

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

- Doors and Windows (Again)
- Contingency Reserve Funds. Are they adequate?
- Update on CCI – Canadian Condominium Institute

## DOORS & WINDOWS & SKYLIGHTS

- (1) Skylights: VCS believes that skylights installed by the developer at initial construction are an integral part of the roof; therefore, they should be considered as common property.

A skylight added by an owner, after initial construction of the property, might fall into two categories:

- (a) the strata council could deem it to be common property; or,
- (b) the strata council could consider it to be an owner modification in which case an "agreement" (See Section 59(3)(c) of the *Act*) with the owner should be created.

- (2) Doors and Windows:

- (a) They are never shown on a strata plan and it cannot be assumed that they are common property or limited common property (LCP).
- (b) The *Strata Property Act* provides a model bylaw (8) requiring the strata corporation to repair and maintain the common assets of the strata corporation and common property (that has not been designated as LCP). Certain conditions, i.e., frequency of repairs, are attached to this requirement.
- (c) Section 72 of the *Act* places the responsibility for repairs and maintenance of the common property on the shoulders of the strata corporation which means that a strata lot owner is not saddled with the obligation other than via his/her contribution of strata fees to the annual budget or any special levy that may be raised from time to time.

The same section does, however, permit the strata corporation to transfer the responsibility for repair and maintenance of common property or limited common property to the shoulders of an owner if a bylaw is created.

Note that Section 72 (2)(b) pertaining to common property was proclaimed on October 11, 2001.

## Bulletin #22

If a window or door of a strata lot is not shown on the plan as common property or LCP, this section (and relevant bylaw) would not apply.

- (d) The question is whether or not doors and windows are common property, limited common property or strata lot property.

"Doors" and "windows" are not defined by the *Act*.

The definition of "strata lot" provided by the *Act* is not helpful in answering the question in the affirmative. In fact, the definition "*means a lot shown on a strata plan*" might well suggest the opposite, i.e., that a straight line outline of a strata lot on the plan, without any breaks for doors and windows, would mean that those doors and windows are part of the strata lot.

The definition of "common property" provided by the *Act* is also not helpful in answering the question in the affirmative. The relevant subsection states that it is "*that part of the land and buildings on a strata plan that is not part of a strata lot. . .*" It is impossible to interpret from this wording that doors and windows meet the requirement.

- (e) Is it reasonable to argue that the doors and windows of a strata lot are inherently part of the common property of the strata corporation?

In support of this position it can be argued that the strata corporation:

- (i) insures such property
- (ii) undertakes periodic cleaning and painting of such property
- (iii) applies standards of conduct via bylaws or rules governing colours, signage etc.

The counter to this argument is that insurance is provided via the strata corporation for the entire assets of the corporation. For example, the interior of a strata lot is insured by the strata corporation: this does not make the interior of a strata lot common property.

## Bulletin #22

Cleaning and painting is done as an economic and practical convenience. It does not equate to a change of ownership.

The application of bylaws and rules is to provide a basis for community standards. A bylaw, for example, to limit the noise of a stereo system after 11:00 p.m. is perfectly desirable and necessary but it does not give ownership to the interior of a strata lot.

Can it be argued that doors and windows of a strata lot are part of the building envelope? In an apartment style condominium, doors face hallways: they are not part of the envelope. Since the statute does not distinguish different types of door arrangements, it is unreasonable to suggest that doors of a townhouse style strata corporation form part of the envelope while doors of an apartment style corporation do not. The same principle would apply to window arrangements.

- (f) The *Strata Property Act* (as did its predecessor the *Condominium Act*) creates model bylaws. The *Act* permits the bylaws to be amended through a specific process. The process does not limit the strata corporation to the extent that the bylaws cannot be removed in their entirety. In fact, all and any model standard bylaws can be removed.

Bylaw 8 can be removed in part or in totality.

The legislators recognized that each strata corporation would want to, and should have the right to, remove bylaws not suited for its own purpose. A strata corporation cannot escape its obligations under Section 72 though, as of October 11, 2001, it can write bylaws to go around Section 72. But there is no statutory conflict or avoidance by removing doors and windows from the model bylaw 8.

Until such time as a court of competent jurisdiction determines that doors and windows are indeed within the definition of common property, it is perfectly safe to deem doors and windows as part of a strata lot. As such, a strata corporation can make the owner responsible for doors and windows, if a bylaw is created. For those strata corporations who inherit the new Standard Schedule of

## Bulletin #22

Bylaws on January 1, 2001, bylaw 8 makes the strata corporation responsible for repairs and maintenance.

So on January 2, 2001 if an owner calls the property manager and says "My window is all fogged up 'cause the seal is broken. Please replace it.", your strata corporation will be responsible for the full expense. Or if there is breakage (which is covered by the insurance policy) the strata corporation will be responsible for the deductible.

All set?

### "The Small Print"

The issue described in this article is one of extreme complexity. This article is intended to provide guidance and thought provocation only: it is not intended to provide or suggest legal opinion. A strata council should obtain professional advice from the legal community on this topic.

---

## CONTINGENCY RESERVE FUNDS: Are they adequate?

---

Generally, no.

First, some basics:

1. Under the old *Condominium Act*, a strata corporation had to set aside 5% of its annual budget unless the reserve fund balance reached 25% of the annual budget. Thereafter, any further contribution was optional.
2. Under the new *Strata Property Act*, a strata corporation must set aside 10% of its annual budget and, again, the 25% threshold prevails.

