

The new *Strata Property Act* is overwhelming. Each month we attempt to inform
Following is bulletin #40. 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

- Insurance Worries Ahead
- Write to the Minister

Bulletin #40

INSURANCE WORRIES AHEAD

Well, actually, not “ahead” – they have already started. VCS is advising all clients to be very cognizant of new insurance worries as follows:

1. Finding Underwriters: Get to know and understand the terms “capacity” and “reinsurers” as it is vital for you to grasp these concepts. Capacity is the ability of an underwriter to provide insurance which, in turn, is purchased by insurers from a worldwide market of reinsurers*. Reinsurers are specialized global insurers who insure insurance companies against financial ruin in the event of catastrophic events, including earthquakes. With recent severe claims losses and a disastrous equity market, insurers have had to pay dearly for the reinsurance they purchase. This is reflected in higher premiums and higher deductibles on your strata policy. Some insurers have either cut back their business or withdrawn altogether.

Additionally, and you likely figured this out already, the insurance companies have taken big hits on claims in recent years. Yes “911” is the most prominent claim (at \$40 billion) but there have been ice storms, floods, aircraft accidents, etc. and all these global catastrophic events are adding to the losses. In the end, it all filters down to the consumer. The ability of brokers and, moreover, underwriters, to provide ongoing coverage is becoming a challenge. To put it bluntly: many underwriters no longer have sufficient capacity or they have severe restrictions.

What does all this mean to your strata corporation? Simply put, you will be lucky to get an insurance renewal similar to your past programs. Getting competitive bids may not even be possible. Most VCS policies renew on December 31st but we have about 20 stratas with various renewal dates throughout the year. In recent months we have been unable to obtain alternate (or competitive) quotes.

* particularly for much higher limits

It also means that you will see much higher premiums, higher deductibles, and a possibility that no underwriter or group of underwriters (called "subscribers") will provide full coverage. You might well be left self-insuring for the difference. (Keep in mind that the *Strata Property Act* says you must insure for replacement cost – i.e., 100%.)

From time to time, strata council members give us names of people they deal with in insurance and suggest we "call them for a quote". We are always pleased to accept your recommendations but keep in mind that the names given to us are those of "brokers" or agents – not actual underwriters. In virtually all situations the brokers are buying from the same group of underwriters that we are already dealing with through Pro Technical, Coastal, Stewarts or CMW.

2. Deductibles: If your strata corporation has had a history of claims arising from water escapes, heads up. Water deductibles now are virtually \$2,500 per occurrence for all stratas and for those with significant claims expect to see either \$5,000 or \$10,000 or \$2,500 per loss, per strata lot. This last example means this...a pipe breaks on the 10th floor and damages eight strata lots. The deductible will be \$2,500 on each of the eight strata lots. Also note that higher water deductibles are being imposed even where there have not been significant historic claims.

It is possible that earthquake deductibles might trend higher over the next year to 15% or 20% rather than the current 10%. We have had one of each in the last two months. Expect many more and do not be surprised at your next renewal on January 1, 2004 to see 20% to be the norm. Calculate what 20% of the value of your strata corporation works out to and you will soon conclude that, effectively, you are no longer insured for an earthquake unless it is really huge. Here are some examples:

| | <u>Replacement Cost</u> | <u>20%</u> |
|--------------------------------------|-------------------------|--------------|
| • Large high-rise | \$60,000,000 | \$12,000,000 |
| • Medium high-rise | \$25,000,000 | \$ 5,000,000 |
| • Small to Medium i.e., Townhouse | \$10,000,000 | \$ 2,000,000 |

Your owners will have to be assessed for these higher amounts. Some people offer the opinion that “the government will step in”. Do you really think this will happen? At VCS, we do not. We, therefore, advocate two courses of action:

- (1) Continue to build your Contingency Reserve Funds. It is not easy, we know, because owners will resist increased strata fees. But at least, give it a try at every budget presentation. Ten percent should be a minimum but try for 15% next time.

- (2) Educate your owners. Let them know by repeatedly announcing the financial dilemma that they may have to face. Some council members and owners do not like to do this as “it scares away buyers when they read the minutes”. That might be true but it might not, either. For example, given all that we have heard about leaky condos in the past five years, you would think there would be no one interested in buying a condo, right? Wrong! New developments continue to blast out of the ground with many strata lots being sold even before completion. And as for “used” units, well, consider this: VCS manages 14,000 strata lots. For the past three years we have experienced change of ownership at about 3,000 units per year. It tells us that buyers will continue to be interested in your strata corporation, so we advise you to do your business as you would normally. Disclose, disclose, disclose . . . especially your long range financial requirements.

