally published online at www.bchydro.com/news/unplug_this_blog/the_accidental_binner.html. Check out BC Hydro's "Green Guides" online at www.bchydro.com/guides_tips/ for a variety of electricity and other conservation tips.

NEW BUSINESS MEMBERS

Horizon Pacific Contracting & Sunrooms

Originally founded in Victoria 25 years ago, today Horizon Pacific is one of the top residential contractors in BC and in particular Vancouver Island. With a history of professional management, integrity and quality workmanship, Horizon Pacific enjoy many long-term client relationships.

Tedford Overhead Doors & Gates

A leader in the garage door industry on Vancouver Island, they've been installing and servicing quality garage door systems and security gates for 27 years. Whether your project is big or small, new or simply in need of repair and maintenance, Tedford have it all covered. Using their online website, you can even see what your own building would look like with

different designs, taking the guesswork out of your project.

Commissionaires Security Professionals

With a history that goes back to England of the 1850's, the Commissionaires have been providing working opportunities for former members of the Canadian Forces, RCMP and other Canadian service organizations on Vancouver Island since 1937. Trained and qualified in First Aid, CPR, Crisis Management, and because of their military and police culture of discipline, service and trust the Commissionaires are uniquely positioned in the security industry.

Peterlyn Properties Masonry, Concrete & Maintenance

With a solid background in restorative

masonry and concrete, Peterlyn Properties are experts in repairing, maintaining and renovating residential and commercial buildings. All projects big or small such as cracks, leaks, foundations, building envelopes, drainage problems, seismic upgrading, or a complete re-facing of multi-storey buildings they do it all, guaranteed.

Catherine Watson - Mediator/Facilitator

Catherine has been in practice as a mediator for the past 10 years. Catherine is a member of the BC Mediation Roster Society and the BC Arbitration and Mediation Institute and is on the Strata Property Roster for the latter organization. Catherine is ready to assist strata property owners and strata councils with resolving issues surrounding strata property residences.



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You Asked

This is a new format for the You Asked column. Previously, Harvey Williams has written extensively on a single question. Beginning with this column various members of the Helpline Team will share Helpline questions that they think will be of interest to readers. 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.

Current Helpline Team members are David Grubb, Laurie McKay, Marlene Smaill and Harvey Williams.

Can the strata agent (manager) chair the Annual General Meeting?

Answered by Harvey Williams

The strata agent cannot chair a general meeting unless he/she is elected to that position. Section 25 of the Standard Bylaws requires that if neither the council president nor vice president chairs the meeting a chair must be elected by the eligible voters from among those present at the meeting. Since Section 25 does not specify that the chair must be an owner the strata agent can be elected.

How should we handle walkway repairs?

Answered by David Grubb

Q. A person tripped on the sidewalk leading up to our front door. It is a poured concrete walkway and one of the sections has been pushed up creating a 1½” to 2” “step”.

We are pretty sure there will be no lawsuit, but were wondering about our future liability.

I hate taking remedial measures that look like patch jobs, but, of course the easy minimum solution is to use a concrete patch material to make the “step” into a slope. I am hoping an easier remedial solution would be to paint a yellow “Caution” stripe across the area.

The only good solution would be to resurface the entire walkway which would have to wait for an annual budget. Is VISOA is aware of any relevant precedent?

A. You need to do something immediately, because you do have a serious hazard, and what is more, you know about it!

Your insurance company will undoubtedly be interested if another accident occurred. Depending on your policy, they could refuse to pay for a settlement since the strata corporation did not exercise due diligence in

making some effort to repair the problem.

My personal opinion is that the yellow line is inadequate, especially at night (depending on your lighting). I sympathize with your dislike of doing patch work jobs, but your idea of converting it into a slope is the better solution (maybe painted yellow, too?).

You might also consider a third option which could allow you to avoid waiting for the next annual budget. You need to consult an expert (engineer? paving company?) with regard to a more permanent repair of the offending slab without necessarily repaving the whole sidewalk. Maybe the slab could be lifted and re-bedded and aligned properly. Then get quotes from a couple of paving companies.

