

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 #30. 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

- Some Feedback on These Cover Pages
- Insurance Review
- Seminar by Canadian Condominium Institute
- Leaky Condo Issues
- Good Advice on Leaky Condos: High Rise Stratas
- Enforcing Bylaws is Neither Easy Nor Inexpensive!

Bulletin #30

FEEDBACK

We receive mostly positive feedback from our monthly financial statement cover pages, but it is not unanimous. We'd like to share with you the following comments representing the other side:

- “What a waste of time, paper and money.”
- “I'm not interested in what the Strata Property Act says. We do things our own way around here.”
- “Who has the time to read all this stuff? Isn't that what we pay you (VCS) to do?”
- Your advice is not consistent with what we want to do. Who's side are you on anyway?”

These comments are from council members. VCS manages about 200 strata corporations and most councils are between 5 and 7 members so the above comments are from a “pool” of between 1000 and 1400 owners.

We welcome your feedback, positive or negative. We also welcome your ideas on topics for future newsletters.

INSURANCE REVIEW UPDATE

Every three years VCS engages an independent insurance consultant to provide advice on the selection of brokers for the strata corporation's insurance policy. This September (2002) we will be doing this again.

VCS manages about 200 strata corporations, of which approximately 180 are insured through Pro Technical Insurance. Although we believe that the Pro Tech policy is the best available in the marketplace, we nevertheless believe that it is wise to periodically have an independent assessment undertaken. The vast majority of the Pro Tech policies (and others) have an anniversary/renewal date of December 31st. We want to be ready by mid November this year as to which broker/underwriter has the best package.

Many strata council members believe that "an insurance policy is an insurance policy" – i.e., that the only variables are the premiums and the deductibles. Far from it actually: the policies vary widely in the coverage provided, the exclusions and the wordings. The lowest premium may not provide the broadest or most suitable coverage. You should keep this in mind when the final package lands on your doorstep.

The maximum cost for the review is \$100 plus GST, and depending on the number of strata corporations that participate, the cost may be less. We emphasize that you are under no obligation to participate.

It is our plan to engage Copper Roof Risk Management, a widely respected company which specializes in such insurance reviews. We have used the firm for previous assessments. Further details are attached hereto.

If your strata corporation participates, you will receive a comprehensive report in the fall on the insurance market (for strata corporations) and an analysis of the premium competitiveness. Your strata corporation will NOT be obliged to purchase insurance for 2003 via the recommended broker/underwriter: the choice will be up to you but you will have all the facts in front of you to make a decision.

Please advise your property manager at your next council meeting if you wish to participate in the program.

Questions? Feel free to ask.

Emerging Trends...Given recent events, insurance underwriters are increasingly concerned about their ability to fund high-risk properties. This year, two large strata corporations managed by VCS were unable to purchase the full level of insurance for their properties. Each strata is "short" by \$10,000,000. Cause for worry....

CANADIAN CONDOMINIUM INSTITUTE

The next CCI seminar is scheduled for Saturday, September 14th, 9:00 a.m. to Noon at the Plaza 500 Hotel, 12th and Cambie, Vancouver. There is no charge for CCI members. For non-CCI members the charge is \$50 plus GST per person. This seminar is sponsored by CCI. It is NOT sponsored by Vancouver Condominium.

Annual membership in CCI is \$95 and, at this time, the North Alberta Chapter of CCI is subsidizing the annual membership by \$35 per application. In other words, the first annual membership would cost you (or your strata corporation) only \$60. If you join CCI before September 14th, you spend \$60 on the annual membership but get the seminar for free. Not a bad deal. All this sounds like watching public television but, hey folks, we need you to support CCI. It is a great organization but it can't survive without your support. So please, won't you subscribe today!

The seminar on September 14th will be on the topic of Contingency Reserve Funds and, in particular, the need to develop long-range plans. The law in BC is very weak: it only suggests the development of long-range funding programs. In Alberta, Ontario and Nova Scotia, such reserve funds are mandatory.

The September 14th seminar will review the BC law and provide an overview of the Ontario experience. Speakers will be:

Gerry Fanaken	BC Property Manager
Jamie Bleay	BC Lawyer
Ted Denniston	Professional Engineer and Reserve Fund Study Consultant

Mark your date books and advise your property manager if you wish to attend. And, once again, please consider joining CCI. Thanks.

This CCI Bulletin is sent to you at no cost.

LEAKY CONDO ISSUES

(1) Homeowner Protection Office Loans to End ???

The latest rumour circulating is that the Homeowner Protection Office will be closing in the fall. *“Not true...”* says Bob Maling of the HPO *“...our Core Services review is now scheduled for September and all indications are that the loans program may be transferred as is to another branch of the government...and that the rest of the HPO's functions may become privatised as a residential construction sector self-regulating body.*

Personally speaking, I see the loans program as safe, mostly because it's the only cost effective way of doing something meaningful to assist the most needy leaky condo owners that does not represent a tax increase...”

(2) The National Picture

The Ontario government commissioned KPMG Consulting last summer to review the Ontario New Home Warranty Program Business Model. Their report was published in November 2001. (It is a 60 page document which is available at VCS.)

