



FEATURES THIS MONTH

1. It's AGM Time Again...
2. AGM Planning - CRF Contributions
3. Bylaws - Those You Must Have and Those You May (Part 1)



1. IT'S ANNUAL GENERAL MEETING TIME AGAIN...

While it does not hold as a rule for all strata corporations, most of you belong to a strata with a December fiscal year-end. That means we're closing in on Annual General Meeting ("AGM") time again and working away on budget preparation, gathering quotes for the next fiscal year, preparing for an audit or financial review, drafting $\frac{3}{4}$ vote resolutions for proposed projects, considering bylaw amendments and attending to all the other fine accoutrements that go along with preparing the AGM notice and for the coming year's work.

This is therefore a timely opportunity to review a number of relevant sections of the *Strata Property Act* (the "Act") that come into play when preparing for your strata corporation's AGM. Councils should be mindful in particular of the time frame involved.

Section 45(1) of the Act states:

"The strata corporation must give at least 2 weeks' written notice of an annual or special general meeting..."

While this section suggests that 14 days will suffice, section 61(3) of the Act states that a document of this kind is conclusively deemed to have been given 4 days after it is left with an adult, put under the door, mailed, put through a mail slot or in a mail box or faxed. Adding these 4 days, plus the day of the meeting itself, brings the total minimum notice period required by the Act to 19 days. In practice, this notice period should be further extended because of section 25(4) of the *Interpretation Act*, which says that where a period of time is expressed as "at least" a specified number of days, the first and last days must be excluded. This would bring the total up to 21 days.

For this reason, our policy at VCS is to send out the AGM notice not less than 21 days in advance of the meeting. Strata councils should work with their strata agent to ensure that a practical timeline is in place to have the budget agreed to for presentation to the ownership, resolutions drafted, audit drafts received and/or finalized, etc... so there is no panic in the final days prior to the notice being sent out to the ownership.



This leads to the actual delivery of the notice. While the management company endeavors to keep up to date mailing addresses and contact information for all owners, there are occasions when an owner will move without providing their new mailing address or may be residing at an address other than that provided to the management company.

Thankfully, as contemplated in section 47:

"Failure to give proper notice of an annual or special general meeting to a person entitled to receive notice under section 45 does not invalidate a vote taken at the meeting as long as the strata corporation made a reasonable attempt to give notice in accordance with that section."

Strata corporations must therefore make reasonable efforts to keep their owner records up to date and to give notice within the time periods indicated above. However, the Act recognizes that it will not always be possible for everyone entitled to notice to be properly notified, and that the strata corporation should not be penalized in such cases as long as reasonable efforts were made.

When the time for the AGM finally arrives, it is often with utter frustration that those who have taken the time and made the effort to attend, note that the meeting room resembles a ghost town. While contentious bylaw amendments or special levies will bring out the ownership in droves, an AGM consisting of little more than the approval of the next fiscal year's budget may not be enticing enough to enable the meeting to meet quorum. As stated in section 48 of the Act:

- "(1) Business must not be conducted at an annual or special general meeting unless a quorum is present.*

- (2) Subject to the bylaws, a quorum for an annual or special general meeting is*
 - (a) eligible voters holding 1/3 of the strata corporation's votes, present in person or proxy, or*
 - (b) if there are fewer than 4 strata lots or fewer than 4 owners, eligible voters holding 2/3 of the strata corporation's votes, present in person or proxy.*

- (3) *Unless otherwise provided in the bylaws, if within 1/2 hour from the time appointed for an annual or special general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time but..."*

It is extremely frustrating to prepare for a meeting that does not quorum and is then required to be held at the same time, in the same location, one week later (unless otherwise stated in your bylaws). The best advice with respect to ensuring adequate attendance is to use the monthly minutes leading up to the AGM as a reminder of the meeting date and relevant information. Owners not able to attend should be encouraged to appoint a proxy and give their proxy form to another owner, a council member, or simply forward it by fax to VCS.

The other option (as provided for in section 48(3)) is to amend the strata corporation bylaws to provide a better alternative in the event of a quorum not being met. In this case, the wording is often something to the effect of the following:

"If within 1/2 hour from the time appointed for an annual or special general meeting, a quorum is not present, the meeting stands adjourned for a further 1/2 hour on the same day and at the same place. If within 1/2 hour from the time of the adjournment, a quorum is not present, the eligible voters, present in person or by proxy, constitute a quorum. This bylaw does not apply to a meeting demanded pursuant to section 43 of the Act."