3. Repair Your Property: Insurance underwriters want to minimize their risks. Apparently they are already hurting pretty badly; hence, the increased premiums and deductibles and the unwillingness to take on more "capacity". Put yourself in the place of an insurance underwriter and consider what risks you would want to pay out. Here are some building problems that insurers are looking at and, if your strata corporation has any of them, be prepared to have no one want to insure you:

- poor claims records (especially water)
- leaky condos*
- any hint of mold presence
- masonry structures
- "heritage" buildings
- commercial occupancies – restaurants in particular

* *Some councils and owners do not like the term "leaky condo" as it sends the wrong message. Fair enough but do not think for a moment that, if you come up with some euphemism, you will fool the insurance underwriters.*

4. Legislative Protection: As noted above, the *Strata Property Act* requires your strata corporation to have full replacement coverage. If you do not, you are in violation of the law which says:

Property Insurance Required for Strata Corporation

149.4 *The property insurance must*

- (a) be on the basis of full replacement value, and*
- (b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.*

What can you do if you cannot purchase insurance to full value? Are you still liable as a council member? Would a court hold you personally responsible? We do not know. It certainly seems reasonable that, if you

made your best efforts to find insurance and you could not obtain it, a court would let you off the hook. On the other hand, a judge might well say “the law is the law” and you are personally liable. This being the case, you should do two things. First, implement the following bylaw at the next opportunity:

Having tried unsuccessfully to obtain the requisite insurance coverage to full replacement value of the buildings, no members of the strata council are liable to any owner, tenant, occupant or group of owners, tenants or occupants for the lack of the property insurance to full replacement value.

Second, you should send a letter to the provincial government (see attached) asking that the *Strata Property Act* be amended.

The *Act* must be amended to provide protection to strata council members and their strata agents. We do not, of course, propose the exact wording for the amendment but the gist of it is that the statute must give relief to you and VCS if best efforts are done and insurance is simply not available.

We urge you to support this initiative by utilizing the attached form letter or creating something similar of your own. In our view, this is an urgent matter.

We hate to be so negative but all this insurance stuff is really beginning to worry us. Your comments, thoughts, ideas and feedback are welcomed.

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June 1, 2003

The Honourable George Abbott, Minister
Community, Aboriginal & Women's Services
Parliament Buildings
Victoria, BC
V8V 1X4

Dear Minister:

Re: Insurance for Strata Corporations

Section 149 of the *Strata Property Act* states:

Property insurance required for strata corporation

- 149** (1) The strata corporation must obtain and maintain property insurance on
- (a) common property,
 - (b) common assets,
 - (c) buildings shown on the strata plan, and
 - (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.
- (2) For the purposes of subsection (1) (d), "fixtures" has the meaning set out in the regulations.
- (3) Subsection (1) (d) does not apply to a bare land strata plan.
- (4) The property insurance must
- (a) be on the basis of full replacement value, and
 - (b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

Our strata council has been advised by our management agent, Vancouver Condominium Services Ltd., that earthquake insurance deductibles are rapidly rising from the current level of 10% to 15% or 20%. (These are percentages of the value of our property.) Such high deductibles are a major concern for our strata corporation. Notwithstanding our best efforts to build up our Contingency Reserve Fund, the gap is substantial and a matching reserve balance is unachievable.

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We are further informed that many insurance underwriters are now declining to provide full replacement value coverage for property losses (aside from earthquake). In other words, instead of insurance to 100% of the replacement value of our strata corporation, we might be faced later this year with limits of 80% or 90%. This poses a huge problem for our strata council as we are obliged by the *Strata Property Act* to obtain and maintain full replacement value insurance. As council members, we might be found by a court to be in breach of our statutory duty; thus, giving rise to legal actions against us through no fault of our own.

We urge your government to amend the *Strata Property Act* as soon as possible to provide protection for strata councils who have made their best efforts to obtain what is likely to be unobtainable. Please provide us some assurance that your government will consider an amendment to this legislation. Our management agent would be pleased to offer suggestions. Thank you.

Yours very truly,

Strata Council _____

President

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