Under SPA Sections 98 (2) and (3), council could authorize the expenditure from either the operating or contingency reserve fund since such an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

It seems to me that this is a justifiable expense since other owners or their guests could be the next “victims” and might not be as charitable as the first person. Moreover, there could be a problem of further damage to the rest of the sidewalk by not repairing the one slab.

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What is the use of a house if you haven't got a tolerable planet to put it on?

*Henry David Thoreau
US Author
(1817 - 1862)*



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Information - Misinformation - Disinformation

by Sandy Wagner - Bulletin Editor

There's a lot of information out there for strata owners. One of VISOA's aims is to be a good source of reliable information – and we hope you think we are meeting that goal.

Of course the foremost source of strata information is the *Strata Property Act* although it is often difficult to interpret or to apply to a specific case.

There is also plenty of “misinformation” and “disinformation” circulating on strata matters. Whenever you are discussing the BC *Strata Property Act* with someone, you should be careful...you or the other person might be way off base.

We all have access to huge amounts of what we assume to be quality credible information – the internet is a vast source of unedited, unfiltered news. But is it all true? Can you trust everything you read about stratas online? Can you believe everything your property manager tells you? Or the president of your strata council?

The answer is no.

Ask any two strata owners, and you may get two widely different opinions on any given strata matter. Both will “prove” their viewpoints by quoting the appropriate part of the SPA and citing examples of how it was applied in a particular situation. How can this be when they both have the same information on which to make their decisions? A case of misinformation or disinformation?

Information is facts and factual data given to you that you can use to reach an accurate conclusion. It becomes useful to us when we view it critically and adds it

to what we already know. An example of this is the *Strata Property Act*.

Misinformation is non-factual data given to you that may lead you to an invalid conclusion. It isn't necessarily deliberate; it may be just mistaken. This often happens when someone hasn't read the *Strata Property Act* carefully.

Disinformation is non-factual data deliberately given to you to keep you from reaching an accurate conclusion. It is false or inaccurate and is spread deliberately. As an example, a business who wants to sell you his product may claim it is “required for use in BC strata homes”.

Take the following example: Bob, a new strata owner, wants to cut down a tree which is growing through his ground-level patio, as he is tired of picking up pine cones. He has been told by some friends that you can't blow your nose without permission from the strata council, and isn't sure who to ask about the tree. Bob goes on-line to find out what he can about trees and BC strata properties. He reads the SPA and sees Standard Bylaw # 6 which states: “An owner must obtain the written approval of the strata corporation before making an alteration to common property...” He thinks to himself: “I wonder if I need permission to cut down this tree? I know of a man named John who writes a strata blog, I will email him to ask what he thinks.” John says “owners in our strata don't need permission to cut down trees; they just have to get a permit from the city.” Bob applies for a city permit which is issued, and calls in

the tree-removal company to do their job. His strata council interrupts the work and insists that Bob does not have permission to remove the tree.

What went wrong here? Did John give Bob some inaccurate information? No, the fact is that in John's strata, owners do not need council permission to remove trees because they are on a “bare-land” strata plan, and trees are not common property. That isn't necessarily the case in Bob's strata. Bob received accurate information, but he did not apply it to what he already knows.

Take two: Bob, a strata owner, wants to cut down a tree which is growing through his ground-level patio. He reads the SPA and sees Standard Bylaw #6 which states: “An owner must obtain the written approval of the strata corporation before making an alteration to common property...” He thinks to himself: “I wonder if I need permission to cut down this tree? I will ask my neighbour George what he thinks.” George, who has been on council, enjoys the shade provided by Bob's tree and doesn't want it cut down. So his reply is “Oh no, Bob – you can't cut down the tree – it is

common property. The only way you can cut it down is if you have a petition to all the owners, and then we need to have 100% of the owners agree with you. I guess you are stuck with the tree”.

What went wrong here? Bob was the victim of disinformation. He was deliberately given inaccurate information, to ensure he would come to the wrong conclusion.

Take three: Bob, a strata owner, wants to cut down a tree which is growing through his ground-level patio. He reads the SPA and sees Standard Bylaw # 6 which states: “An owner must obtain the written approval of the strata corporation before making an alteration to common property...” He says to himself: I wonder if I need permission to cut down this tree? I will ask my strata manager, Dave, what he thinks.”

