

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. Attached is bulletin #28. If you need a copy of previous bulletins please feel free to ask your property manager. DO YOU REQUIRE BACK COPIES OF OUR FINANCIAL STATEMENT BULLETINS? IF SO, YOU MAY ACCESS THEM FROM THE NET. GO TO www.vancondo.com AND FOLLOW THE LINKS TO ARTICLES. 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

- Bylaws To Consider
 - Council Member Selling His/Her Strata Lot
 - Requests for AGM/SGM Registration Sheets
 - The Difficult Owner
 - Access to Records

Bulletin #28

BYLAWS TO CONSIDER

From time to time we run into some very interesting situations in strata administration where reference to the *Strata Property Act* is generally of little benefit. There are many, many topics and issues that the legislation does not cover and, as result, we have those grey zones which no one knows how to handle. The purpose of this article is to identify some of these areas. You may think of some also: if so, please let us know.

SCENARIO #1: A Council member has his/her strata lot for sale. It is not unreasonable that this strata lot owner would sell his or her strata lot but, if a listing is commenced, should that strata lot owner remain as a council member? We have seen situations where important topics of discussion can be influenced, sometimes vigorously, by a council member whose unit is listed for sale. In some instances, the minutes of council meetings are edited in order to remove items which may impact negatively on a sale. This is not a wide-spread practice but it does happen. The way to correct or prevent any abuse is to have a bylaw that says that an owner is not eligible to be a member of council if his/her strata lot is for sale. Is this possible? Note Section 28 of the *Act* which states:

Eligibility for council

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(1) *The only persons who may be council members are the following:*

- (a) *owners;*
- (b) *individuals representing corporate owners;*
- (c) *tenants who, under section 147 or 148, have been assigned a landlord's right to stand for council.*

- (2) *Despite subsection (1), the strata corporation may, by a bylaw passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be council members.*
- (3) *Despite this section, a strata corporation may, by bylaw, provide that no person may stand for council or continue to be on council with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).*

Would our theoretical bylaw conflict with this provision of the statute? Subsection (3) paves the road to deny eligibility to be a council member if an owner is in arrears. A specific bylaw must be created to achieve this goal. Subsection (2) opens the door to permit, by bylaw, other "classes of persons" to be council members. Typically this is for spouses of owners who are not, for one reason or another, registered on the title but are actively involved in the administration of the strata corporation and want to be on council.

It is VCS' view (and this is not a legal opinion) that Section 28 does not preclude a strata corporation from creating additional eligibility requirements. It merely makes it clear that a bylaw can be created to permit control for some situations. It does not close the door after the two circumstances embodied in subsections (2) and (3) and, in fact, if the standard bylaws to the Act are examined, we can see at Division 3 (Bylaws 9 – 22) the legislation contemplates all manner of controls, terms and conditions on councils.

Bylaw 9 "Council Size" could be changed to read

"Council"

- (1) Subject to subsection (2), the council must have at least 3 and not more than 7 members.

- (2) If the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council.
- (3) An owner who is a council member must disclose to council if he or she lists his/her strata lot for sale and shall be deemed to have resigned from council at the date of the listing.

SCENARIO #2: Requests for AGM/SGM Registration Sheets

Following contentious annual or special general meetings, it is not unusual for the management agent to get requests from owners or council members for a copy of the sign-in, registration sheet. The request is usually premised on the idea that "it would be nice to know who attended" which then leads to a campaign for securing support in another round on the same issue. "Leaky condo" repair programs have generated a torrent of such requests since it is usually a very emotional topic. A few years ago, a non-legal "consultant" to strata corporations advised councils to always obtain the names of people at AGMs/SGMs and to record how they voted. *"If they vote against the ¾ vote resolution, you can sue them"* she advised. With respect, we don't think so, but that kind of advice gives rise to the frequent requests for the registration sheet.

VCS discourages the release of the registration sheet to all owners, including council members. The *Strata Property Act* does not address the issue. The closest authority can be found at Section 35 of the Act (Division 2 – Records) at Subsection (1)(a) which states that "the strata corporation must prepare all of the following records: minutes of annual and special general meetings and council meetings, including the results of any votes". The registration sheet is not part of the minutes, even though it is an adjunct.

