

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.

ANNUAL GENERAL MEETING REQUIREMENTS

Not all strata corporations have their fiscal year-ends as December 31st, although that is the most common anniversary date. The content of this bulletin deals with AGMs and, if your strata corporation is not a December 31st year-end, the timing of this bulletin may be a bit off; nevertheless, the content is important and you should retain it for use as your AGM comes up in the new year.

The procedures for AGMs are a bit different than they used to be under the old *Condominium Act*. Section 40 of the *Strata Property Act* states at subsection (2) that the Annual General Meeting must be held no later than two months after the strata corporation's fiscal year-end. Under the *Condominium Act*, it was actually a bylaw that required AGMs to be held within 13 months of the previous AGM. Clearly, it can be seen that the statute has been changed to tie the AGM to the fiscal element of the strata corporation and not the date of the last AGM. Many strata corporations have historically had their Annual General Meetings in the middle of a fiscal year but this no longer can be done.

It is important to note also that the new *Act* requires the AGM to be held within two months of the fiscal year-end. When the *Act* was first drafted, it provided for a one-month timeline; however, VCS brought to the government's attention that this would be insufficient time for those strata corporations that like to have their year-end audits done first before presenting a budget to the owners. The two month timeline, therefore, is intended to provide an opportunity to a strata council to have the audit done and then issue the notice for the AGM. You must admit that even the two month timeline is quite tight. Therefore, the first point of this bulletin is to draw attention to those strata councils that prefer having audits done first that they must make a decision in this regard as early as possible in the current fiscal year so that no time is lost at year-end.

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Section 45 of the *Strata Property Act*, at subsection (1), requires the strata corporation to give at least two weeks' written notice of the AGM. Note, however, that two weeks' notice actually means at least 19 days since the *Act* requires at Section 61(3) that four days be allowed for the purpose of distribution of notices. Knowledgeable lawyers have advised us that this should be interpreted as "clear days" and that means at least 19 days. In one instance, a lawyer has advised that it should be 20 days on the premise that you don't count the first day or the last day. VCS has always had a 21 day rule for AGM/SGM notices and that is sufficient to meet the requirements of the *Act*.

Strata councils must be alert to the fact that the preparation of AGM and SGM notices takes time and it is not wise to leave the details to the very last minute. In one recent case at VCS, a client presented a dozen pages of bylaws and resolutions on the last day that the notice had to be issued. This was impossible to do and the meeting had to be postponed to another date. This, of course, can be quite disruptive to the council, property agent, owners, etc. Please ensure, therefore, that you leave lots of time to have the notices properly prepared for distribution. Many councils prefer to see an advance draft which is an excellent idea, but this takes more time.

Section 45(4) requires the strata corporation to include the budget and current financial statement as part of the notice. Section 103 of the *Act* requires an extensive amount of detail, some of which is described in the Regulations to the *Act*. You should take a look at these sections so that you are aware of your legal obligation when issuing the AGM notice. One of the requirements of the Regulations (6.7) is that the financial information is supposed to contain "details of expenditures" from the operating fund and the contingency reserve fund over the past year. The legal interpretation of this section is that full details are required, not just a summary which you would get on a financial statement

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each month. In most cases, these details, even when printed in teeny, tiny print, can run dozens of pages. Multiply this by the number of owners in your strata corporation and you can see that the cost of AGM notices can be substantial. Although this is a statutory requirement, we know of no strata corporation within our portfolio that has complied with the *Act* in terms of distributing the "details of expenditures" for the past year. As an aside, note that VCS has written to the Ministry suggesting that this section of the legislation be amended since it is an unnecessary and extreme financial burden on strata corporations. We are hopeful that some changes will be made but, as you know, governments work slowly.

Section 48 of the *Strata Property Act* deals with the matter of quorums for Annual or Special General Meetings. Under the *Condominium Act* the establishment of a quorum was actually covered off by the Part V bylaws. Now it is a statutory requirement, although there is still provision for a strata corporation to have its own bylaw on this topic. The content is essentially the same: subsection 48 (2) states that the quorum is "eligible voters holding 1/3 of the strata corporation's votes, present in person or by proxy...". Subsection (3) is essentially the same as the old bylaw which states that, if a quorum is not met, the meeting is adjourned to the same day a week later. This, of course, has always been a big problem for strata corporations and management companies as the procedure is extremely inconvenient for all concerned, to say nothing of costly if hotel rooms have to be rented. Very often schools, community centers and hotels are not available on short notice. The subsection does provide for the strata corporation to have a bylaw to provide an alternative and many strata corporations have introduced bylaws which provide that the meeting can proceed ½ hour later, rather than a week later. While this is extremely convenient and practical, there may come a day when a court will have to rule on such a bylaw and determine whether or not it is

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reasonable and meets the spirit of the legislation. Let's cross that bridge when we come to it. In the meanwhile if your strata corporation has a bylaw dealing with quorums, that bylaw is valid and in effect. Use it.