Dave has been a strata agent for about a year, and is newly appointed as strata agent to this particular strata corporation. He advises Bob: “Trees grow on common property; you must apply to the strata council for permission to alter common property. If it doesn't affect any other owners it is quite

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Information, disinformation, misinformation

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likely it will be authorized but I can't speak for the council – they might want to have all owners vote at the upcoming AGM just to make sure that a majority are in agreement. Why not write a letter to council, and you can present your case at the next council meeting?"

Was Bob finally given correct information? Maybe, maybe not! This might be misinformation. The information was accurate, but incomplete. Dave didn't do his research – nor did he suggest that Bob do more research.

The rest of the story: Bob decided that it was much too confusing to decide what to do all on his own. He emailed the VISOA Helpline and the response was this: "Your property agent has given you good information – however you must also determine whether your strata has enacted a by-law which replaces Standard Bylaw

#6. You must also confirm whether the patios (and thus the tree) are common property, which is likely, or whether it is part of your strata lot." Armed with this new information, Bob made further inquiries and had a lawyer confirm his investigations. It turns out that Bob's strata has a bylaw which states "Trees on common property may not be removed without prior written permission of the strata council." This would seem to indicate that the strata agent was correct. However, what the strata agent did not know – and the strata council members had forgotten – was that the ground-floor patios are labelled as "SL" on the official strata plan registered at the Land Title Office.

The moral of the story: Be sure of the accuracy of your information sources, especially with on-line information. There are many websites that purport to provide credible information, but either through accident or design may lead you astray. There are also some strata blogs which are great for an evening's reading but not necessarily full

of accurate information. Many of these sites are little more than personal opinion disguised and presented as fact, written by anonymous individuals who are free to publish what they like. They may have a political point to make or an axe to grind. You may get a smattering of facts, some accidental errors, or some deliberate mis-statements.

INFORMATION. MISINFORMATION. DISINFORMATION.

Do your research. Educate yourself. Know your sources. Check and double-check.

If in doubt, ask a lawyer who specializes in BC strata law.

Inspired by an editorial entitled "Information, Misinformation: It's Your Choice" written by Martin Hunter for the Business Examiner, May 2010.

Mark your calendar VISOA'S FALL SEMINAR

RESERVE FUND STUDIES

Who needs it, who reads it?

by Rudy Wouts, CSCE, P. Eng.

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Electing a strata council

By Harvey Williams

Election of a strata council for the ensuing year and approval of the annual budget are the two most important items of business at the annual general meeting. The strata council is important because it manages the affairs of the strata corporation between general meetings.

Unfortunately, the *Strata Property Act* provides little guidance to strata corporations regarding the procedure for conducting council elections. Most often in smaller stratas, the challenge is to find enough candidates for council to meet the Standard Bylaw requirement. Inability to form a council can result in the appointment of an administrator. The following are common questions about strata council elections; answers are a combination of SPA guidelines and common practice.

Are absentee ballots allowed? The Act does not provide for absentee ballots. Section 25 of the Act states: "At each annual general

meeting the eligible voters who are present in person or by proxy at the meeting must elect a council." Owners unable to attend the AGM can instruct their proxies which council candidates to vote for.

Can nominations be made from the floor? While a slate of candidates for council can be drawn up in advance of the general meeting, there should be provision for nominations from the floor. Owners should be allowed to nominate themselves and seconds for nominations are not required.

Can strata council members be elected for more than one year?

Some strata corporations have adopted a bylaw establishing 2-year staggered terms for council members in order to provide continuity. While well-intentioned, such a bylaw appears to conflict with Section 25 of the Act which requires the election of a strata council, not half of a council, at the AGM. Concerns about continuity may be addressed by encouraging

some council members to stand for re-election as provided for in Standard Bylaw number 10. Bylaw 10 states that a council member's term of office ends at the end of the annual general meeting, but that council members may be re-elected.

Must the nominations of strata council candidates be seconded?

No, nominations for council need not be seconded. Eligible candidates may even nominate themselves.

