

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

- CCI Seminar – Construction Management
- AGM Notices and Financial Information
- Records of Your Strata Corporation
- I Am the President...

## CANADIAN CONDOMINIUM INSTITUTE

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# FREE SEMINAR

WEDNESDAY, JANUARY 30, 2002

7:00 P.M. – 9:00 P.M.

Pacific Palisades Hotel  
Robson & Jervis  
Vancouver, BC

*Sponsored by  
Read, Jones, Christoffersen Ltd., Consulting Engineers*

### TOPIC: CONSTRUCTION MANAGEMENT

Guest Speaker: Bruce Gleig, Lawyer  
Clark, Wilson

You do not have to be a "leaky condo" to benefit from this seminar.

- What is Construction Management?
- Advantages and Disadvantages of this Process.
- Common Contractual Pitfalls
- Managing Your Repair Program

For further information, please contact your property manager.

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

## AGM NOTICES AND FINANCIAL INFORMATION

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The following important amendment was made to the *Strata Property Act* Regulation in October 2001.

(c) *in section 6.7 by adding the following subsections:*

- (3) For the purpose of distribution with notice of the annual general meeting, a strata corporation may provide, by bylaw, that the financial information required under subsection (1) (c) to (e) be provided in a summary form.
- (4) Despite a bylaw under subsection (3), the strata corporation must place before the annual general meeting a financial statement that complies with subsection (1).
- (5) Despite section 36 (3) of the Act, if a person who is entitled to a notice under section 45 of the Act makes a request in the period between the date that notice was given and the date of the annual general meeting, the strata corporation must promptly provide a copy of the financial statement that complies with subsection (1) to that person.

Strata councils ought to be aware of the very significant change in the *Strata Property Act* Regulation as shown above. You first need to know the background.

Under the original wording, a strata corporation was obliged to send with the AGM Notice to each owner the details of all expenditures from the Operating Fund and the Contingency Reserve Fund. Just imagine how much detail this entailed – particularly for larger strata corporations. In one 200 unit strata corporation managed by VCS, we learned that these details, even when printed in teeny tiny print, consumed over 30 pages. Thirty pages times 200

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owners equals 6000 pages – what a huge cost and what a waste. Who would read all this? In reality few, if any, strata councils actually complied with this Regulation (which was the law) between July 1, 2000 and October 11, 2001 when the law changed.

VCS brought this matter to the attention of the Ministry in the fall of 2000 and we are pleased to say that, on our advice, changes were made to the Regulation as printed at the outset of this bulletin. The change is that the information may now be provided in "summary form", which is essentially the budget document that we distribute with the AGM Notice. Note, however, that a bylaw is necessary to achieve this goal. At this time, no strata corporations have incorporated such a bylaw. We obviously recommend that your strata corporation create such a bylaw. The following is suggested wording:

Bylaw #\_\_\_\_: Pursuant to Regulation 6.7(3) of the *Strata Property Act* the financial information for the notice or Annual General Meeting, required\* under subsection (1) (c) to (e), may be provided to the owners in summary form.

- \* (c) the details of the strata corporation's income from all sources, except special levies;
- (d) the details of expenditures out of the operating fund, including details of any unapproved expenditures under section 98 of the *Act*;
- (e) the details of expenditures out of the Contingency Reserve Fund, including details of any unapproved expenditures under section 98 of the *Act*.

With reference to subclause (4), note that all VCS clients are presently conforming to the Regulation.

Note subclause (5) which still permits an owner to all the details even if a bylaw has been created. This is a good provision although the only glitch we foresee is if the owner requests the information "at the last minute". Luckily, at VCS we can

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print the GL with the push of a button so we do not anticipate too many problems in this area.

Please add this new bylaw requirement to your agenda for the next SGM or AGM.

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*The content of this bulletin is intended as information only. It does not purport to offer legal opinion or advice. VCS recommends that strata councils retain professional legal counsel in this matter.*

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## RECORDS OF YOUR STRATA CORPORATION

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The purpose of this bulletin is to remind/alert you to the legal requirement of the strata corporation in respect of its records.

Forgive us if we digress for a moment before we tackle the subject at hand. Section 31 of the *Act* states:

*Council member's standard of care*

*In exercising the powers and performing the duties of the strata corporation, each council member must*

- (a) act honestly and in good faith with a view to the best interests of the strata corporation, and*
- (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.*

Do you have a copy of the *Strata Property Act* and the Regulation? If not, you should. How can you achieve the "standard of care" required by an extensive and complex piece of legislation if you do not have a copy of it? The topic of this bulletin has to do with strata corporation records. It is too extensive to print; therefore, if you have your own copy of the *Act* and the Regulation you will be able to follow the point much easier.

OK – Back to the main topic.

