

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 #42. 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

- A Growing Problem
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## Bulletin #42

### A GROWING PROBLEM

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Apparently there is good money to be made in growing marijuana and "grow ops" in condos are increasing significantly. In the past year VCS has been involved in several very significant events which have been costly to strata corporations both in terms of money, insurance and energy.

In one instance, a water leak was observed in a building parkade. The resident manager and members of council investigated and determined the probable suite which was causing the leak. No one was home and, relying on the standard bylaw/concept that the strata corporation can enter a strata lot without notice in the event of an emergency, forced entry took place and indeed the right suite had been located. It was a mess: water everywhere in the unit. The cause: a broken watering line for the grow-op. Was this an easy situation to resolve? Put yourself to the test. See the next article.

This is only one case. VCS has several more incidents in the files on the same general topic. Apart from the usual concerns about "who pays the deductible" we wondered about the larger issues. Would an insurance underwriter impose greater deductibles on claims arising from grow-ops, meth labs and so on? What would be the chances that the coverage would be denied entirely? After all, in recent months we have seen the insurance industry make radical changes in the policy coverage and terms: surely such illegal activities as drug grow ops will impact on our clients' insurance policies. We posed the questions to a broker and an adjuster. Not surprisingly, they are ahead of the curve as it is already a growing concern for their industry.

The adjuster told us that, for the most part, claims arising from drug incidents are being covered, even though these are illegal acts. Generally, insurance policies do not have to pay out claims if the cause is created by an illegal act. (For example, if you use your car as a getaway vehicle for a bank robbery and you crash it in the process, your car insurance policy does not pay out the resulting claim.) But here is the difference: in drug operations, the strata corporation itself is not the person doing the illegal act;

therefore, the concept of denial does not come into play and the policy pays the claim. Some of these claims are reaching into the tens of thousands of dollars, plus the deductible, so, although the strata corporation is covered, the impact will definitely be an issue in terms of higher premiums and, of course, increased deductibles.

Consider a strata corporation's water deductible is \$1,000 which is a low amount because the strata corporation has had virtually no claims on the policy. The underwriter loves these kinds of clients. Then some low-mind starts a grow op and there is a major flood with a \$10,000 claim. The water deductible will surely increase to \$2,500 or more either at the next renewal or possibly even mid-year. Also, the strata corporation will have to pay the deductible (Section 158 of the *Strata Property Act*) for the initial claim.

The broker we contacted on this subject confirmed that the insurance policies presently in effect are providing coverage and there are no discussions in the immediate term about inserting exclusions for drug ops. Keep in mind that after 911, all strata insurance policies have terrorism exclusions and that illustrates clearly that the underwriters will look at their programs to add such exclusions which might give rise to significant claims payouts. Right now, although there is an increasing number of claims arising from drug operations, it is not enough to generate such an exclusion. It is fair to say, however, that if the trend continues, it is something that will be considered. Just imagine. Your strata corporation suffers a major fire or water claim and you are uninsured because the cause was from a drug op.

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## WHAT WOULD YOU HAVE DONE?

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- A tenant's marijuana grow op floods;
- A council takes fast action to prevent damage;
- The strata lot owner says "Hey, I'm not at fault – don't assess me the costs."
- A judge says:
  - To the owner: "You don't have much claim for rental loss"
  - To the council: "Not so fast..."

It is fascinating stuff – strata administration. Strata councils are propelled always to do the right thing – or at least what they genuinely believe to be the correct course of action. Owners are increasingly refusing to go along with council's decisions and the courts are saying "not so fast please". Consider the following true (all our stories are true) incident and reflect on what you might have done in the same circumstances. No cheating, eh? You are to make decisions as this story unfolds. You cannot use the hindsight principle and change your decision at the end of this article. Okay?

A council member and the building manager are walking through the parkade of the strata corporation and they see water dripping. "Hello, what's this?" They locate the unit right above the leak, knock on the door but there is no answer. Water is seeping out under the door. Do nothing? Of course not, so they call a locksmith and enter. Very nice. The place is flooded. The tenant has a major grow op and one water line has come loose, thus the flood. Careless these criminals!

The police are called and so is a water extraction/restoration company. (Let's call them XYZ Services.) The cops do a stake out and the tenant is nabbed. Meanwhile XYZ Services determines there is so much water it is not a matter of just sucking up the water – they have to remove the carpet and underlay and take it back to the shop. They leave an assortment of fans in the unit to dry it out. And, to boot, there is a high stench of chemicals in the air – some of the water and chemicals (and odour) has spread under the walls to the neighbouring units. All in all, quite a mess.

