

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.

FEATURES THIS MONTH

- Interest charges instead of fines.
- Doors and windows: oh oh!

THIS COULD BE "INTEREST"-ING...

When owners do not pay their monthly strata fees, most strata corporations invoke a \$25 penalty as fines on the strata lot owners' accounts. Some strata corporations have specific bylaws to this effect, while others have historically relied on the general provisions of the *Condominium Act* permitting fines. If there is no specific bylaw, Bylaw #1 of the *Strata Property Act* is already in force. It reads as follows:

Payment of strata fees

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

Most of you are likely aware that, if an owner defaults on his or her mortgage and the owner's financial institution forecloses, the strata corporation is usually not entitled to receive the fines which have been levied on the owner's account. This is because Section 37 of the *Condominium Act* contained wording which precluded the inclusion of fines as a lien priority. Some landmark rulings by the BC Supreme Court clearly established that financial institutions would be obliged to pay the strata fees and special assessments but not fines. Invariably then, it has been necessary to write off the fines when the foreclosures were finalized. The new *Strata Property Act* has not changed this process; thus, strata corporations are still vulnerable in this regard.

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What is different, however, is that strata corporations may now charge interest on outstanding balances. Note Section 107 of the *Strata Property Act* which states:

Payment of strata fees

- (1) *A bylaw that establishes a schedule for the payment of strata fees may set out a rate of interest, not to exceed the rate set out in the regulations, to be paid if an owner is late in paying his or her strata fees under that schedule.*
- (2) *The interest payable on a late payment of strata fees in accordance with a bylaw referred to in subsection (1) is not a fine, and forms part of the strata fees for the purposes of section 116.*

Note subsection (2), the key point being that interest is not a fine and forms part of the strata fees for the purpose of Section 116.

Section 116 (1) states in part:

Certificate of Lien

- (1) *The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:*
 - (a) *strata fees;*
 - (b) *a special levy;*
 - (c) *a reimbursement of the cost of work referred to in section 85;*
 - (d) *the strata lot's share of a judgement against the strata corporation.*

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Hopefully, what all this means is that, if a strata corporation creates a bylaw authorizing the charging of interest on late strata fees, then that interest will be collectable through the lien process and through any subsequent foreclosure by a financial institution. Clearly this is a huge advantage to strata corporations. *(Always remember that these matters are subject to determination by future court rulings; however, several "strata-knowledgeable" lawyers have expressed support for this viewpoint.)*

Also note that, pursuant to Section 135 of the *Act*, when a fine is levied on an owner's account, the owner is to be notified, in writing, before the fine can be imposed. Since the *Strata Property Act* became law in July 2000, most strata councils have more or less been following this statutory requirement in matters dealing with conduct such as noise bylaw violations, pet issues, etc. With respect to the levying of fines on late strata fees, most strata councils have not followed this procedure at all. As an aside, it is VCS' opinion that Section 135 (i.e., to provide an owner with a hearing prior to the application of a fine) was not intended for such a routine matter as late strata fees. Unfortunately, Section 135 casts a very wide net so, in all likelihood, the imposition of fines for late strata fees does fall within the boundaries of Section 135. VCS has written to the Victoria policy analysts who write condominium law and suggested that an amendment be made to the legislation. This is under review but, as you can probably guess, this takes a very long time.

So finally, the point of this bulletin is to suggest to you that you abandon the concept of fines for late strata fees and move toward an interest

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structure. This does require a bylaw and, since most strata corporations are contemplating new bylaws this fall, we suggest that you include a bylaw authorizing the levying of an interest charge for late strata fees to replace the traditional \$25 fine structure. In creating a bylaw, you should be aware of Regulation 6.8, Maximum Amount of Interest For Late Strata Fees, which states:

For the purposes of section 107 (1) of the Act, the maximum rate of interest that a strata corporation may set out in its bylaws for the late payment of strata fees is 10% per annum compounded annually.

VCS encourages its clients to consider such a bylaw with an effective date of January 1, 2002. It is our intention to program our computer system on that date for this purpose. Your comments and suggestions would be welcomed.

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DOORS AND WINDOWS: OH OH!

Bylaw 8 of the *Strata Property Act* reads as follows:

- 8** *The strata corporation must repair and maintain all of the following:*
- (a) common assets of the strata corporation;*
 - (b) common property that has not been designated as limited common property;*
 - (c) limited common property, but the duty to repair and maintain it is restricted to*
 - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and*
 - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:*
 - (A) the structure of a building;*
 - (B) the exterior of a building;*
 - (C) chimneys, stairs, balconies and other things attached to the exterior of a building;*
 - (D) doors, windows and skylights on the exterior of a building or that front on the common property;*
 - (E) fences, railings and similar structures that enclose patios, balconies and yards;*
 - (d) a strata lot in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to*
 - (i) the structure of a building,*
 - (ii) the exterior of a building,*
 - (iii) chimneys, stairs, balconies and other things attached to the exterior of a building,*

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(iv) doors, windows and skylights on the exterior of a building or that front on the common property, and

(v) fences, railings and similar structures that enclose patios, balconies and yards.