So, there you have it. There is a lot of work to do in preparing for your AGM and many ducks to get in a row prior to the notice being ready for delivery. Keep in mind that, as stated in section 45(3):

"The notice of the annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a ¾ or unanimous vote."



Should you wish to adopt a bylaw to deal with lack of quorum, please advise your agent before it's down to 22 days and counting and the panic is setting in.

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2. AGM PLANNING – CRF CONTRIBUTIONS

As a continuation on the Annual General Meeting theme, an Annual General Meeting must be held every year within two months after the fiscal year-end of the strata corporation and the main purpose is to approve the next year's budget, elect the strata council and deal with certain other applicable business (e.g., bylaw amendments, ratification of rules, and special levy proposals).

With respect to budgets, your property agent will prepare a draft budget generally in the eighth or ninth month of the fiscal year and it will be reviewed and revised by the strata council at each successive council meeting until the document is finalized, included in the Notice of Meeting and considered for approval by the owners at the Annual General Meeting.

One of the most important components of an operating budget is the Contingency Reserve Fund contribution. It will appear as a single line item in the budget. Although a critical item, unfortunately many strata corporations do not undertake a careful review of the purposes and requirements of this Fund and therefore, their Contingency Reserve Fund will likely be faced with financial shortfalls in the long term.

As a refresher, some of the relevant sections of the *Strata Property Act* involving CRF contributions are as follows:

Operating fund and contingency reserve fund

92. *To meet its expenses, the strata corporation must establish, and the owners must contribute, by means of strata fees to*
- (a) an operating fund for common expenses that usually occur once a year or more than once a year, and*
 - (b) a contingency reserve fund for common expenses that usually occur less than once a year, or that do not usually occur.*



Minimum and maximum contributions to contingency reserve fund

93. *Subject to the requirements set out in the regulations, the strata corporation must determine the amount of the annual contribution to the contingency reserve fund.*

The requirements referred to immediately above are set out in regulation 6.1, which provides guidelines regarding the appropriate amount of the annual contribution to the Contingency Reserve Fund for a fiscal year, as follows (in summary):

If the CRF Balance is under 25% of the new budget, you must allocate an amount equal to at least 10% of the new budget. VCS in fact recommends 20%. If the CRF Balance is between 25% and 100% of the new budget, an additional allocation is optional, but VCS suggests at least 10% to 20%. And, in the rare scenario where the CRF exceeds 100% of the new budget, no further allocation is permitted unless approved by a ¾ vote resolution of the owners before the budget is presented.

So, how do you determine where your strata corporation stands based on the above regulations? Good question! Here is the formula:

CRF Balance at fiscal year end will be:	\$	_____
25% of Expenses on new budget:	\$	_____

As mentioned above, if your strata corporation has reached the 25% threshold, the allocation is optional, but where many strata corporations go wrong is that they reduce their contributions to minimal amounts, and in some cases eliminate their contributions altogether. The end result is that when major items of the common property (e.g., the roof) or common assets (e.g., playground equipment or fitness equipment) must be repaired or replaced, the strata corporation does not have the appropriate reserves in place, and must go to the owners to raise the necessary funding by way of special levies. This is not always an easy process with owners' stretched budgets and the requirement of achieving 75% approval. Smaller contributions made continuously over a longer period are always easier to manage than large lump sums required to be contributed within a matter of months.



The next question you should ask is: How do we go about setting aside enough money to properly fund our CRF? The answer is not simple or easy, but some careful planning and thought will lead you in the right direction. As a brief recap, the *Strata Property Act* states that a depreciation report may be used to assist a strata corporation in determining the amount that it should be contributing to the CRF. Because it is not mandatory, very few strata corporations prepare such reports. We have covered the difficulty in achieving this goal in previous bulletins (higher strata fees are necessarily the result). The development of reserves is mandatory in other jurisdictions within Canada, but not yet in British Columbia. However, hiring a professional consultant to prepare such a report or reserve fund study is a very worthwhile exercise as it will provide strata councils with much needed guidance to plan for the long-term financial well-being of their strata corporation.