The non-resident owner of the strata lot is contacted – it is late evening and she cannot immediately attend to the situation but allegedly says to the caretaker on the phone “*Do whatever is necessary to restore the unit*”. Apparently a police officer is on the scene and overhears this conversation – at least one half of it.

Stop here for a moment. So far, would you have done anything differently?

Okay, the tenant is hauled off to the pogy to face the music and the wet carpet is hauled off to the shop to dry out. The problem is that the carpet, once dry, is in such bad shape it cannot be used. The invoice from XYZ Services is about \$2,000 and is presented to the owner to pay. She reviews it carefully and determines that it is incorrect. XYZ has listed too many drying fans. When she was in the unit, two days after the event, she counted the fans and noted the overcharge on the invoice from XYZ. An innocent error by XYZ? We will never know, but XYZ amends its invoice to \$1,600 and this amount is charged to the owner’s account. (For the purpose of this article the dollar amounts are approximate but you get the point, right?) The owner also says that her husband has connections in the carpet business and could have had the same work done for much less, about \$1,000.

The non-resident owners proceed with the installation of new carpet, at a cost of about \$3,000 and sue the strata corporation for this amount plus \$800 for the loss of one month’s rent. The strata council counter sues for \$1,600 for recovery of the costs incurred for XYZ Services Ltd.

The Settlement Conference: Prior to an actual trial in Small Claims Court, it is necessary for the parties to the dispute to attend a Settlement Conference. Although it is informal (boardroom style meeting), it is official, with the presence of a judge who listens to both sides, who tries to steer the parties to “the law” and who tries to get the parties to settle, “somewhere in between”, rather than go on to an actual trial.

The judge asks the owner to confirm whether or not she said “*do whatever is necessary...*” to the caretaker on the phone the night of the incident. She denies having said that and goes on to trash the invoice from XYZ Services. (Remember the wrong number of fans?) The judge is sympathetic.

The judge asks the council why it proceeded so hastily in removing the wet carpet. The council explains that it had to take immediate action as water was dripping into the parkade and horizontally into the neighbouring units. Additionally, there was a profuse odour problem caused by the chemicals used in the marijuana grow operation. “*Council had no choice*” explains the President.

The judge asks the strata agent “*Who owns the carpet?*” The agent tells the judge “*Ah, that’s an interesting question your honour – you see the carpet is technically owned by the owner but since it is part of the building, the strata corporation has to insure it and the strata council must take steps to mitigate damages when events like this take place.*” The judge does not appear convinced – he looks puzzled. He raises the question of insurance and insurance deductibles and now an hour into this settlement conference process, he expresses his wish to carry on with other disputes on the docket.

The judge asks the owner why the strata corporation should pay the lost rent. She cannot provide a good answer other than to blame the council and he suggests that she abandon that part of her claim.

The judge asks the council if they are prepared to offer a settlement (that would be for the cost of the new carpet - \$3,000). Council says no and judge almost falls off his chair. He is astonished. Council explains that they will take their chances at a trial – a precedent must be established. If owners’ tenants have grow ops, the owners must be responsible for their tenants’ actions. The judge disagrees and directs the parties to the Court Registry to set a date for a trial. It is agreed that a full day will be required.

The trial will be sometime in 2004 and, of course, we will let you know what happens.

Meanwhile, would you have done anything differently? We’d like to hear from you.

## RENTALS - 2010

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We are, of course, delighted that Vancouver won the Olympic bid and we look forward to enjoying the benefits and the limelight that will be bestowed on all of us. We are reminded, however, about the problem strata corporations encountered in 1986 during Expo. That was the use of individual strata lots as short-term rental accommodations, i.e., hotels. Our memories on the grief suffered by strata councils are deeply embedded. There is lots of time to deal with this issue but we alert our clients to start looking closely at their bylaws over the next few years to make certain they have very good bylaws that can be enforced. Part of enforcement is education in advance, meaning that just having a good bylaw should not be the only goal. What good will it do you to have a good bylaw but owners violate it anyway and you spend 2011 and 2012 in court trying to collect some fines?

We urge our clients to develop good bylaws to deal with this potential problem early in the game and then repeat, repeat, repeat them in 2009, 2008, 2007...

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