

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.

Bulletin #13

The law firm of Clark, Wilson has prepared an extensive bylaw package for strata corporations to comply and coordinate with the new Strata Property Act. The package costs \$750 plus tax; however, due to volume discounts through VCS, this package can be purchased for \$300 plus taxes. (The cost includes one hour of time with a lawyer, either Pat Williams or Bonnie Elster, at their office.) You are under NO obligation to participate in this program; however, VCS recommends it highly.

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BYLAW BUGABOOS

THE SIMPLE(?) FACTS:

- (A) The bylaws in the new Strata Property Act are called The Schedule of Standard Bylaws. They number from 1 to 30.

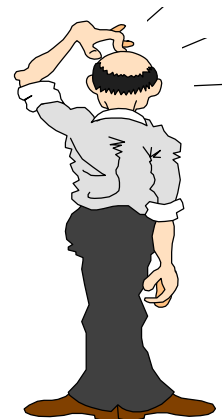
Your strata corporation does NOT have these bylaws at this time, with two possible exceptions:

- (1) Your strata plan was registered in the Land Title Office after July 1, 2000.
- (2) Your strata corporation does not have a bylaw requiring owners to pay his or her strata fees on the first of each month. If not, bylaw 1 is in effect now. It reads:

"An owner must pay strata fees on or before the first day of the month to which the strata fees relate."

Question: "Oh yeah, where does it say that?"

Answer: Regulation 17.9 Payment of strata fees says:



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"If a strata corporation created under the Condominium Act has no bylaw that establishes a schedule for the payment of strata fees, the strata corporation is deemed, on the coming into force of this section, to have the bylaw set out in section 1 of the Standard Bylaws to the Act."

- (B) The new Schedule of Standard Bylaws comes into effect on January 1, 2002 for all strata corporations.

Question: "Where does it say that?"

Answer: Section 120 Standard Bylaws says, in part:

"(1) The bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office."

Question: "What does it mean "except to the extent that different bylaws are filed in the Land Title Office?"

Answer: Read on...

- (C) The existing bylaws of your strata corporation will remain in existence forever:

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- (a) unless your strata corporation changes them at an Annual or Special General Meeting by way of a $\frac{3}{4}$ vote resolution; or
- (b) unless your bylaw conflicts with any section of the statute – i.e. the Strata Property Act. This means the Act itself, not the Standard Bylaws.

Question: "Does all this mean that we do not have to readopt our existing bylaws?"

Answer: Yes, but...

Regulation 17.11(5) says:

"On January 1, 2002, a strata corporation bylaw filed in the land title office ceases to have effect to the extent that it conflicts with a provision in Parts 1 to 17 of the Act or this regulation."

And Regulation 17.11(4) says:

"Subject to subsection (5), if a strata corporation bylaw filed in the land title office conflicts with a Standard Bylaw, the filed bylaw prevails."

Example #1: Your strata corporation has a bylaw that says the size of council is between 3 and 5 members. The new Standard Bylaw (#9 Council Size) says between 3 and 7 members.

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Your existing bylaw prevails and does not need to be re-enacted. It does not conflict with the *Act* itself.

Example #2: Your strata corporation has a bylaw that allows you to charge back an insurance deductible to an owner. This bylaw conflicts with the *Act** and can only be enforced up to December 31, 2001. After that, even though it is registered in the Land Title Office, your bylaw is unenforceable. Why?

*Section 158 says, in part:

"(1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1)."

P.S. There is no regulation at this time

(D) Regulation 17.11(3) says:

"On January 1, 2002,

(a) the Standard Bylaws are deemed to be the bylaws for all strata corporations created under the Condominium Act, except to the extent that conflicting bylaws are filed in the land title office, and

(b) any bylaws under Part 5 of the Condominium Act or under a former Act which were deemed, by section 26(2) of the Condominium Act

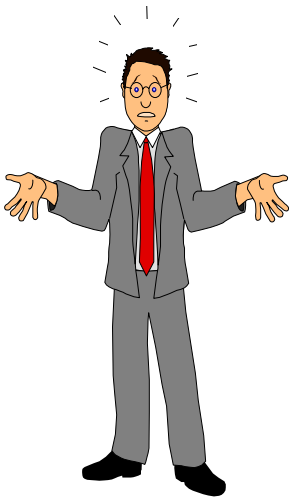
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or a similar section of a former Act, to be bylaws of the strata corporation cease to have effect."

Question: If the Part 5 bylaws of the Condominium Act were filed in the Land Title Office, will they be valid? One regulation says they cease to have effect - Reg 17.11(3). Another regulation says if it is filed it remains in effect - Reg 17.11(5).

Answer: If your corporation filed the Part 5 Condominium Act bylaws, they will remain in existence. They are not automatically replaced by virtue of 17.11(3). If they were not filed, they expire.

Question: "Yikes! Is this for real? This is very complicated. We now have:



(a) our own bylaws which we added over the years;

(b) the Part 5 Condominium Act bylaws which we filed in the Land Title Office;

(c) the new Standard Bylaws on January 1, 2002, but only to the

extent that they do not conflict with existing bylaws.

What a mess!"

Answer: Yes, for sure!

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Question: "What do we do?"

- Answer:
1. Pass a $\frac{3}{4}$ vote resolution (before December 31, 2001) to repeal the Part 5 Condo Act bylaws.
 2. Match your "added" bylaws (the existing ones you have enacted over the years) with the new Standard Bylaws. The best way to do this is to start with the new Standard Bylaws on a computer program, then one at a time, insert your existing "added" bylaws in the appropriate areas. If there is "conflict", your existing "added" bylaw prevails and the Standard bylaw on that topic can be removed. (Judges are going to have a very difficult time with all this in years to come so a good "paper trail" is vital to identify and establish your own strata corporation's bylaws.)

Another problem we will have deals with the issue of determining what constitutes "conflicting". If the conflict is "black and white", that would be easy. Example: council consists of between 3 and 5 members versus 3 and 7 members. Easy to see the conflict here. But try this one for size:

Pet Restrictions

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<u>Your Existing Bylaw</u>	<u>The new Standard Bylaw</u>
<ul style="list-style-type: none">• Pets may be permitted in a strata lot only with the consent of the strata council.• The council may revoke permission.	<p>(3) An owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.</p> <p>(4) An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:</p> <ul style="list-style-type: none">(a) a reasonable number of fish or other small aquarium animals;(b) a reasonable number of small caged mammals;(c) up to 2 caged birds;(d) one dog or one cat.

Not so easy, eh? It becomes very difficult to establish if there is a conflict between the two bylaws. These types of bylaws will need work.

(E) The authority to have bylaws is found at Section 119 of the Act which states:

"(1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation."

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The following is an excerpt from the The New Condominium Concept (Revised)

119: Nature of Bylaws

"Under the Condominium Act, Sections 26 - 28 provided the guidelines for the establishment, creation and amendment of bylaws. Under the Strata Property Act, Section 119 is the basic authority for bylaws and it states the strata corporation must have bylaws. Subsection (2) states that these bylaws may provide for the control, management, maintenance use, and enjoyment of strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation. The statute uses the word "may" rather than "must" which means that such critical and fundamental bylaws could be optional although it is unlikely that a strata corporation would want to operate in such a fashion."

Note also that, although the *Strata Property Act* says that the strata corporation must have bylaws, there is nothing in the statute that says an owner is obliged to abide by them. Was this just an oversight when the law was written? Or is it only a goofy observation because, of course an owner is obliged to abide by the bylaws – it is common sense, implied, obvious, etc. Hmm.