Think about the following event. If a major earthquake takes place in the Lower Mainland and your building sustains significant damage, your strata corporation will have to come up the deductible amount (most insurance policies carry a 10% deductible). All the more reason to continue to build the Contingency Reserve Fund for the unexpected as well as the known long-term financial requirements of your strata corporation.

3. BYLAWS: THOSE YOU MUST HAVE AND THOSE YOU MAY (PART 1)

All strata corporations must have bylaws (SPA section 119(1)), and to the extent that different bylaws are not filed in the Land Title Office, the Schedule of Standard Bylaws in the SPA applies to all strata corporations (SPA section 120(1)). Those bylaws cover the basics, but do not go far enough to satisfy a variety of the specific circumstances and requirements of many strata corporations. The SPA acknowledges that, and both by implication and by express provisions provides for supplementation. That is the focus of this article.

The general scope and purpose of bylaws is set out in SPA section 119(2), which reads:

"The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation."

This general statement is of course qualified by a number of specific limitations, such as in respect of bylaws restricting the sale of strata lots (SPA sections 121(1)(c) and 122), rentals in certain situations (SPA sections 121(2)(a) and 141-144), and pet and age limitations (SPA sections 121(2)(c) and 123), or in respect of bylaws that contravene the SPA or the provisions of other legislation (SPA section 121(1)). On the flip side, the SPA identifies quite a number of areas in which supplemental bylaws are specifically suggested. These are not included in the Schedule of Standard Bylaws presumably both because the drafters of the legislation wanted to keep the basic mandatory bylaws as bare bones as reasonably possible and because these alternate bylaw provisions might not appeal to all strata corporations. But, if they do make good sense to your owners, then why not take advantage of them? Some examples are discussed below, in the order in which they appear in the SPA.

Eligibility for council

28 (1) *The only persons who may be council members are the following:*

- (a) owners;*
- (b) individuals representing corporate owners;*

(c) tenants who, under section 147 or 148, have been assigned a landlord's right to stand for council.

(2) Despite subsection (1), the strata corporation may, by a bylaw passed at an annual or special general meeting held after the first annual general meeting, allow classes of persons, other than those referred to in subsection (1), to be council members.

(3) Despite this section, a strata corporation may, by bylaw, provide that no person may stand for council or continue to be on council with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).

It is not uncommon, for example, for the spouse of a registered owner to be interested in sitting on council, but he or she cannot do so unless a bylaw such as that contemplated by subsection (2) above has been passed. Many strata corporations have trouble filling council seats, so expanding the pool of eligible participants can make very good sense. The supplemental bylaw suggested by subsection (3) above will also make good practical sense to most strata corporations. But, unless you formally pass and implement these bylaws you cannot enjoy the benefits or protections they offer.

Approval of council member remuneration

34 *Any remuneration paid to a member of council for the member's exercise of council powers or performance of council duties must be approved in advance of payment*

(a) in the budget,

(b) in the bylaws, or

(c) by a resolution passed by a 3/4 vote at an annual or special general meeting.

In our experience it is not common for council members to be reimbursed for services rendered in that capacity. However, this section of the SPA certainly anticipates it to be appropriate provided the owners agree. And, if they do so agree, then it can be codified in the form of a bylaw. This may be a good way to get more owners to consider participating on council.

Quorum for annual or special general meeting

- 48 (1) *Business must not be conducted at an annual or special general meeting unless a quorum is present.*
- (2) Subject to the bylaws, a quorum for an annual or special general meeting is
- (a) *eligible voters holding 1/3 of the strata corporation's votes, present in person or by proxy, or*
 - (b) *if there are fewer than 4 strata lots or fewer than 4 owners, eligible voters holding 2/3 of the strata corporation's votes, present in person or by proxy.*
- (3) Unless otherwise provided in the bylaws, if within 1/2 hour from the time appointed for an annual or special general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting, the eligible voters present in person or by proxy constitute a quorum.

We are not aware of any strata corporation that has passed a bylaw that changes the standard quorum threshold stipulated by SPA section 48(2)(a), but the above suggests that one could do so. Presumably, one could increase, but not decrease, the percentage of owners needed to make the quorum. What is certainly relatively common, however, are bylaws that take advantage of the option suggested by section 48(3). Typical language provides that if there is no quorum within 1/2 hour, then after waiting an additional 1/2 hour those present will constitute a quorum and the meeting may proceed at that time and place. This is generally preferable to all concerned rather than reconvening a week later, with perhaps even fewer owners in attendance then.

