

Bulletin #10

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.



FOR YOUR INFORMATION...

Are you aware that there are a number of sections in the new *Strata Property Act* that require the strata corporation to inform owners and tenants about various issues that may arise from time to time? Here are some of the key ones that you should be aware of and implement when appropriate.

1. Section 106 - Informing Owners of Strata Fees: Within 2 weeks following the annual or special general meeting at which a budget is passed, the strata corporation must inform owners of any changes to their strata fees resulting from the new budget.

2. Section 167 – Defending Suits:

(1) The strata corporation must inform owners promptly if it is sued.

This section pertains to lawsuits. The same provision also applies to arbitrations which are brought against the strata corporation. The relevant section is 176.

3. Section 98 – Unapproved Expenditures:

This deals with emergency expenditures from the CRF or annual operating budget.

(6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3). . . which says:

(3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage.

4. Management of Contingency Reserve Fund:

Background: If a strata corporation temporarily runs short of money in its operating fund and requires money from its Contingency Reserve Fund as a "loan", Section 95 of the Strata Property Act permits this at subsection 4. It reads:

(4) Despite subsection (2), the strata corporation may lend money in the contingency reserve fund to the operating fund as permitted by the regulations.*

Regulation 6.3 (2) provides as follows: The strata corporation must inform owners as soon as feasible of the amount and purpose of any loan made under this section.

(*Subsection (2) directs the corporation on investments)

5. *The following section is a bylaw and does not apply to your strata corporation at this time. It is part of the Schedule of Standard Bylaws and will come into effect January 1, 2002. You should, nevertheless, be aware of it.*

Bylaw 19 – Council to Inform Owners of Minutes: The council must inform owners of the minutes of all council meetings within two weeks of the meeting, whether or not the minutes have been approved.

6. Section 125 – Rules: The strata corporation must inform owners of any new rules as soon as feasible.

7. Section 128 – Bylaw Amendment Procedures: The strata corporation must inform owners and tenants of any amendment to the bylaws as soon as feasible after the amendment is approved.

The above sections of the statute, in all probability, contain and constitute procedures which you have been employing already. Certainly, it is something that VCS does routinely; however, not all management companies or strata corporations go through this process. Now it is the law and everyone must comply. What does it mean to inform resident owners and tenants? The statute is very specific and it is outlined at Sections 65 and 61 which read as follows:

65. Informing Resident Owners

For the purposes of sections 98 (6), 106, 108 (4) and 125 (4) and any regulations, bylaws or rules that require the strata corporation to inform owners of certain matters, the method chosen to inform resident owners may include one or more of the following methods:

- (a) leaving a document containing the information at a location designated by the strata corporation for the distribution of such information;
- (b) posting a document containing the information in a part of the common property designated by the strata corporation for the posting of such information.

61. Notice Given By Strata Corporation

- (1) A notice or other record or document that the strata corporation is required or permitted to give to a person under this Act, the regulations, the bylaws or the rules may be given to the person,
 - (a) if the person has provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
 - (i) by leaving it with the person, or
 - (ii) by mailing it to the address provided, or
 - (b) if the person has not provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,
 - (i) by leaving it with the person,
 - (ii) by leaving it with an adult occupant of the person's strata lot,

- (iii) by putting it under the door of the person's strata lot,
 - (iv) by mailing it to the person at the address of the strata lot,
 - (v) by putting it through a mail slot or in a mail box used by the person for receiving mail, or
 - (vi) by faxing it to a fax number provided by the person.
- (2) The notice, record or document may be addressed to the person by name, or to the person as owner or tenant.
- (3) A notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vi) is conclusively deemed to have been given 4 days after it is left with an adult, put under the door, mailed, put through a mail slot or in a mail box or faxed.

Section 65 (a) talks about a "document" containing the information that is required for distribution. The *Act* is not specific in what constitutes a "document" and some might argue that it specifically means a separate memo or bulletin on a given topic, while others may argue that the reporting of these matters in the minutes of council meetings would be adequate. At this time, since the *Act* is so new, there is not a right or wrong answer which can be supported by court precedents; however, VCS feels that it is reasonable to take the position that the reporting of these matters in the current minutes of council meetings meets the requirement of the *Act*. If your strata council does not support this view, it might be appropriate for you to obtain legal counsel in this matter.

The *Act* also does not define what constitutes "as soon as feasible" or "promptly" and, again, it may very well be a matter of time before we have a definitive answer from the court to this question. It is VCS' view that, if the minutes are relied upon for the dissemination of this information, the distribution of monthly council meeting minutes would be appropriate. VCS also advises, however, that if minutes are not distributed to the owners or not distributed within a one-month timeframe, then a separate bulletin should be sent to the owners to comply with the *Act*. To be on the safe side, a strata council should

consider separate bulletins other than the minutes to ensure compliance with the law, notwithstanding the apparent vagueness of words like "promptly" and "as soon as feasible". Again, your strata council may very well wish to obtain legal counsel in this matter.

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We hope this bulletin has been, uh, informative.

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