Must council candidates receive over 50% of the eligible votes to be elected?

On the surface, this appears to be reasonable principle, but I can find no support for it in the or Regulations. A bylaw to that effect might be adopted, but I don't know that it would be upheld if tested in court. Most strata corporations including my own struggle to get enough owners to serve on council, let alone receive 50% of the votes

Continued on page 9



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Electing a strata council

Continued from page 8

cast.

Standard Bylaw 9 states that a strata must have between three and seven council members. This bylaw may be amended to set a specific number of council members. Unless more than the maximum number of candidates let their names stand for election to the council, most stratas declare all of them elected without an actual vote. If more than the maximum number of candidates stand for election, each voter is allowed to cast up to the maximum number of votes and the candidates with the most votes are declared elected.

What becomes of the ballots after a contested council election?

This is not addressed in the Act, Standard Bylaws, or Regulations. The aim should be to avoid any

suggestions of fraud or election tampering. I have checked Roberts Rules of Order and it is rather vague on this subject, suggesting that eventually, ballots be destroyed. I suggest that the ballots be kept for a month or so, and unless there is a request for a recount, they be destroyed.

How should an election of council members be conducted?

While the Act is silent on "Rules of Order", these recommendations are common-sense rules adopted by many stratas.

The chair announces that nominations are open for x number of positions on the strata council and asks "Are there any nominations?"

If there is a slate, the slate should be presented at this time after

which the chair asks "Are there any further nominations?" If so, the name(s) are added to the ballot.

The chair asks three times, "Are there any further nominations?"

If there are none, the chair says, "Hearing no further nominations, I declare the nominations for strata council closed."

Blank slips of paper to be used as ballots are distributed to eligible voters.

Voters list the candidates they wish to vote for on a ballot slip.

The ballots are collected and counted and the winners announced.

The bottom line is that the election must not only be open and fair, but that owners perceive it as open and fair.



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Carrying out repairs

By Shawn M. Smith

Every strata corporation will, at some point in time, be faced with carrying out a significant repair project. As with many things in life, there may well be more than one way to undertake the repairs in question. That in turn may lead to disagreements amongst the owners as to which method should be chosen. Even when the majority of the owners have selected a method of repair, there may still be those who would rather see a different method used. Those who disagree with the approach chosen by the strata corporation may even go so far as to launch a court action challenging that choice. This was the case in the recent decision of *Weir v. Owners, Strata Plan NW17 2010 BCSC 784* and in which the writer acted as legal counsel for the strata corporation.

Before reviewing the court's decision in *Weir* it is perhaps best to review the underlying obligation on

the part of the strata corporation to carry out repairs and maintenance as that sets the basis for the decision in *Weir*.

Section 72(1) of the *Strata Property Act* (the "Act") makes the strata corporation responsible for the repair and maintenance of the common property (which includes limited common property). Section 72(2) allows the strata corporation, by way of a bylaw, to make individual owners responsible for the repair and maintenance of limited common property. In turn, each owner is responsible for repairs and maintenance to their strata lot (except those parts for which the strata corporation is responsible pursuant to a bylaw – which is typically the structural portions or the building and doors and windows). It should be noted that the duty to repair common property is the same whether the repairs arise by way of design defect or general deteriora-

tion - see *Strata Plan 1229 v. Trivanor Investments (1995)(BCSC)*.

Establishing who is responsible for repairing and maintaining something is one thing, but what does that actually mean? What does the duty to "repair" actually look like? This issue was considered in the case of *Taychuk v. Strata Plan LMS744 2002 BCSC 1638*. In *Taychuk*, the owners of the strata lot began to experience ongoing problems with the hot water supplied to their bathtub. The water was always a yellow-brown colour. (No health risk appeared to have existed). The problems began in 1994. Various tests and investigations were done and some attempts at fixing the problem were made; all to no avail. In 1998 there was a proposal by the strata corporation to install an "under-fixture water filtration system". The strata corporation would pay for

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Carrying out repairs

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the installation with the owners paying for the filters as time went on. The owners rejected this proposal and no other methods to solve the problem were pursued.

