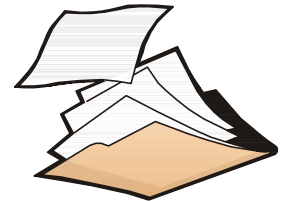


Bulletin #8

The new *Strata Property Act* is overwhelming. Each month we attempt to inform and educate you on different provisions and we hope this process is helpful. If you need a copy of previous bulletins please feel free to ask your property manager. If you have joined your strata council in recent months you should obtain a copy of previous bulletins as they are most useful. The content of these bulletins does not purport to offer legal opinions or advice. You should retain and consult with legal professionals.

The Strata Property Act

JUST FOR THE RECORD



Have you had an opportunity to closely review Section 35 of the new *Strata Property Act*? Here it is:

Strata corporation records

35 (1) The strata corporation must prepare all of the following records:

- (a) minutes of annual and special general meetings and council meetings, including the results of any votes;*
- (b) a list of council members with telephone numbers at which they can be contacted;*
- (c) a list of
 - (i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements,*
 - (ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,*
 - (iii) names of tenants, and*
 - (iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148;**
- (d) books of account showing money received and spent and the reason for the receipt or expenditure;*
- (e) any other records required by the regulations.*

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(2) The strata corporation must retain copies of all of the following:

(a) the records referred to in subsection (1);

(b) the registered strata plan and any strata plan amendments as obtained from the land title office;

(c) this Act and the regulations;

(d) the bylaws and rules;

(e) resolutions that deal with changes to common property, including the designation of limited common property;

(f) waivers and consents under section 41, 44 or 45;

(g) written contracts to which the strata corporation is a party;

(h) any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation;

(i) the budget and financial statement for the current year and for previous years;

(j) income tax returns, if any;

(k) correspondence sent or received by the strata corporation and council;

(l) bank statements, cancelled cheques and certificates of deposit;

(m) Information Certificates issued under section 59;

(n) the records and documents given to the strata corporation by the owner developer under section 20, or obtained by the strata corporation under section 23;

(o) any other records required by the regulations.

(3) Records referred to in this section must be retained by the strata corporation for the periods set out in the regulations.

Now take a look at what Section 36 says:

Access to records

36 (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,

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(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).

(2) On receiving the request of a tenant, or a person authorized in writing by a tenant, the strata corporation must

(a) make the bylaws and rules available for inspection, and

(b) provide copies of the bylaws and rules.

(3) The strata corporation must comply with a request under subsection (1) or (2) within 2 weeks unless the request is in respect of bylaws or rules, in which case the strata corporation must comply with the request within one week.

(4) The strata corporation may charge a fee for a copy of a record or document provided under this section of not more than the amount set out in the regulations and may refuse to supply the copy until the fee is paid.

Now take a close look specifically at Section 35(2)(k) which states that the strata corporation must retain copies of correspondence sent or received by the strata corporation and council. Also take a look at Section 36 which says that the strata corporation must make those records, i.e. the correspondence, available for inspection and also to provide copies within two weeks.

In our book The New Condominium Concept (Revised) on page 37 it states:

"While the vast majority of the records and documents required under Section 35 can be given on request, the inclusion of (k) "*correspondence sent or received by the strata corporation and council*" will cause significant problems for strata councils. Many

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owners write letters to their councils and do so on a confidential basis, particularly if the correspondence deals with a personal matter, or perhaps deals with a complaint about another owner or tenant. To make available publicly this correspondence will be extremely unfair and possibly prejudicial to these owners. The unfettered access to such correspondence is unwarranted and will cause strata councils major headaches. It is not inconceivable that strata councils will either ignore this requirement or create evasive measures to circumvent the statutory requirement."

We knew it would only be a matter of time before this very difficult issue would surface. At one of the strata corporations we manage, we have recently received a letter from a lawyer representing an owner demanding a variety of correspondence dealing with a complaint by another owner. It would appear that the matter is headed for court with charges of harassment, etc. It is not going to be pretty. Caught in the middle, is the strata council which now has to provide the copies of the correspondence that they received in confidence from the complaining owner. It is quite possible that, if the strata council releases the correspondence, the council itself could find itself either drawn into the litigation or the subject of litigation by the original owner for breach of privacy and confidentiality.

We are bringing this situation to your attention because you should be aware that it is only a matter of time before it will likely happen to you. Despite strenuous efforts by Gerry Fanaken, the President of VCS, to have the government delete the offending subsection (k), it was left in. The consequences of the government's decision in this matter are enormous. We welcome your feedback.