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Section 35 of the *Act* prescribes the various records that must be kept by the strata corporation. (Remember that this is a requirement of the strata corporation, not the management agent.) Here is a condensed summary of these records: minutes, names of council members, owners, non-resident mailing addresses, mortgagees, tenants, assignments of voting rights, the registered strata plan and any amendments, extensive financial and accounting data, bank and tax files, documents provided by the owner developer, etc., etc., etc.

Section 35 (3) requires the strata corporation to retain these records for periods set out in the Regulations.

Regulation 4.1 (Preparation and retention of records) states that records be retained either permanently, for at least six years, or for at least two years. The details are too lengthy to print here but you should refer to your personal copy of the *Act* and the Regulations to determine the timeline for various items.

Some strata corporations (unfortunately a very small minority) actually have space for storage of such records. Most strata corporations have very limited space or none at all. In townhouse developments it is not uncommon to see boxes of records stored in electric meter rooms. Apart from the possibility of a fire hazard, such locations are far from perfect and often these boxes of records are ill preserved.

In some cases, the management company will store all records but typically this is only for current and the immediate past year or so as office space is costly. Most management firms request that old records be removed from their premises. It would appear that the time has come for strata corporations to store old records in proper facilities. Most professional businesses (lawyers, doctors, accountants) rent space in warehouses for such records. The space is well maintained and orderly. Unfortunately, it is one more expense on the shoulders of the owners of condominiums but it should be done. Properly.

I AM THE PRESIDENT: WHAT'S MY ROLE?

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In the 20 plus years VCS has been managing strata corporations we were rarely asked this question. Times have changed and we are now constantly asked this question not only by council presidents but also treasurers and other council members "at large". It would seem, therefore, it is time to put it in writing so here goes, but if you have any thoughts, ideas, concepts or suggestions we would welcome them.

First note that the Strata Property Act does not provide any specific guidance or direction. It merely says (in the Standard bylaws) that the council shall have a President, Vice President, Secretary and Treasurer. It is up to each council to set parameters for the job description. The Act does require all council members to conduct themselves in a certain manner. Note Section 31 of the *Act* which states:

### *Council member's standard of care*

*In exercising the powers and performing the duties of the strata corporation, each council member must*

*(a) act honestly and in good faith with a view to the best interests of the strata corporation, and*

*(b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.*

Sections 32, 33 and 34 deal with disclosure of conflict of interest, accountability and approval of council member remuneration. These statutory requirements apply to all council members.

The President of the council is basically the "eyes and ears" of the collective council. It is his or her duty to form a communication bridge between council and the owners and/or the management company and/or others who have

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business with the corporation. Apart from one section of the *Act\**, the President is not vested with any superior powers or authority. The President is required to chair council meetings and owner meetings (SGMs/AGMs) according to Standard bylaw 25. In reality that does not always happen but it is a function of the President. (Many strata councils have plans to change Standard bylaw 25.)

The President is the leader of the council and that suggests that the agenda for the year is set by the President. Again, in reality that does not always happen but in theory the President ought to develop a game plan of objectives for the term of office. A President can also set the tone or level of harmony within a strata corporation. We have observed, over the years, that most Presidents are open and fair-minded people who value other owners' viewpoints and respect everyone's property values. We have also seen, regrettably, that some people take on the position of President and make everyone's life miserable (i.e., other owners, property managers, staff, contractors). In one strata corporation managed by VCS, the council President had an ongoing and passionate affair with the caretaker employee – an event which was periodically witnessed by residents. Imagine the chaos that prevailed. This may be an extreme example of lack of responsibility but it does serve to illustrate the problems that can arise when good business practice, and ethics, are not at the forefront of the leadership style. The *Strata Property Act* does not, and cannot, address these concepts directly.

Councils generally meet once per month but invariably there is business to be conducted between council meetings. The President should act as the point person to co-ordinate communication and to give direction to the management agent. The President should also follow up with other officers and committee chairs to ensure that their assignments and objectives are being fulfilled. The President should work closely (perhaps even meet) with the

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property manager in advance of council and general meetings to ensure that the agenda is in order. The President should periodically (quarterly or semi-annually) communicate (perhaps even meet) with the senior management of the property management firm to discuss/review broader issues concerning the strata corporation – i.e. bylaw development, budgets.

The President should ensure that council meetings are conducted in an orderly and business-like manner. Very few people really know Robert's Rules of Order but everyone can understand a common sense approach to fairness and time management at council meetings, or for that matter, Special or Annual General Meetings.

For those of you who have been chair or President of your strata council, please let us know how you viewed your role. We will compile your comments to incorporate into a future bulletin.

Speaking of feedback, we welcome all your comments on any topic of our bulletins. Are they helpful? Are there topics you would like addressed?

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\*Section 51 (Reconsideration of resolution by  $\frac{3}{4}$  vote) deals with a call for another vote by 25% of the strata corporation's votes following an SGM or AGM. In these circumstances Section 51(7) states that *"The President of the council may call the special general meeting without holding a council meeting."* (Not a great idea in our opinion but it is permitted by the statute.)