The question before the court was whether or not the strata corporation had in the past and was currently, living up to its duty to repair and maintain the common property (the water supply system clearing falling within the definition of common property). In order to answer this question, the court had to determine what was meant by “repair”. For that it turned to the definition cited in a previous case, *Sterloff v. Strata Corp. of Strata Plan No. VR2613 (1994)(BCSC)*. That definition read:

“It is true that the primary meaning of the word “repair” is to restore to sound condition that which has previously been sound, but the word is also properly used in a sense of to make good. Moreover, the word is commonly used to describe the operation of making an article good or sound, irrespective of whether the article has been good or sound before.”

The court also referred to the case of *Wright v. Strata Plan No. 205 (1996)*, 20 BCLR (3d) 343 (BCSC) aff’d 103 BCAC 249 (BCCA) which held that the strata corporation had to act reasonably in its attempts to undertake the repairs but were not guarantors of a perfect outcome. As the court in *Wright* put it, the strata corporation’s duty “is to do all that can reasonably be done in the way of carrying out their statutory duty; and therein lies the test to be applied to their actions.”

Applying the decision in *Wright* to the facts in *Taychuck*, the court in the latter case found that the strata corporation, for the most part, acted

reasonably. The only instance where it didn’t was where it refused to install the “under-fixture water filtration system” unless the owners paid for the filters. Here the court found there was a viable solution which the strata corporation should have undertaken, even if that meant paying for the filters. The strata corporation was also found to be in breach of its duty when it chose to do nothing about the problem. As long as reasonable steps such as flushing the system were taken, the strata corporation was carrying out its duty.

In *Weir* the issue surrounded how to go about repairs that were required to the perimeter drainage system surrounding a townhouse block. The strata corporation had received a detailed proposal from a contractor and had approved a levy to carry out repairs based on that proposal. The petitioners (being the owners of the strata lots in the block in question) didn’t agree with that approach and wanted engineers to assess the problem and propose a fix. The strata corporation resisted that approach on the basis that the contractor’s suggested approach was likely to fix the problem with much less cost than an engineered solution. The issue before the court was whether the strata corporation was acting reasonably in relying on the recommendations of a tradesman and not bringing in an engineer to design a fix. The court held that the strata corporation was acting reasonably. In reaching that conclusion it said:

[28] In resolving problems of this nature, there can be “good, better or best” solutions available. Choosing an approach to resolution involves consideration of the cost of each approach and its impact on the owners, of which there is no evidence before the court. Choosing a “good” solution rather than the “best” solution does not render that approach unreasonable such

that judicial intervention is warranted.

[29] In carrying out its duty, the respondent must act in the best interests of all the owners and endeavour to achieve the greatest good for the greatest number. That involves implementing necessary repairs within a budget that the owners as a whole can afford and balancing competing needs and priorities: *Sterloff v. Strata Corp. of Strata Plan No. VR 2613*, 38 R.P.R. (3d) 102, [1994] B.C.J. No. 445 and *Browne*.

[31] It may even prove to be the case that the approach of the petitioner is the wiser and preferable course of action. Again, that does not render the approach of the respondent unreasonable.

[32] Disagreements between strata councils and some owners are not infrequent. However, courts should be cautious before inserting itself into the process, particularly where, as here, the issue is the manner in which necessary repairs are to be effected.

The important principle recognized by the court in *Weir* was one of deference to the strata council, particularly where the question is one of how to meet an obligation under the Act. It is a decision which clearly recognizes the majority rule aspect of strata corporations and strengthens the ability of strata councils to govern the affairs of the strata corporation for the benefit of the whole.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a lawyer whose practice focuses on strata property law. He frequently writes and lectures for a variety of strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com.

All electrical equipment needs maintenance

by Jennifer Childs

Electricity runs almost everything in our homes and the system that carries it is often the most neglected. Whether you live in a high-rise, a townhome or something in between; your electrical distribution system needs preventive maintenance, not just service when something breaks down. Electrical preventive maintenance (EPM) can not only extend the life of electrical equipment but can identify sources of energy waste.

