

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 #32. DO YOU REQUIRE BACK COPIES OF OUR FINANCIAL STATEMENT BULLETINS? IF SO, YOU MAY ACCESS THEM FROM THE NET. GO TO [www.vancondo.com](http://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

- Settling Disputes
- BC Gas: The short story . . . budget 10% increase for 2003

## **Bulletin #32**

### **SETTLING DISPUTES**

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Disputes within strata corporations are commonplace. VCS manages very few strata corporations where there are no issues. Fortunately, most disputes between owners and council members are resolved before they are "blown out of proportion"; however, we can safely say, with much regret, that there is a growing, and perhaps alarming, trend of more and more disputes.

Apart from the application of good, ordinary common sense coupled with a willingness to compromise and "work things out", there are essentially three mechanisms for settling disputes within strata corporations. They are: suing in court, arbitrating, or using the "voluntary dispute resolution" mechanism provided by the *Strata Property Act*.

It is our observation that suing (ie. litigation) is the fastest growing mechanism used to settle disputes. A few years ago, arbitration was a very common mechanism but remarkably it seems to have almost disappeared from the tool kit. We are delighted at this trend (of fewer arbitrations) because our experience has shown that arbitration is a waste of time, money and energy. Regular readers of VCS bulletins will know that VCS has long been opposed to use of this mechanism. We will review the process further in this bulletin.

This brings us to the third mechanism which is the Voluntary Dispute Resolution process. You will find this option as Bylaw 29 of the Schedule of Standard Bylaws of the *Strata Property Act*. Most strata corporations have, by now, adopted this Schedule and you likely, therefore, are bound by the bylaw. Keep in mind that

the bylaw uses the word "may" so it does not mean that you "must" rely on the bylaw if there is a dispute in your strata corporation.

Let's first look at the Section. Bylaw 29 says:

### ***Voluntary dispute resolution***

- (1) *A dispute among owners, tenants, the strata corporation or any combination of them may be referred to a dispute resolution committee by a party to the dispute if*
  - (a) *all the parties to the dispute consent, and*
  - (b) *the dispute involves the Act, the regulations, the bylaws or the rules.*
  
- (2) *A dispute resolution committee consists of*
  - (a) *one owner or tenant of the strata corporation nominated by each of the disputing parties and one owner or tenant chosen to chair the committee by the persons nominated by the disputing parties, or*
  - (b) *any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties.*
  
- (3) *The dispute resolution committee must attempt to help the disputing parties to voluntarily end the dispute.*

Although this bylaw has been available for the last several years, no VCS client (we have about 190) has used the bylaw. The likely reason for this is that it is

essentially designed for the owner (or tenant) to call upon the mechanism. How many owners (or tenants) know of its existence? Few, if any. On the surface, it would seem reasonable for a strata council to say that, if an owner (or tenant) is not aware of the bylaw, just leave it that way and do not bring it to their attention. It is practical reality for a strata council to "lay low" when there are incoming missiles rather than to jump up and say "Hey, why don't you try this bylaw?" There may, however, be good reason and value to do this if an owner (or tenant) is about to take a run at the strata corporation. Litigation or arbitration, as we will see in a moment, is very expensive and emotionally draining. A "voluntary dispute resolution" process may just solve the problem at hand and save you a lot of time and money.

The concept is a new one. There was no parallel in the old *Condominium Act*. We are not certain what motivated the government, i.e., the policy planners, to introduce this bylaw but our guess is that it mirrors the practice in the real world – meaning the conventional judicial system. Dispute resolution is widely used in the judicial system and we are told that it is successful. The government policy planners, when creating the *Strata Property Act*, might also have had an eye on the significant costs of litigation or arbitration and, accordingly, introduced the mechanism as a means of encouraging condo owners to try and solve their disputes within the confines of the strata corporation first. We do not know for sure, but in any event, it is now a bylaw. Note that it is a bylaw, not a statutory requirement. If government had been adamant about the idea they would have included it as a "must" provision in the statute. The bottom line here is that VCS encourages strata councils to promote use of this bylaw. We routinely see the cost of litigation and arbitration and we are staggered.

ARBITRATION Sections 175 to 189 of the *Strata Property Act* provide the authority and mechanism for arbitration. We do not provide the sections

verbatim here: you can refer to the statute on the web or ask VCS for a copy. Suffice it to say it is detailed, complicated and exhausting --- literally! It is a major revision to the similar concept found in the previous *Condominium Act* but it has been expanded significantly.

The process is mind-bending. "A party may begin arbitration" via a specific form prescribed by the *Act*. The other side responds with another official form and this process ping-pongs back and forth. You will need a wall chart to keep track of who's on first, etc. This may inadvertently be one of the reasons that arbitration has fallen into some disfavor. No one wants or needs the enormous bureaucracy. There are two other major problems with arbitration. First, the cost is astronomical. At one time it was believed that solving internal strata disputes by use of arbitration would be cheaper, much cheaper, than going to the BC Supreme Court. Unfortunately, this was not the case. Simple disputes have cost individual owners and strata corporations tens of thousands of dollars. Think we're exaggerating? One dispute involving a simple modification to a strata lot cost \$70,000. The strata corporation has 25 units. Another arbitration cost of over \$100,000 and had to be paid by 12 owners. To top it off, the decision was ultimately set aside by a court (a real court) and now there is a dispute (more costs) over the legal bills. There are many more examples.

The other major problem with arbitration is that there are very few people available to act as arbitrators. In some cases, the persons acting as arbitrators come to the table knowing "nothing" about the *Strata Property Act* or how strata corporations work. Biases also play a factor. We have seen arbitrators who have a pre-established hate against strata corporations or management companies. One arbitrator relied on the Bible as a source for writing his decision. We have seen arbitrations conducted by lawyer "A" and the owner

represented by lawyer "B". A few months later in another arbitration we have seen A & B reversed. Can you imagine if this occurred in our court system?

Can this be stuff of good administration? No, not at all. Arbitration is a waste of time, money and emotional energy.

LITIGATION Sections 170 to 174 of the *Strata Property Act* provide the authority and mechanism for litigation. We would like to write a separate bulletin on this subject so for now we simply encourage you to become familiar with the sections. In next month's bulletin we will explore litigation. It is worth a separate discussion because over 90% of your disputes with owners will fall into this dispute settling mechanism.

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