



FEATURES THIS MONTH

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1. CONTRACTING WITH CARE YOU BETTER BE CAREFUL. VERY CAREFUL.

There are two elements to this article. The first deals with the actual process of obtaining bids and selecting a contractor. The second element has to do with the awarding of a contract. There is very little in the *Strata Property Act* that gives you guidance or direction on this topic: essentially, you need to rely on contract law as established by the legislature and courts.

When minor contracts are awarded on behalf of your strata corporation, things can go wrong but for the most part the consequences are not great. Having to write off a few hundred dollars may be aggravating but it is not going to sink the ship. When you get into larger contracts, there are indeed serious consequences if the contract procedure is not followed properly. Damage awards can be substantial. Legal fees just to deal with a dispute can be substantial. Exactly what constitutes a minor contract as compared to a major contract is something that only your council can decide. As a general rule, VCS considers anything over \$5,000 to fall into the range of a major contract for a strata corporation. For a strata corporation that has an annual budget in the one million dollar range, \$5,000 is a very small percentage but the problem for you as a council is that your owners want you to be accountable for every dollar, so taking the position that writing off \$5,000 is alright is simply not acceptable. Anyway, the point of this article is to alert you to some problems we see arising from contracting. You better be careful. Very careful.

The first problem arises when contracts are issued in a rush and without proper consideration, paperwork or legal advice. As an example, VCS recently received a request from a strata council to issue a contract valued at about \$35,000. The contractor selected by the council (directly and without the involvement of VCS) wanted to start immediately and council also wanted to get the project underway as soon as possible since declining weather would impact the project adversely (exterior painting). Council gave VCS 24 hours to issue the contract. VCS did not have a copy of the bid documents or anything else and a mad scramble ensued in order to meet the deadline imposed. Remember the cliché "Hurry work is worry work". If there should be an error in the contract award document, or a breach of the contract or some other dispute, everyone including the judge will look to the contract itself first to see what it says. Throwing a contract together in 24 hours without all relevant background information in hand is a sure-fire recipe for problems.

The bidding process is also important and we regret to say that most strata councils are unaware of the potential liabilities that are formed if bidders are not treated properly or equitably. We understand that our courts have determined that the bidding process itself constitutes a contractual arrangement. The awarding of an actual contract is a second step so, in effect, you have what has become known as "Contract A" and "Contract B". Make an error in either contract and you will have problems. Most people have a general and good understanding of the meaning of a written agreement (Contract B) but we sadly observe a blissful unawareness of your legal obligations at the initial step (Contract A). It is vital that proper procedures not only be instituted at the outset, but also followed. Some common examples of errors are:

- Receiving tenders over a period of time rather than on one specific closing date.
- Negotiating with a contractor after receiving tenders to alter the terms and conditions or lower the price.
- Seeking a legal review of the contract submission with a view to changing essential terms.
- Not having specs prepared.
- Not reviewing tenders to ensure they followed the spec.
- Not including the VCS contract in the spec.
- Tendering to unqualified contractors.
- Not obtaining references in advance.
- Not waiting for the contract to be signed.

Once a contractor has been selected by council, it is important, as outlined earlier in this article, that sufficient time be left to prepare the contract award document. Despite all the good reasons why you want the property agent to "get on with it", 24 hours is not conducive to developing a good paper trail. In fact, if things do go wrong afterwards, council will be responsible for any



consequences. In many cases also, a contract should be developed by legal counsel, not the property agent. The contract is an important legal document which is designed to protect you; therefore, make sure it is done by people whose business it is to do that kind of thing. This is a very real problem faced by the property management industry. If a client wants a roof leak fixed, they instruct the property agent to hire a roofer. They do not expect the agent to run over with a bucket of tar to patch the leak. If a client wants a contract awarded, it should be no different - the property agent should be asked to take the details to legal counsel to have the proper contract prepared. That is how you protect your strata corporation.

In future articles, we will deal with the topic of breaches of contract. Contractors, employees and yes, even your property agent and management company, all have the potential to breach a contract with your strata corporation. How do you recognize such breaches? How do you determine if they are significant? How do you correct them?



2. WCB AND YOUR OBLIGATIONS

Senior management at VCS recently received a telephone call from an extremely irate council president who had become totally frustrated dealing with the property agent assigned to his account. The council wished to commence a \$20,000 contract with a firm who wanted a significant advance deposit before starting work. VCS issued the cheque but, at the same time, checked to see if the contractor was paid up on WCB premiums.

WCB provides information to anyone who asks on the status of contractors. The "one-man" outfits generally do not have to carry WCB but all other contractors must be registered with WCB and must pay premiums. It is the law we are told. VCS checks on all contractors to ensure that both conditions "come up green". In fact, we do so many checks with WCB (on-line) that we are well known to them and they have advised us periodically that they really appreciate our efforts.

If a contractor is registered but has not paid current WCB premiums, the clearance report shows that the contractor is "ACTIVE BUT DELINQUENT". This means that the contractor has overdue premiums. This means that your strata corporation will be held responsible for the WCB premium if the contractor does not pay it. Therefore, we hold the cheque and advise the contractor.