Most importantly, EPM solutions save both buildings and lives from potential electrical disasters. Ultimately, EPM practices, which include energy management, asset management and safety, translate to significant reductions in liability and compelling cost savings for strata owners.

ENERGY MANAGEMENT

As the number of electrical devices we use increases, so does the demand for our limited energy resources. While everyone is sensitive to the environmental consequences of energy consumption, they also welcome the significant cost savings that EPM brings to their bottom line.

A typical residential strata property can have as many as 12 or more hotspots throughout its electrical system. Hotspots are areas of wasted power, equipment wear, poor connections and possible fire hazards. Not only do hotspots pose potential safety hazards but they are associated with increased operational costs from wasted power consumption. A single hotspot can increase power consumption by 15 percent on a 30 amp motor (for example, an intake fan). If the motor runs for 160 hours each month, that adds up to an extra 3,500 kWh – and an extra \$250 - each year. In this example, if you

multiply 3,500kWh by only 6 hotspots, the wasted energy could cost the strata an



Qualified personnel will be equipped with proper safety equipment and will use many different techniques to analyze your system

extra \$1,500 each year.

ASSET MANAGEMENT

EPM serves to protect a building's most important asset – the electrical system. This system can contribute as much as 15 percent to the construction costs of any building. As such, owners of both new and old buildings should be keenly aware that due care and attention means greater longevity for the equipment and fewer capital expenditures over the life of the system.

Essentially, proper maintenance and early problem detection of a building's electrical system ensures that what might be a \$20 fix does not become a \$50,000 problem. By doing regular EPM, a strata is demonstrating their due diligence in taking care of this very important building system.

SAFETY

The National Fire Prevention Association (NFPA) has found that nearly two thirds of all electrical distribution fire losses could have been prevented. Where safety is concerned, the importance of a well-maintained electrical system cannot be overstated.

Furthermore, a safely functioning electrical system is also critical to the continuity of numerous building operations such as heating, ventilation and air condi-

tioning systems and fire safety programs. Without a dependable and continuous supply of electricity, these systems simply cannot operate. According to the Institute of Electrical and Electronics Engineers (IEEE), the failure rate of electrical components is three times higher for systems where preventive maintenance is not performed. Electrical failures and safety risks can be prevented with regular EPM.

EFFECTIVE EPM PROGRAMS

Effective EPM Programs are not just about Infrared scans and tightening a few bolts; they should incorporate the following components:

QUALIFIED PERSONNEL

With the introduction of Bill C-45, liability now rests largely with corporations that contract firms to work within their facilities. As such, it is important to do research before hiring an EPM provider. In addition to having licensed electricians with infrared thermography certification, check that the company is doing business with other reputable organizations and has a stellar safety track record. You can also request a copy of their insurance and Work Safe certifications.

REGULARLY SCHEDULED INSPECTION, SERVICING AND TESTING

An EPM program should be performed on a regular basis. The period between inspections depends on the environmental conditions, the importance of the equipment and its loading and use. Annual energized testing is recommended and Vault maintenance on high voltage equipment

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All electrical equipment

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should be performed at least once every three years.

Energized Services do not require a power outage and include Visual and Mechanical inspections, as well as Infrared Thermography, Ultrasonic Testing and Voltage and Current measurements.

INFRARED THERMOGRAPHY

The most common tool in EPM is infrared thermography, which uses an infrared camera to detect hotspots by taking detailed heat images of the electrical system. Areas that are typically scanned include the main electrical room, branch circuit panels, transformers and generators. It is important, however, that these scans are accompanied by a visual and mechanical check to spot corrosion, rust, leaks, safety hazards and physical damage. Good EPM suppliers will provide licensed electricians who possess infrared thermography certification.

ULTRASONIC TESTING

Another technology commonly used in conjunction with infrared scanning, is ultrasonic testing. Just as hotspots can pose serious electrical hazards, so too can arcing, tracking and corona, which are problems related to thinning of wire insulation, faulty parts or loose connections. Ultrasonic testing detects the specific sounds made by these anomalies, which pose a serious electrical hazard that might be missed by just doing infrared scans. Ultrasonic testing also provides a higher level of safety by giving the testing personnel another tool to detect any potential problems.