The report includes a review of jurisdictions other than Ontario. These include New Jersey, Victoria, Australia, Alberta and British Columbia. Gerry Fanaken of Vancouver Condominium was one of the contributors to the report from BC.

The section on British Columbia (8 pages) is available for your review as consent has been obtained from KPMG to copy and circulate this portion of the report to VCS clients. If you would like a copy, please contact your property manager and we will send you one. The BC section is of great relevance to those of you who have leaky condos or have done remediation programs.

GOOD ADVICE ON LEAKY CONDOS: HIGH RISE STRATAS

Better late than never . . . An excellent report was published in October, 2001 by CMHC and the Homeowner Protection Office. We regret that this report was not brought to your attention earlier, but (aaargh) neither CMHC nor HPO told anyone it was available. We just found out.

The report is called: STUDY OF HIGH-RISE ENVELOPE PERFORMANCE IN THE COASTAL CLIMATE OF BRITISH COLUMBIA. We understand that this report cost about \$100,000. The primary sponsors were CMHC and the HPO. Secondary sponsors were the City of Vancouver, The Exterior Insulation Finish Systems Council of Canada (located in Ontario) and, hey, Vancouver Condominium Services Ltd.

The report was written by RDH Building Engineering Limited, whom, as most of you know, are whiz bang experts on leaky condo stuff. The report is too big to enclose here, but you can get it by going to the HPO website at www.hpo.bc.ca. Choose "Research & Education – Industry" and from there select "High-Rise Envelope Details Study" to take you to the report. There are gazillions of statistics which might put you to sleep, but it really is an excellent report and well worth reading even if you skip over the stats.

IF YOU ARE A STRATA COUNCIL MEMBER IN A HIGH-RISE BUILDING, YOU REALLY SHOULD FIND THE TIME TO READ IT. You may say "Our building doesn't leak." which is great, but the report is an eye-opener which you need to know.

ENFORCING BYLAWS IS NEITHER EASY NOR INEXPENSIVE

Strata councils routinely attempt to enforce their bylaws and, in fact, it seems that at virtually every council meeting a violation or alleged violation comes up for discussion. Section 119 of the *Strata Property Act* is the authority given to a strata corporation to have a bylaw. It says:

Council exercises powers and performs duties of strata corporation

Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

Note “including the enforcement of bylaws and rules”. Easier said than done, as you will see from the following (true) story.

A 33 unit strata corporation (a VCS client) encountered a problem with a tenant who had little regard for the disturbances he created that affected other residents at the property. He would frequently hold parties and other events in his strata lot. Some of these were wild affairs to say the least and on more than one occasion the police were called to try and bring peace and order. On one late night visit the police were actually unable to attract the attention of the tenant, and his guests, because the music was so loud he could not hear the door knocking. Nice, eh?

This pattern of behaviour continued over a lengthy period of time and the strata council enforced its bylaws. First, the usual letters from VCS were issued to the tenant and the owners of the property but these were ignored. The strata council thereupon filed a writ in B.C. Supreme Court to seek a declaration that the tenant cease and desist from the bylaw violations. The matter dragged on and on as the owners (who were the parents of the tenant) engaged their own legal counsel “to fight the council” whom they would later describe in court as “a bunch of bozos”.

The tenant subsequently moved out but by this point the strata corporation had spent some \$18,000 on legal costs. The strata council sued in Small Claims Court for the maximum allowable amount, i.e., \$10,000. The rationale, of course, is that a Small Claims Court action is “inexpensive” since the strata council could represent itself rather than go to the expense of hiring legal counsel to sue for recovery of its costs in B.C. Supreme Court. The matter was directed to a Settlement Conference (Small Claims Court), the standard procedure.

The presiding judge listened to the arguments from the owners and the strata council and attempted, as is the function and purpose of a Settlement Conference, to settle the dispute without it being sent to trial. A settlement was reached for just over half of the claim, or roughly one-third of what the strata corporation had spent on legal fees to date.

Not easy, not inexpensive, and here's where it gets even more interesting. A question of law arose at the Settlement Conference as to whether or not the strata corporation could even pursue a Small Claims Court trial given that an action had been commenced in the B.C. Supreme Court. The concept here is that a lower court is reluctant to hear a matter which is already before a higher court. Even though the tenant had moved out (hence no more bylaw violations, hence no need to “enforce” the bylaws) the strata corporation's action to enforce the bylaws remained before the B.C. Supreme Court. The Settlement Court judge cautioned the strata corporation that a Small Claims Court action to collect the costs of enforcing the bylaws might not be heard and would be referred to the higher court for adjudication.

The owners of the strata lot further argued that the alleged violations of the bylaws were not proved: they were merely assertions by “a bunch of bozos”. Although the judge did not appear to necessarily agree with the legal argument of the owners, it did motivate him to push for a settlement. Upon conclusion of the session, the judge commented that it would be an interesting legal argument if pursued. Indeed.

Enforcing bylaws: neither easy nor inexpensive.

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