Very few contractors who are delinquent, and are notified by VCS, are very pleasant to deal with. Some of them become extremely hostile, rude and abrasive. Some of the language heaped on our staff falls into the category of unacceptable. (Try it on an airplane these days and see what happens to you.) Frequently, contractors tell us that their WCB is all paid up, that WCB has made an error, that their cheque is in the mail, that there is an old dispute, yada, yada, yada. As far as VCS is concerned, delinquent is delinquent.

What then happens is that the contractor runs back to the strata council person that hired them and tells them that VCS is giving them a hard time. The council person then phones VCS and smacks the property agent or senior management. The solution offered is this. If you want a job/contract started and the contractor is WCB delinquent, simply send us a fax or an e-mail accepting all responsibility for the consequences and absolving VCS of any liability. The cheque will be released immediately.

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3. WHO'S IN CHARGE HERE? (MORE E-MAIL CHAOS)

A recent event in one of our strata corporations motivates this article and illustrates one of the major problems with e-mail and also highlights a "heads up" for councils when it comes to meeting statutory requirements.

First, The Heads Up

Not all our clients have rental limitation/restriction bylaws, but the point of this story applies universally. Section 144 of the *Strata Property Act* permits an owner, in a strata corporation that has a rental bylaw, to be exempted from the bylaw if that owner thinks he/she would suffer a hardship by being denied rental status. The section states:

144 Exemption from rental restriction bylaw

- (1) *An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.*
- (2) *The application must be in writing and must state*
 - (a) *the reason the owner thinks an exemption should be made, and*
 - (b) *whether the owner wishes a hearing.*
- (3) *If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 3 weeks after the date the application is given to the strata corporation.*
- (4) *An exemption is allowed if the strata corporation does not give its decision in writing to the owner*
 - (a) *within one week after the hearing, or*
 - (b) *if no hearing is requested, within 2 weeks after the application is given to the strata corporation.*
- (5) *An exemption granted by the strata corporation may be for a limited time.*
- (6) *The strata corporation must not unreasonably refuse to grant an exemption.*

Note well clause (3) which requires the strata council to deal with this issue within a limited time frame. Since councils usually only meet on a monthly basis, it is not at all inconceivable that holding a hearing would mean an additional council meeting or rescheduling a previously arranged

meeting. If the strata corporation does not respond as prescribed at clause (4), the strata lot owner is automatically deemed to have earned rental status.

Councils are well-advised to heed such requirements of the *Strata Property Act*. This example pertains to rental bylaws but it is illustrative of the overall demeanor of the statute which places considerable responsibility on the shoulders of strata councils.

Now The E-mail Problem

The second issue arising from this storyline is what happened at one strata corporation managed by VCS. Upon receipt of the strata lot owner's letter requesting a hardship exemption from a rental bylaw, the property agent e-mailed it and a covering memo to council asking for direction. Less than half of the council members responded and, of those who did, one agreed to the request, one did not and a third had no opinion but instead raised a number of questions. What was the property agent to do at this point?

E-mail is great. We know all the reasons why it is here to stay but we are pleading with you to assist us in its use. VCS cannot, as your agent, take action on important issues without consensus by council. It is impossible to manage your account when we get "one in favour, one opposed, one who is on the fence and four that are MIA". It is up to you to discuss the issues amongst yourselves (we do not need or want the back and forth chit-chat) and give us, via your President, clear directions on what has to be done. If you do not, VCS regrettably cannot accept blame in such matters if the wrong thing results.

4. INSURANCE

For most VCS clients, their insurance policies run to December 31st. This article, however, will be of benefit to all clients.

Section 149 (1) states:

(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.*

Subsection (4) states:

(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.*

“Full replacement” is the phrase which requires the annual appraisals. In the appraisal industry, appraisals are done on three-year programs which means that a comprehensive appraisal is done the first year and then updates are provided for the second and third years. The cost is paid for at the first year.

Almost all strata corporations do comply with the statute in respect of replacement value; however, some councils do not do these appraisals as a cost-saving measure. It is a somewhat dangerous practice because, if you guess wrong and there is a big claim, you may find yourself underinsured. The industry refers to this as co-insurance. For the few dollars involved, we urge you to have the appraisals done.



Coverage for yourself as a council member is vital and attached hereto is a bulletin from Stewarts Insurance outlining coverages that will be included in 2005. (Not all clients have Stewarts for their insurance.)

5. WHEW!

The proposed amendment to the *Strata Property Act*, propagated by MLA Tony Bhullar, is now a dead issue as it did not get beyond First Reading. Thank goodness!

To refresh your memory, this piece of legislation would have permitted owners in strata corporations to avoid any financial liability arising from costs incurred by the strata corporation to defend lawsuits over proposed bylaws. If this legislation had been enacted, all that an owner would have to do is voice their objection to a bylaw and that simple step would relieve him or her of future legal costs.

The effect of such a law would be that many owners would, of course, vote against any bylaw to ensure immunity from financial obligations. Many of you, our strata councils, have voiced your astonishment that such an amendment was proposed and, no doubt, you will be pleased to see it gone. What remains in the scary category is the fact that anyone would have proposed it in the first place. Mind you, wouldn't it be great to have a similar law for all British Columbians in respect of laws and lawsuits that are generated in the Legislative Assembly? Hello, Mr. Bhullar?

PLEASE NOTE

VCS office will be closed on Friday, December 24th and Monday, December 27th for Christmas. We will be closed on Monday, January 3rd for New Years.

