

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. Following is bulletin #35. 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

- Earthquake Insurance Deductible
- Deficit Recoveries
- **Electricity Costs for 2004**
- **An Ugly Section of the Act: A reminder**

EARTHQUAKE INSURANCE DEDUCTIBLE

August 14, 2003. An earthquake, magnitude of 6.5, rocks the lower Mainland of B.C. The damage to property is substantial. In a relatively small strata corporation you can expect losses in the range of \$500,000, more in mid size stratas and substantially more in the very large stratas, i.e. over 100 units. The deductible is 10% of the value of your strata corporation which means that, effectively, you have no coverage. The losses fall beneath the deductible. The repairs will have to be funded entirely by the owners of your strata corporation.

The only bit of good news here is that, in order to raise the required funds to repair the property (assuming you deplete the Contingency Reserve Fund) the Strata Property Act allows the strata corporation to assess a special levy on the owners without calling an SGM. (Those of you who have been on council for some years will recall that VCS created a bylaw to achieve this same goal when stratas were governed by the Condominium Act. We like to think that our creation which was widely adopted by our clients, and widely copied [in some cases plagiarized] by other management companies, played a role in the new law).

Section 158 (3) of the Strata Property Act states:

Insurance Deductible

- 158** (3) *Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.*

So, you do not have to call an SGM. Is that good news? Not really. The reality is that owners will be extremely upset that (a) there was insufficient insurance in place, and (b) there is insufficient money in the Contingency Reserve Fund to cover the expense. Can you hear it now? The very same owners who year after year resist increasing the budget for ordinary projects, repairs and maintenance will be the first ones to cry to the council and management for not having the forethought to build up the Contingency Reserve Fund for the earthquake deductible. Pardon us if we sound a bit whiny but you know this will be the case, right? So what to do about it?

We are frequently asked by owners and councils if additional insurance can be purchased to cover the EQ deductible. Sometimes referred to as “buy-down” coverage, it is not available. It was, about a decade ago, but today the insurance industry is extremely twitchy about earthquakes and, given the general opinion that insufficient reserves exist to fund coverage at the present level, never mind the buy-down level, the notion of obtaining such buy-down coverage is impossible.

Another comment we frequently hear is that “the government will step in”. All we can say to that idea is “yeah right”.

So all this leaves your strata corporation with up to 10% of the value of your property without coverage. Wouldn't it be nice to add a huge amount to your CRF allocation in the next annual budget for this eventuality. You know, and we know, it won't happen: the owners will not agree to it. The only thing we recommend to you, and we mean strongly recommend, is to continually inform the owners about the potential levy they might face. This way, they can never say (or sue you) that they didn't know. On the next page is a suggestion for a bulletin or a “blurb” in your minutes.

In our view, this is an important disclosure you should make to your owners. It should be done at least once per year – say at the time your insurance policy is renewed, which for most clients is December 31st. Perhaps twice a year would be a good idea.

In any event, give this some thought. If you have any ideas or suggestions, we would welcome them and we would be pleased to share them with other strata councils in our portfolio.

Owners are reminded that the strata corporation has insurance for earthquake claims BUT THERE IS A 10% DEDUCTIBLE ON A CLAIM. PLEASE NOTE:

- The value of Strata Plan \$ _____
- 10% of that value is \$ _____
- The Contingency Reserve Fund is \$ _____
- The difference (i.e. shortfall) is \$ _____
- The number of strata lots is _____
- In the event of an earthquake, given the 10% deductible, the average expense to each strata lot owner would be \$ _____

Happy New Year

(earthquake free we hope)

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DEFICIT RECOVERIES:

Does the Requirement About CRF Allocations Apply to Them?

Strata councils are familiar with the requirements of the Strata Property Act about allocations to the Contingency Reserve Fund. Just a quick review first:

- If the CRF balance is less than 25% of your annual budget expenses, the allocation must be at least 10% of the budget;
- If the CRF balance is over 25% of the annual budget expenses, any further allocation is optional;
- If the CRF balance is over 100% of your budget expenses, you need a $\frac{3}{4}$ Vote Resolution to put more money into it.