NOTE, however, that such a bylaw does not apply to a meeting called pursuant to SPA section 51 to reconsider a 3/4 vote passed by fewer than 50% of the strata corporation's votes (SPA section 51(9)). It is also sometimes drafted so that it does apply to special general meetings called by the owners pursuant to SPA section 43, in which case the absence of quorum will result in adjournment to the following week. Whether there is a good reason for this may be a matter of debate.

Electronic Attendance At Meetings

- 49 (1) *A strata corporation may, by bylaw, provide for attendance at an annual or special general meeting by telephone or any other method, if the method permits all persons participating in the meeting to communicate with each other during the meeting.*
- (2) *A person who attends a meeting as provided under subsection (1) is present in person at the meeting.*

Though a bylaw providing for electronic attendance at general meetings has been adopted by quite a few of the strata corporations we manage (via the Clark Wilson standard bylaw package), we cannot recall having seen this option actually being put to use.

Voting

- 53 (2) *... a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring a unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).*

This is a bylaw option that is widely used and seems to us both useful and appropriate, though some minimum threshold of indebtedness could make good sense. In other words, a strata corporation is at least theoretically *entitled* to register a section 116 lien even if only \$1.00 in outstanding strata fees or special levies is owing, but the strata corporation never would in practice, and therefore may not want in those circumstances to prohibit such a person from voting. So, it could be that you might want to qualify and quantify this restriction on voting in some manner.

NOTE that if such a bylaw is passed, any strata lot to which it applies is not to be counted in determining if there is a quorum for a variety of voting purposes as specified in SPA section 53(3).

Repair of Property

- 72 (2) *The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of*
- (a) limited common property that the owner has a right to use, or*
 - (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.*
- (3) *The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.*

Section 72(2)(b) is inapplicable because no such common property has yet been identified in the regulations. Section 72(3) is also inapplicable for the purposes of this discussion because it will only arise in limited and particular circumstances. Section 72(2)(a), on the other hand, does have practical relevance to many stratas, and many therefore have bylaws derived from it. The key point here is that with such a bylaw the strata corporation can off load onto the shoulders of the owner, who after all has the exclusive use and enjoyment of such LCP, responsibility for repairing and maintaining it. Otherwise it will fall within the general category of common property which it is the strata corporation's responsibility to repair and maintain (SPA section 72(1)).

NOTE, however, that section 2(2) of the Schedule of Standard Bylaws does deal with this issue, so it is effectively covered (unless and until a different bylaw is filed), except to the extent that that bylaw does not go as far as one might like in specifying exactly what responsibilities the owner is to have. A question as yet unanswered by the courts is just how far the strata corporation can go down this road. Can, for example, a bylaw make an owner responsible even for the repair of structural elements of a balcony, storage locker or parking space that is LCP for the exclusive benefit of his/her strata lot? We doubt it.

Acquisition and disposal of personal property by strata corporation

- 82 (3) *The strata corporation must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting of an acquisition or disposal of personal property if the personal property has a market value of more than*
- (a) an amount set out in the bylaws, or*

(b) \$1,000, if the bylaws are silent as to the amount.

Requiring a 3/4 vote resolution to allow council to acquire or dispose of any item worth more than \$1,000 will in some stratas seem inappropriate because expenditures in that range may arise a number of times a year. If your strata falls into that category, you may wish to consider a bylaw that increases this statutory spending limit.

Payment of strata fees

107 (1) *A bylaw that establishes a schedule for the payment of strata fees may set out a rate of interest, not to exceed the rate set out in the regulations, to be paid if an owner is late in paying his or her strata fees under that schedule.*

The rate applicable is 10% per annum compounded annually (see Regulation 6.8), which in today's financial world may be seen as generous. Another reason why a bylaw to this effect can make good sense is that interest earned on late strata fees can then be included in the amount recoverable under a section 116 lien (SPA section 107(2)). Without such a bylaw no such interest is recoverable.

In this article we skipped over section 98 (unapproved expenditures) because of space constraints, but intend to deal with it and other subsequent sections in the SPA that similarly provide for supplemental bylaws that all strata corporations should at least consider implementing.