De-energized Services usually apply to high voltage equipment and require the electrical system to be shutdown to safely test the system. De-energized services are typically done, but not limited to, the main incoming service of a building. This service is generally called vault maintenance, whereby the main switchgear and transformers are cleaned, tested and exercised while the power is off.

EFFECTIVE EVALUATION OF THE RESULTS

It is imperative that the person reviewing the test reports have a thorough understanding of electrical systems. Your EPM team should include electricians and engineers that can investigate any problems that are found and be able to provide you with recommendations and options to help keep your electrical system running optimally.

PERFORM THE NECESSARY WORK

This seems like an obvious point, but it is often not done. It does little good to have testing done to identify problem areas if you have no intention of fixing the problems. Thorough inspection of your electrical system will help to focus resources and give strata council as much information as possible when planning for maintenance expenses and capital expenditures. Being able to plan these types of repairs in advance is a luxury when compared to the alternative of emergency repairs.

CONCISE AND COMPLETE RECORD KEEPING

This is the most overlooked aspect of EPM; however, a clear record-keeping system will help keep the EPM program cost-effective by ensuring that all the work is being done when it is supposed to be. In addition, tracking of test results over time can often identify a potential failure that can be corrected before it happens. Documentation of regular preventive maintenance will also show that strata council is performing their due diligence in taking care of this important building system, and is also appreciated by insurance companies.

COST EFFECTIVE AND CONVENIENT

Electrical Preventive Maintenance is cost effective and convenient for strata council and for residents. First, it is less

expensive to make repairs to equipment before it fails. When electrical equipment fails, particularly protective devices like circuit breakers or relays, there is usually subsequent damage to other components in the system. Often the equipment cannot be repaired and must be completely replaced. New equipment does not always replace the failed component in-kind and may require other modifications to make the system whole; this is especially common in older buildings where the old equipment is a different size than replacement components.

With regular maintenance you can have a planned outage for EPM and time to prepare for required repairs at the most convenient time for your residents; emergency equipment failures are always at inopportune times, like 6:00pm on Thanksgiving Day. Emergency repairs are very costly due to the urgency of the situation; temporary work is often required before a permanent repair can be done.

In addition, an effective EPM program will improve equipment efficiency and reduce utility bills. When considered over a period of time, these energy losses can add up to quite a significant amount of money.

If you have been taking your electrical distribution system for granted, it's probably time for you to implement an EPM program. But don't wait until after the first electrical failure happens – you may not have a system then.

CUSTOMIZED EPM PROGRAMS

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Follow the SPA and save money

As a non-profit corporation, a strata should use simple accounting and reporting methods to account for owner's fees paid into funds for income and expenses: i.e. "fund accounting." The *Strata Property Act* sets out two separate funds - the Operating Fund and the Contingency Reserve Fund - and provides for separate Special Levy Funds if required. The strata is not considered to be a profit-making business corporation and fund accounting is not considered to be a business accounting method.

Apparently, some strata councils and agents disregard the *Strata Property Act* when accounting for, reporting and auditing strata funds and use complicated business accounting methods which are incompatible with the *Strata Property Act* and the rights of owners.

For example, setting up a Special Levy Fund under an agent instead of using the Contingency Reserve Fund incurs extra administration fees and expenses for special meetings, bank deposits and withdrawals,

processing costs, plus extra administrative, postage and miscellaneous fees most of which do not apply if the Contingency Reserve Fund is used as set out in the *Strata Property Act*. In a forthcoming amendment to the Act, owners will consider and vote on "Auditing Strata Financial Statements". Stratas will be making a choice between auditing strata accounts that are compliant with the *strata Property Act*, or auditing accounts that are not compliant with the Act which will take more audit time and expense to audit, or not auditing at all.

In another forthcoming amendment to the Act, strata owners will consider and vote on using a "Depreciation Schedule" which is essentially a choice between using the Contingency Reserve Fund or using a Special Levy Fund or other arrangement to plan ahead for strata maintenance.