(Bolding added for emphasis.)

The first thing to note here is that this bylaw is not in effect at this time. Of course, come January 1, 2002 the bylaw will automatically become the bylaw of your strata corporation unless you already have a bylaw dealing with the subject matter. (You will recall that existing bylaws of strata corporations remain in force and effect after January 1, 2002 as long as they do not conflict with anything in the statute itself. If an existing bylaw conflicts with a *Strata Property Act* bylaw, the existing bylaw takes precedence.)

Very few strata corporations actually have bylaws dealing with responsibility for doors and windows since this topic was covered off by the Part 5 Bylaws of the *Condominium Act* which are, of course, being replaced by the new Standard Bylaws of the *Strata Property Act*.

You need to think very carefully about Bylaw 8 and the impact on your administration and budget insofar as the responsibility for doors and windows. As you can see from the bylaw printed above, the strata corporation now becomes responsible for repairs and maintenance of doors and windows. If that is what you wish, fine. If that is not what you wish, then it will be necessary for you to pass an amendment to have this

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bylaw deleted. This can be done prior to December 31, 2001 or at a subsequent date; however, if it is done at a subsequent date, the standard bylaw is valid from January 1, 2002 until such time as an amendment is filed in the Land Title Office.

In case you think all this is quite academic, think about the following scenarios.

An owner calls the property manager and says that the double pane window in the strata lot is all fogged up with condensation. This is usually the case because the seal in the double pane window has broken. This is a routine matter and, until now, property managers have advised owners that the responsibility for replacing that window pane lies with the owner, not the strata corporation. After January 1, 2002, the new bylaw changes all that.

An owner phones the property manager and reports a break and enter into his or her strata lot. The door has been damaged and requires repair or replacement. It is true that the insurance policy for the corporation will provide coverage here but there is the issue of the deductible. As you know from previous bulletins, the deductibles can no longer be charged to owners as they are now to be treated as a common expense of the strata corporation. What about the lockset itself? Who will pay for the new lockset and, if an owner has upgraded from the original el-cheapo lockset installed by the developer to a high-security system, would the strata corporation pay for the cost of the replacement lockset? What if all these expenses are incurred but it is not from a break in but rather due to

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forced entry by the strata corporation because there is a leaky pipe inside the strata lot and the owner is not home? If the answer is that the strata corporation is responsible for all these expenses, does that lead to a conclusion that the strata corporation should have a right to a spare set of keys for such emergencies? Egads! What a slippery slope! We welcome your thoughts, suggestions and other comments.



E-MAIL IS WONDERFUL BUT . . .

It is not without its downsides. If you are communicating with us via e-mail, please take a moment to read this bulletin.

These days we are inundated with e-mails and we need your help because we do not want to miss anything important. Note our policies:

- E-mail is to be used by strata council members only; it is not for owners/residents of your strata corporation.
- We need the final decision to a discussion that takes place between council members. We do not need the exchange between council members. Sometimes this discussion can be "pages and pages". We need the bottom line and ideally this should come to us from the council President or a Committee Chairperson.
- E-mail should not be used for emergencies. Our e-mail "turn-around" time is 48 hours (Monday to Friday) and VCS will accept no responsibility for anything that is unanswered in the 48 hour time frame. VCS relies solely on the telephone system to deal with emergency situations at all times.
- If you wish to use the e-mail system for urgent matters which are not emergencies, please identify it as an URGENT MATTER and do not include it with other communication in the same e-mail. We sometimes receive two or three page memos on a variety of routine issues and buried in there on page 3 is an urgent matter request.

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- Subject to the guidelines in this bulletin, you can use e-mail for any purpose – there are no restrictions but ensure that any attachments are Windows 95 or 98 compatible.
- We do not require updates on virus scares, hoax warnings, chain letters, etc.
- Jokes are great but let's include them in the "do not send" category.

FOR YOUR INFORMATION

We receive e-mail from owners not on council and we politely advise them that they should not be using our e-mail system. Some owners get very angry at this; however, consider that our e-mail system is for VCS corporate use as a business not as a "server" providing a distribution centre for some 13,000 households. In this regard, however, we are working on a program to provide our clients with their own e-mail address/websites where owners can communicate with council. The website will contain various elements such as a property profile, minutes, bylaws and other bulletins. We have to develop such a site very carefully as certain information and data is likely to be considered private and confidential. We will let you know later this year how we are doing with this project.

In the meantime, thanks for helping out. It is very much appreciated!

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There is no charge to your strata corporation for this bulletin.