

Bulletin #20

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.

INSURANCE PREMIUMS FOR 2002

The coverage for "all-risk" must be for replacement value. The *Strata Property Act* states at Section 149:

Property insurance required for strata corporation

(1) The strata corporation must obtain and maintain property insurance on

- (a) common property,
- (b) common assets,
- (c) buildings shown on the strata plan, and
- (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

(2) For the purposes of subsection (1) (d) and section 152 (b), "fixtures" has the meaning set out in the regulations.

(3) Subsection (1) (d) does not apply to a bare land strata plan.

(4) The property insurance must

- (a) be on the basis of full replacement value, and
- (b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

Although we tipped you off earlier this year about the possibility of increased insurance premiums for 2002, no doubt you have already twigged onto this issue given recent events in New York City. For those of you preparing budgets for January 1st, you will need to give some careful thought as to exactly how much money you need for your insurance budget. For those of you with fiscal years starting from February on, it will be a little easier for you as we will have the actual insurance policies for January 1st.

Note that the vast majority of the insurance policies of VCS managed strata corporations have an anniversary renewal date of December 31st,

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irrespective of the fiscal year-ends of the strata corporations. The reason we do this is because we are able to purchase the premium at a good rate. Incidentally, the total value of insurance purchased each year by VCS is approximately \$2,000,000,000. (Yes, billion) Most of this is through Pro Technical Insurance but we also utilize other brokers. Clients (strata councils) frequently ask us to obtain quotes from other agencies and we are happy to do this for you. Invariably, however, other agencies are unable to match the premiums and the quality of the coverage.

The first thing to note about the annual insurance premiums is that, unlike the old days, we generally do not find out what the premiums will be until sometime in mid-December. Years ago, we were able to get advance information on premiums by October or November but, given the volatility of the insurance market these days, the underwriters play their cards pretty close to their chests until the last minute. In the last few years we have only been able to get the actual hard numbers in mid to late December. We anticipate that that will be the case again this year.

We already knew from information earlier this year that the low premiums we have enjoyed for the last two or three years are coming to an end. For those of you new to your strata council, you must be saying "what low premiums?" For those of you who have been on council for over three or four years, you will remember that the premiums were approximately two to three times higher than what you have been paying this past year or two. In any event, we do know that the current level of premiums are scheduled for an increase on January 1st due to a wide variety of market / global conditions.

Now add to that the disaster of New York City and the fact that the underwriters are on the hook for billions of dollars. Each article that we read has a different number but it is reasonably safe to say that the bottom line in all of this for insurance companies is going to be staggering. Needless to say, the insurance industry will be seeking to recover its losses by way of increased premiums.

So, what does all this mean to you? Well, we think it would be prudent that you put a hefty amount into your budget for insurance coverage for the coming year. Does this mean you should double the past year's allocation? That might be excessive, but certainly 30 to 50 percent would be advisable. That might be a very safe route to go and, in the event that the premiums do not double on January 1st, well at least you

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have some cushion that will assist your budget in other categories if necessary.

BYLAWS YOU DON'T WANT ?

Well, the last word is yours but VCS recommends that you consider the following bylaws very carefully. For most strata corporations, the new *Strata Property Act* bylaws will automatically become your bylaws on January 1, 2001. (The reason we say most is:

- (a) if you already have a bylaw in place {i.e., registered at the LTO} dealing with the same topic, your existing bylaw will be superior to the SPA bylaw and the SPA bylaw will not be in force and effect.
- (b) if you filed the *Part V Condo Act* bylaws in the LTO, they will remain in force and effect and will not automatically be replaced with the SPA bylaws. We hasten to add that this advice does not constitute a legal opinion. You should obtain professional legal advice in this matter.)

DO YOU WANT THE FOLLOWING BYLAWS?

- 4. *Inform strata corporation*
 - (1) *Within 2 weeks of becoming an owner, an owner must inform the strata corporation of the owner's name, strata lot number and mailing address outside the strata plan, if any.*
 - (2) *On request by the strata corporation, a tenant must inform the strata corporation of his or her name.*

VCS suggests removal of "On request by the strata corporation" in subclause (2).
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- 8. *Repair and maintenance of property by strata corporation*
The strata corporation must repair and maintain all of the following:
 - (a) *common assets of the strata corporation;*

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- (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,*
 - (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.**

See VCS Bulletin #18 "Doors and Windows: oh oh!" Heads up on the 180° shift in responsibility.
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14. *Calling council meetings*

- (1) Any council member may call a council meeting by giving the other council members at least one week's notice of the meeting, specifying the reason for calling the meeting.*
- (2) The notice does not have to be in writing.*

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- (3) A council meeting may be held on less than one week's notice if
 - (a) all council members consent in advance of the meeting, or
 - (b) the meeting is required to deal with an emergency situation, and all council members either
 - (i) consent in advance of the meeting, or
 - (ii) are unavailable to provide consent after reasonable attempts to contact them.
- (4) The council must inform owners about a council meeting as soon as feasible after the meeting has been called.

VCS recommends that subclause (2) be amended to provide that it must be in writing. We feel that subclause (3) should also add the words "in writing". Over the years, we have seen much arguing on these points. With respect to subclause (4), we see no reason why council should have to do this. We suggest it be removed.

15. Requisition of council hearing

- (1) By application in writing, stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
- (2) If a hearing is requested under subsection (1), the council must hold a meeting to hear the applicant within one month of the request.
- (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week of the hearing.

VCS does not object to the principle espoused by this bylaw; however, you should look at it closely, consider the implications and possibly modify the timelines prescribed.