Section 93 of the *Strata Property Act* states:

### *Minimum and maximum contributions to contingency reserve fund*

**93** *Subject to the requirements set out in the regulations, the strata corporation must determine the amount of the annual contribution to the contingency reserve fund.*

Regulation 6.1 (1) states in part:

### *Contributions to contingency reserve fund*

- 6.1 (1) *For the purposes of section 93 of the Act...(a), if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is less than 25% of the total annual budgeted contribution to the operating fund for the fiscal year that has just ended, the annual contribution to the contingency reserve fund must be at least 10% of the total contribution to the operating fund for the current fiscal year.*

Regulation 6.1 (3) states:

- (3) *If the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is at least 25% but less than 100% of the total annual budgeted contribution to the operating fund for the fiscal year that has just ended, the*

## Bulletin #22

*annual contribution to the contingency reserve fund may be of any amount.*

Some strata corporations continue to build up their reserves to very healthy levels (which VCS endorses) and the balance can actually match or exceed the annual budget. If that happens, be aware of Regulation 6.1 (2) which states:

- (2) *If the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is equal to or greater than 100% of the total annual budgeted contribution to the operating fund for the fiscal year that has just ended, any additional contribution to the contingency reserve fund must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting.*

Okay, basics aside, the question arises as to how much money should be set aside in the CRF.

Given the crisis created by the leaky condo syndrome, the government was all too aware of the fact that most strata corporations did not have enough money to address that problem – not by a long shot! There was recognition that much higher reserves would be required and those levels could be forecast by doing long-range financial planning. A proper reserve study would produce some very precise detail upon which a strata corporation could develop its Contingency Reserve Fund requirements.

Accordingly, the legislators devised Section 94, the Depreciation Report, and Regulation 6.2 provided the guidelines for such a report.

The problem, however, is that Section 94 is optional. It is not mandatory. In other words, a strata corporation does not have to develop a long-range financial plan and resulting reserve requirement. Given that most long-range financial forecasts call for considerable money to fund the contingency reserve, it is not surprising that only a very few strata corporations embark on such studies.

Even if all strata councils endorsed the depreciation study concept, it is unlikely to succeed since the owners would never vote for an increase in their strata fees. Right? So why did the government make the concept optional rather than mandatory? The answer is likely political. Leaky condo stories dominated the news just at the time the new Act was being finalized and legislated – just

## Bulletin #22

before the last provincial election. Financial horror stories about special assessments filled every newscast and it would have been politically unwise to force reserve fund studies. Condo owners would have been outraged.

In a future bulletin we will tell you what Ontario did. (They did it right.) For now, the absolute minimum in your reserve fund should be \$1,000 per strata lot but obviously, if you have major problems on the horizon, this minimum is not sufficient.

Is 100% of the strata corporation's annual budget a good idea?

Yes.

## UPDATE ON CCI – THE CANADIAN CONDOMINIUM INSTITUTE

---

As of November 30<sup>th</sup>, we have 19 members in the Vancouver Chapter of CCI. Actually, it is not formally a chapter quite yet since it is necessary to have 35 members before an application can be made for official status. But we're close and hope to close the gap by the end of January 2002.

The seminar we held on October 30<sup>th</sup> was very successful with about 40 attendees – mostly VCS strata council members but there were also some engineers and property managers from other management companies. Bonnie Elster of the law firm Clark, Wilson, addressed the meeting on the topic of bylaws pursuant to the new *Strata Property Act*. She was great and we could have gone on for two more hours. Clearly the topic of bylaws is a hot button these days.

The next seminar will be held on Wednesday, January 30<sup>th</sup> (7:00 p.m. – 9:00 p.m.) at the Pacific Palisades Hotel on Robson Street. We sincerely hope you can attend. The topic will be either building envelope technology and/or construction management. Again this is another hot item of interest to strata councils.

The Annual General Meeting and conference of CCI was held in Toronto from November 16<sup>th</sup> to 19<sup>th</sup>. Jamie Bleay and I attended. (I hasten to add that we paid our own airfare, accommodation, etc. No funds from the Vancouver CCI chapter were used). Most of you know that Jamie Bleay is a lawyer frequently used by VCS in strata disputes. His firm is The Access Law Group. I am pleased to report that Jamie was elected to the National Board of Directors of CCI. At last B.C. has joined the organization so congratulations to all of us and to Jamie.

We urge your strata corporation to join CCI, especially given our growing achievements to date. We need a few more stratas to join and we will be there! The current annual fee is \$95 although, once we form a chapter, the members can set the fee at whatever they wish. The only stipulation is that the first \$35 must be sent to the CCI National Office. The North Alberta Chapter of CCI has very graciously offered to sponsor Vancouver: they will pay the \$35 head office

fee. That means for your strata corporation to join, the cost is only \$60 for the year 2002. We hope you will. Please add this item to your next agenda for discussion.

The following is a list of current members who have joined:

- Jamie Bleay - Lawyer
- Bob Mailing - Home Protection Office
- Lyn Stoll - Property Manager
- Cameron Carter - Insurance Appraiser
- Kevin Thom - Property Manager
- Ebba Reiter - Council Member
- Janis Beaumont - Council Member
- Mari Worfolk - Lawyer
- Pat Williams - Lawyer
- Pierre Gallant - Engineering Consultant
- Christine Doolan - Council Member
- Diane Strachan - Council Member
- Conrad Desrosiers - Engineering Consultant
- Carol Fagan - Council Member
- Tony Gioventu - CHOA
- Rick Dickson - Property Manager
- Barry Kinakin - Engineering Consultant
- Monica Wynn - Lawyer
- Gerry Fanaken - Property Manager

*There is no cost to your strata corporation for the photocopying of this CCI bulletin.*