Some strata councils and agents mix non-routine expenses in the Operating Fund and do not report these expenses separately in the Contingency Reserve Fund as required by the *Strata Property Act*. Using the Contingency Reserve Fund for accounting and reporting non-routine expenses, which is really one of the purposes of the Fund, would reduce operating fees, operating expenses, the operating budget and provide a clearer understanding of the operating budget process for the owners.

Some strata councils and agents mix Special Levy, Operating and Contingency fees in one universal or pooled trust account which results in excessive transfers of money between accounts and other extra administrative time and expenses. It would save money and time by separating the funds as required by the *Strata Property Act*.

While some may say that the *Strata Property Act* has many flaws, it is a step in the right direction for accounting and reporting strata funds and for the rights of strata owners.

This article was written by a VISOA member who wishes to remain anonymous.

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TALK TO US



Dear Editor,

I have read numerous articles complaining about the Real Estate Council of British Columbia (RECBC), not taking strata complaints seriously. I would like to submit a success story of my strata presenting a case to the RECBC about a strata Property Manager (PM).

When our PM was first hired, they seemed to be a good fit, and then cracks began to appear. Half way through the strata's fiscal year, the council was no longer receiving any financial reports, and the communication between the PM and the council was very sporadic. Council made a right decision and informed the PM their contract would be terminated. As the PM had failed to provide financial documents, the council had a challenging period in preparing for an AGM. Owners voted to no longer have a PM and become self managed.

I became involved and was elected to be on council as President. It was brought to our attention this situation should be reported to the RECBC. First we had to determine if there would be sufficient evidence to present a case against our PM. I met with my fellow council members as well as members from the previous council. Information was gathered together outlining deficiencies of the PM. This took numerous hours and weeks. I knew it was a very essential part of the processes to ensure anything documented wasn't anecdotal evidence, malicious or accusatory. This would have been the first trigger in losing any chance of RECBC taking our case seriously. Any facts stated had to have some form of supporting documentation.

Once the package was together, a motion was passed at our fall council meeting to pursue this with RECBC. The package mailed was very lengthy. Approximately two

weeks later I received a letter from RECBC informing me a file would be opened and an initial assessment of the complaint would be made. A month later, a letter was received informing me that RECBC had found sufficient evidence to take our complaint seriously and an investigation would be started. Part of this process was sending our complaint package to the PM for their counter response.

The PM did not respond promptly to the RECBC and missed the due date. Approximately three months after the investigation started I received another letter informing me there would be a hearing. The hearing was scheduled for a date twelve months away because of the large volume of files RECBC was dealing with at the time.

The hearing was cancelled - the Real Estate Services Act permits a licensee to propose a matter be resolved on the basis of an admission and without a hearing and such a proposal was made. The next step was for the Council's Consent Order Review Committee to consider the matter. This took another two months to receive. The PM was officially reprimanded by the RECBC. From the time our strata sent the PM a letter letting them know their contract would be cancelled to the time the RECBC gave a verdict was approximately two years.

The RECBC makes it clear they're not empowered to resolve commission disputes, make monetary settlements or adjudicate contract matters. We had not lost money, but did wish to point out the PM had not competently managed our strata, plus, finances had not been properly disclosed or handled.

Remaining quiet on the issue would not improve the system. If any stratas have legitimate complaints, the RECBC has to be notified. The route of making a complaint to RECBC is also

of very little cost to strata. It only consisted of mailing and printing the package being sent to RECBC. Had there been a hearing, RECBC would have covered the cost of travel for any witness needing to be called from our strata.

In conclusion, if a strata presents their case well, it is possible to have RECBC take it seriously enough to investigate a PM and reprimand them. An interesting final note is this PM already had another disciplinary decision posted on the RECBC Web site, during the course of our case being investigated.

*Miina Piir, Strata 5938,
Courtenay, BC*

Editor's Reply:

That is indeed great to

hear. Often, when a strata corporation makes the choice to discontinue the services of a property management firm due to incompetence, the strata is simply glad to be rid of the problem and that is the end of it. The management agent is then free to inflict his or her incompetence on another strata corporation. Thank you for reminding us that remaining quiet will not improve the system and letting us know that the RECBC does listen.

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but if you really make them think, they'll hate you.

*Don Marquis
US humorist (1878 - 1937)*

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