For the purpose of this article, we will assume the first scenario above, and in this model let's say that you finish your fiscal year with a deficit and there is no operating fund surplus to absorb that deficit. That means that in the next fiscal year you have to build in a deficit recovery. Example:

		ON TARGET BUDGET <u>2002</u>	OFF TARGET BUDGET <u>2002</u>	INCORRECT BUDGET <u>2003</u>	CORRECT BUDGET <u>2003</u>
Revenue		\$110,000	\$110,000	\$130,000	\$132,000
Expenses	Actual	100,000	120,000	100,000	100,000
	CRF	10,000	10,000	10,000	-
	Total	\$110,000	\$130,000	\$110,000	\$100,000
<i>Deficit Recovery</i>		-	-	20,000	20,000
	Deficit	0	(\$20,000)	-	-
	Subtotal	-	-	\$130,000	\$120,000
	CRF	-	-	-	12,000
					\$132,000

When a deficit is created by overspending, in effect no allocation has been made on that amount to the Contingency Reserve Fund – as if it had been budgeted. So, for example, if the deficit (i.e. overexpenditure) is \$20,000, the CRF should have received 10%, i.e. \$2,000. Therefore, when the deficit recovery is set up for the future year, you need to recover not only the deficit amount but also a 10% allocation to the CRF. The difference, as shown in the example, amounts to \$2,000 – if done correctly.

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ELECTRICITY COSTS FOR 2004

By now most strata councils are well aware of the increasing costs in their annual budgets for 2003 led by huge insurance premiums and gas expenses. It seems that we have been spared on electricity costs but that relief may be short-lived. For 2003 it is unlikely that electricity costs will change but 2004 may well bring some startling increases in this budget category. Councils, whose strata corporations' fiscal years extend beyond December 31, 2003 should definitely contemplate increases in 2004.

We may be wrong (let's hope so) but consider a recent news article in the Vancouver Sun (December 14, 2002) reporting "A finding that B.C. Hydro's Powerex subsidiary and other electricity suppliers overcharged California utilities by \$1.8 billion US . . ." The quote from the Federal Energy Regulatory Commission chairman flowed from a ruling from the FERC Administrative Law Judge that will see "B.C. Hydro lose \$279 million Cdn in expected profits".

The freeze in B.C. utility rates which was initiated several years ago by the previous government will expire this spring. Another recent news article stated that it would be unlikely B.C. Hydro would immediately raise its rates and that, in fact, an application would be made, in the fall of 2003, to the B.C. Utilities Commission for approval to increase its rates. Presumably, if approved, the rates would be implemented in early 2004. Given the California impact and other financial constraints on B.C. Hydro it is reasonable, we think to contemplate a 10% increase in your electricity budgets commencing January 1, 2004.

Your thoughts and feedback are welcomed.

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AN UGLY SECTION OF THE ACT: A reminder

New Year's Eve: A party gets out of hand and by 4:00 a.m. some of the guests are out of control. On their way out of the building they smash the glass in the front door. What fun!

VCS dispatches a glass company to repair and clean up. It is now New Year's Day, a statutory holiday, and the cost will be about \$1,000. It is an insurance claim and the strata corporation will have to pay the deductible – in this case \$100. Even though the strata council knows which owner held the party, the cost cannot be charged back to the owner. An insurance claim must be made and the owner does not even have to pay the deductible of \$100. Doesn't seem right, does it? Why?

Section 158 (1) of the Strata Property Act states:

158 (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99(2) or 100(1).

Until the *Strata Property Act* became law, most strata corporations had an "Insurance Deductible" bylaw which allowed the council to charge back the deductible to the owner. Effective January 1, 2002, such a bylaw has no force or effect. So the yahoos who vandalize and break glass are essentially off the hook. It is true that Section 158(2) of the Act allows the strata corporation to go after an owner for the deductible. The section states:

158 (2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

The reality is, however, that for \$100, would a strata council go to the trouble of suing in Small Claims Court? Not likely. So there it is: score one for the yahoos.

Notwithstanding the above statutory sections, some strata corporations have adopted a new insurance deductible bylaw based on “packaged bylaws” offered by law firms. Far be it for us to challenge such bylaws written by the legal community but we do say, “heads up”. Read section 158(1) and it seems clear enough. Time will surely bring some specific cases which will produce solid court decisions. Let’s see.

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