The new *Act* does provide at Section 49 that a strata corporation can hold its Annual General Meeting "by telephone or any other method" (e-mail?) as long as the method permits all persons participating in the meeting to communicate with each other during the meeting. Sounds good on paper but we wonder just how easy this process would be in reality.

Section 50 deals with voting at Annual or Special General Meetings and the key element to remember now, and this is a big change from the old *Condominium Act*, is that any amendments to resolutions requiring a $\frac{3}{4}$ vote may be made only with a $\frac{3}{4}$ vote. Under the old *Condominium Act*, if a special resolution was being voted on and someone wanted to amend it, the amendment only required a 50% plus one vote to pass the amendment. Under the *Strata Property Act*, a $\frac{3}{4}$ vote resolution requires a $\frac{3}{4}$ vote to amend it.

Section 51 of the new *Act* is a brand new concept dealing with reconsideration of resolutions passed by $\frac{3}{4}$ votes. We will not get into all the nitty gritty details of Section 51 in this bulletin but, the long and the short of it is that, if less than 50% of the owners attend an Annual General Meeting and a $\frac{3}{4}$ vote resolution is passed, the strata corporation cannot proceed with the implementation of that vote for at least one week in order to allow a reconsideration process. You should take some time to read Section 51 of the *Act* prior to your next Annual General Meeting. This is very important if you have plans to move quickly on something, ie. a new bylaw, spending money from the CRF, assessing a special levy on the owners and, oh oh, firing the management company.

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As you know, tenants have considerably more rights now under the *Strata Property Act* than they used to under the *Condominium Act*. In terms of voting at AGMs, Section 54 does give tenants the right to vote, although there is a procedure that must be followed before that can happen. A tenant cannot simply appear at the AGM to invoke his or her rights under Sections 147 or 148 of the *Act*. Keep in mind, however, that a tenant can attend and vote at an AGM if the owner of a strata lot has given the tenant a proxy.

Speaking of proxies, Section 56 provides statutory direction on proxy voting, whereas it used to be part of the bylaws of the *Condominium Act*. Generally, there have not been that many changes, although the one specific change that is notable is that a person who provides strata management services to the strata corporation cannot hold a proxy. The same applies to employees of the strata corporation. (As a matter of policy VCS has never accepted and voted proxies.)

One last point regarding AGM/SGM notices. Once a notice has been issued it is virtually impossible to change it if there are insufficient days (ie. 19). Councils sometimes change their minds after a notice goes out and want to do the change as an "amendment". For example, instead of charging an expense to the CRF, charge it as a special levy (or vice-versa). This cannot be done as an amendment at the AGM/SGM.

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"I AM NOT A LAWYER BUT..."

For those of you who have been on strata councils for a number of years, you are very cognisant of the enormous changes that have occurred from the old legislation to the new *Strata Property Act*. In addition to these legislative changes, there is a whole new attitude by owners regarding the authority of the strata corporation and the authority of the elected strata council. The

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challenges to strata councils' decisions and policies seem to be endless these days. The vast and significant changes of the new legislation have also given rise to more disputes and varying interpretations of what the law says or means. In the past 20 years that VCS has been providing management services to strata corporations, it has been rare to see lawyers attend Annual or Special General Meetings of the corporation. Although there is not a turn-around in this practice, we wish to foretell the future and suggest that, in a few years, it will likely be quite common, particularly in the larger strata corporations where there are many contentious issues, to see lawyers attending and representing the strata council in legal matters. Interestingly, in Ontario, lawyers have been attending Annual General Meetings for a number of years and it is an expectation that this is part of the AGM process. Needless to say, the cost of administration for strata corporations is driven up by virtue of having lawyers attend the meetings for three or four hours. Stay tuned: it will happen here.

In the meantime, strata councils and management agents do the best they can to conduct the administration of the strata corporation without the direct benefit of a lawyer at the head table. Councils and property managers should be very careful, however, as to how they answer some of those blistering questions that come from the floor of the meeting. Notwithstanding our collective exposure to the *Strata Property Act* and the bylaws of the corporation, there is a huge danger in trying to provide quasi-legal advice to the owners at Annual General Meetings (or at any time). Often the phrase is heard from strata councils or property managers "*I am not a lawyer but blah blah blah.*" One lawyer recently advised us that such an expression should not be used because it suggests that the "*blah blah blah*" part is, in fact, providing the very legal advice that we should not be providing. This is probably good advice but from a practical standpoint, just imagine what will happen at AGMs if every time a question comes from the floor and the council or the property managers says "*That's a*

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good question. I'll check with our lawyer and get back to you." It won't wash and the owners will want answers right there and then, so we are forced into making these statements and providing opinions. All we can say at this time is be very careful what you say and don't be pressured by the owners to play lawyer. Our property managers are somewhat knowledgeable in the *Strata Property Act* and, any training that they have received from VCS should still be considered as informational only and not as formal legal opinion. This is truly a "heads up" for all concerned at the head table.