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17. Council meetings

- (1) *At the option of the council, council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other.*
- (2) *If a council meeting is held by electronic means, council members are deemed to be present in person.*
- (3) *Owners may attend council meetings as observers.*
- (4) *Despite subsection (3), no observers may attend those portions of council meetings that deal with any of the following:*
 - (a) *bylaw contravention hearings under section 135 of the Act;*
 - (b) *rental restriction bylaw exemption hearings under section 144 of the Act;*
 - (c) *any other matters if the presence of observers would, in the council's opinion, unreasonably interfere with an individual's privacy.*

VCS strongly recommends that subclause (3) be either removed or changed. We prefer the wording of the old Condominium Act bylaws at 121 which essentially said "*The council may meet for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit.*" The underlined words reflect the point we are making.

19. Council to inform owners of minutes

The council must inform owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved.

First, we believe that "2 weeks" is too tight. It is true that VCS delivers minutes in two or three days, but that is a VCS thing. Imagine for a moment that you need to hold your minutes for technical or legal reasons for more than 2 weeks. That could be possible. Some strata councils (though not many) prefer that minutes not be circulated until approved at the next monthly meeting. VCS recommends that this bylaw (while good in principle) should be amended to provide a 6 week timeline.

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Also, there are times when "in-camera" (i.e., private and confidential) minutes are taken. The existing SPA bylaw requires distribution of all minutes. VCS recommends an amendment with words to the effect *"With the exception of in-camera minutes..."*

21. *Spending restrictions*

- (1) *A person may not spend the strata corporation's money unless the person has been delegated the power to do so in accordance with these bylaws.*
- (2) *Despite subsection (1), a council member may spend the strata corporation's money to repair or replace common property or common assets if the repair or replacement is immediately required to ensure safety or prevent significant loss or damage.*

VCS recommends that subclause (2) be deleted or amended. "A council member" should not be vested with such authority, in our opinion.

25. *Person to chair meeting*

- (1) *Annual and special general meetings must be chaired by the president of the council.*
- (2) *If the president of the council is unwilling or unable to act, the meeting must be chaired by the vice president of the council.*
- (3) *If neither the president nor the vice president of the council chairs the meeting, a chair must be elected by the eligible voters present in person or by proxy from among those persons who are present at the meeting.*

More often than not, AGMs and SGMs are chaired by the property manager. The new SPA bylaws prevents this practice. VCS recommends that subclause (3) be deleted and replaced with wording to permit the property manager to chair the meeting if so agreed to by a majority of the owners, or some similar provision.

26. Participation by other than eligible voters

- (1) *Tenants and occupants may attend annual and special general meetings, whether or not they are eligible to vote.*
- (2) *Persons who are not eligible to vote, including tenants and occupants, may participate in the discussion at the meeting, but only if permitted to do so by the chair of the meeting.*
- (3) *Persons who are not eligible to vote, including tenants and occupants, must leave the meeting if requested to do so by a resolution passed by a majority vote at the meeting.*

The concerns we have are self-evident. You should consider either deleting this bylaw or amending it.

27. Voting

- (1) *At an annual or special general meeting, voting cards must be issued to eligible voters.*
- (2) *At an annual or special general meeting a vote is decided on a show of voting cards, unless an eligible voter requests a precise count.*
- (3) *If a precise count is requested, the chair must decide whether it will be by show of voting cards or by roll call, secret ballot or some other method.*
- (4) *The outcome of each vote, including the number of votes for and against the resolution if a precise count is requested, must be announced by the chair and recorded in the minutes of the meeting.*
- (5) *If there is a tie vote at an annual or special general meeting, the president, or, if the president is absent or unable or unwilling to vote, the vice president, may break the tie by casting a second, deciding vote.*

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- (6) *If there are only 2 strata lots in the strata plan, subsection (5) does not apply.*
- (7) *Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.*

VCS has no objection to this bylaw except for subclause (7). One person can demand a secret ballot. While there is merit to the concept of a secret ballot, VCS is concerned about the abuse that could occur as a result of just one person seeking to obstruct the efficient flow of a meeting. We recommend that the bylaw be amended to provide for a higher level of demand – i.e., one third or one half of the eligible voters.

28. Order of business

The order of business at annual and special general meetings is as follows:

- (a) *certify proxies and corporate representatives and issue voting cards;*
- (b) *determine that there is a quorum;*
- (c) *elect a person to chair the meeting, if necessary;*
- (d) *present to the meeting proof of notice of meeting or waiver of notice;*
- (e) *approve the agenda;*
- (f) *approve minutes from the last annual or special general meeting;*
- (g) *deal with unfinished business;*
- (h) *receive reports of council activities and decisions since the previous annual general meeting, including reports of committees, if the meeting is an annual general meeting;*
- (i) *ratify any new rules made by the strata corporation under section 125 of the Act;*
- (j) *report on insurance coverage in accordance with section 154 of the Act, if the meeting is an annual general meeting;*
- (k) *approve the budget for the coming year in accordance with section 103 of the Act, if the meeting is an annual general meeting;*
- (l) *deal with new business, including any matters about which notice has been given under section 45 of the Act;*
- (m) *elect a council, if the meeting is an annual general meeting;*

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(n) *terminate the meeting.*

VCS recommends the addition of a subclause to permit the owners by majority vote to amend the order and the agenda. As it stands, you are bound by the prescribed format.



NOTE

- (1) This bulletin does not address all bylaw concerns. These are only current priorities. Other bylaws should be scrutinized by council during the next year.
- (2) This bulletin does not purport to offer legal advice and any recommendations made by VCS are done so on a constructive basis as a result of past experience. Strata councils should seek professional legal opinions and advice on any of these recommendations.