To avoid debate, therefore, a strata corporation could create a bylaw to prohibit the release of the registration sheet to any owner including council members. This is achievable easily where there is a management company but

it can also be workable for strata councils with only "financial management" or which are self-managed. A sample bylaw would read to the effect of:

Bylaw (): The registration sheet of all Annual or Special General Meetings of the strata corporation shall not be released to any owner, including council members, and the document shall be filed as a confidential document of the strata corporation.

SCENARIO #3: The Difficult Owner

Luckily it is not universal but it is fair to say that most strata corporations have at least one difficult owner. "Difficult" is a polite way of describing such persons. They hate the authority of the strata council, they hate the property manager or company, they hate the democratic process and they hate, in the final analysis, being in a small community which requires its own social and governmental structure. Such people really do not belong in strata corporations which depend on a somewhat harmonious and compromising approach to achieving its objectives. Of course, there is no law to prevent these people from purchasing condominiums but we are often asked "if there is anything in the Act?" that council can rely on for relief or "can a bylaw be created to control such people?" The answer is no in both cases.

The *Strata Property Act* has no provisions which require an owner to act reasonably insofar as that person's conduct in the social/governmental structure. An owner is required to repair and maintain his/her strata lot, and not unreasonably interfere with other owners' rights to peace and quiet, but there is nothing in the statute to prevent an owner from harassing the strata council and/or the property manager. It would be nearly impossible for such a law to be written and virtually impossible to enforce.

For example, one strata council previously managed by VCS has such an owner and council implemented a policy that correspondence could not be given to council members. The owner has a penchant for producing huge volumes of correspondence thrashing every monthly decision made by council. Council requested, via their rule, that all correspondence must be sent to the management company. The owner continued the barrage but instead of handing it to council members, he left it at their doors and sent copies to VCS. The point is that it is impossible to enact reasonable policies, rules or bylaws when dealing with people who are not reasonable. This owner has three lawsuits against the strata corporation and it has cost over \$50,000 to defend them. The owner has little cost since he has learned the legal process and files his own writs. In a future article we will offer tips (not sure-fire solutions) on how to deal with these difficult owners. Suffice it to say, for now, that creating a bylaw to deal with difficult owners is extremely problematic. We welcome ideas and suggestions from you on this topic.

SCENARIO #4: Access to Records

As you know, the new legislation permits owners to access a wide variety of records of the strata corporation and to obtain copies (at not more than 25¢ per page). Many owners are availing themselves of this provision of the Act. Providing photocopies in small quantities is generally not a problem but providing access to the records is an entirely different matter. It would be highly imprudent to let an owner sit in an office, unsupervised, with the strata corporation's records, although access is a legal right of the owner. Most management companies, including VCS, now charge to provide supervision services for these situations. In other words, a management company staff member, or security person, has to be assigned to literally sit with the owner to

ensure that no records are altered, removed, destroyed, etc. In some situations, owners have attended the management office for hours at a time, even days at a time.

Councils, naturally, take offence at these owners, most of whom are on a wild speculative witch hunt for some unspecified evil and, as a result, councils want to be able to charge back the expense to the owner, the expense being the hourly charge by the management company or security firm. Unfortunately, the Act says that access to the records is mandatory. Section 36 states:

Access to records

- 36 (1) On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,*
- (a) an owner,*
 - (b) a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or*
 - (c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).*
- (2) On receiving the request of a tenant, or a person authorized in writing by a tenant, the strata corporation must*
- (a) make the bylaws and rules available for inspection, and*
 - (b) provide copies of the bylaws and rules.*
- (3) The strata corporation must comply with a request under subsection (1) or (2) within 2 weeks unless the request is in respect of bylaws or rules, in which case the strata corporation must comply with the request within one week.*
- (4) The strata corporation may charge a fee for a copy of a record or document provided under this section of not more than the amount set out in the regulations and may refuse to supply the copy until the fee is paid.*

Councils then say "Let's create a bylaw that will allow us to effect a chargeback." That regrettably is not possible. A strata corporation cannot create a bylaw that conflicts with the Act. No matter how precise and well-written you create such a chargeback bylaw, it is unenforceable. Regulation 4.2 states:

Maximum fees for records

- (1) *The maximum fee that the strata corporation may charge for a copy of a record or document provided under section 36 of the Act is 25 cents per page.*
- (2) *No fee may be charged to an owner, a tenant or a person authorized by an owner or tenant for the inspection of a record or document under section 36 of the Act.*

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