



FEATURES THIS MONTH

1. Your 15 Minutes of Fame: Might Not Be Pleasant
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1. YOUR 15 MINUTES OF FAME: MIGHT NOT BE PLEASANT

Technically, strata corporations ought to run quite smoothly and consistently since they are governed by very detailed legislation - the *Strata Property Act of B.C.* While that is true, from a practical standpoint we all know that politically they can be anything from problematic to explosive. As we have said many times in our financial statement cover page articles, strata administration has changed considerably over the last decade. Owners, tenants and others simply do not always abide by the rules, never mind show respect for the governing authority (the council), never mind contribute in a positive and productive way to the community as a whole.

Not so long ago, councils rarely saw law suits, arbitrations, mediations and other similar dispute resolution mechanisms. Today, it is common, and as we observe regularly on the 6 o'clock evening news, citizens take full advantage of the media if they think they can get some mileage by exploiting the circumstances of their particular grievances. In some instances, media exposure does serve to bring about solutions, perhaps even "justice". At other times, it can make matters worse.

We bring to you, therefore, an excellent article by Ron Danks, an Ontario Lawyer, from the current winter 2004/2005 edition of the *CCI Review* - the magazine published by the Canadian Condominium Institute. They have graciously granted consent to us to reproduce their article called "Meet the Press." Read it and take notes. You may be on the evening news one day so it is vital you know how to act properly.

The Canadian Condominium Institute is a national, non-profit, organization which serves to educate and inform condominium owners, condominium boards, strata councils, and others, across Canada. About 30 VCS clients belong to the organization. If you are interested in joining, please let us know.

2. MEET THE PRESS

VCS property agents receive many enquiries from owners, tenants and councils about very complicated issues arising within strata corporations. As our strata council readers know all too well, VCS is not in a position to offer legal advice and, in fact, each new enquiry gives rise to greater concerns about the legal responsibility of strata corporations.

We find that even lawyers well-versed in strata corporation matters are often relying on their interpretation of the law. They offer opinions to clients but these are only that - opinions - not actual case law precedents. Indeed, even case law is turning out to be somewhat unreliable as a guide of what you should do. Right now at VCS we have two strata corporations where one lawyer is involved. In one case the lawyer is relying on a recent court judgement. In the second case, the lawyer finds the very same case to be contrary to the arguments raised by the second client. In other words, the courts are still giving mixed messages. That is not the fault of the courts - it is simply a by-product of the evolution of law for a junior industry. All this can be very problematic for property agents and strata councils. For example, the following is a recent submission by a VCS strata council. Some very interesting questions are raised. Read on.

Some more things to think about:

A couple of owners have asked me what the Strata Corp. is doing about covering repairs to water damaged floors. We have two different issues:

- original flooring
- upgraded flooring

In the situation of building envelope leaks, I am not sure what the Strata Corporation's legal responsibility for either is.

Regardless of our legal responsibility, I am sure we have a moral responsibility to do something, but I think we should know the law before deciding on a policy.

The SPA is clear that original flooring is required to be insured against major perils by the Strata Corp., and flooring upgrades are not. One of the major perils included in the Act is "water escape", which would cover a burst pipe. But would it include leaks that result from failure to maintain the building envelope? One owner has already told me that his private insurance company will not cover the damage to his hardwood floor, as they only cover water damage of the "sudden unforeseen" type.

If this is not an insurance issue, then there is nothing that I can find in the SPA that applies to our situation.

I think we are going to have lots of requests for repairs so it might be wise to get a legal opinion before we set any policy. There are lots of things to consider, some of which have already been pointed out to me by owners:

- If an owner has upgraded flooring, how much is the Strata prepared to pay towards the repair? (In the case of an insurance claim, we pay replacement value for original carpet only.)
- If an owner goes ahead and has their flooring replaced and/or repaired without first having the damage reviewed by the Strata Corp, how do they prove that their floor was water damaged from a building envelope leak before they replaced it?
- It has been brought to my attention that some owners have fixed their own floors in the past without putting in a bill. If we make a policy to cover this sort of thing, will those owners be able to submit their bills retroactively?

Interesting stuff, and now read the next submission from another strata corporation dealing with use of common property rooms.

A recent issue that I have been dealing with at both NW1459 and LMS4193 is that the councils/building managers hadn't realized that there was a protocol to be followed when handing out vacant common rooms to owners/tenants to use as lockers/bike storage. They just assumed that since the room(s) were vacant they could do what ever they wanted with the rooms. At

NW1459, a council several years ago assigned a vacant room to a council member for storing his tools and to use as a work shop. Now an owner has caught onto this and wants his own room or be able to use this particular room. The council denied his request. I have suggested to council to present a $\frac{3}{4}$ Vote Res. to change the use of this particular room to this council member's exclusive use. But what if it doesn't pass? Will this owner resurface and request a room of his own or a common shared room? Has Pandora's Box been opened? Also at NW1459 each floor has small closets which Marie has been handing out to owners as lockers on a first come first service basis. It hasn't been an issue but to be on the safe side I have suggested presenting $\frac{3}{4}$ Vote res. to change the use of these rooms to lockers with a user fee (these lockers are hot commodities as they are in the building, not wet/moist, odourless and close to the owner's suite - unlike the lockers in the lockers rooms which are in the outer limits of the parkade, chicken wire contraptions, and they are dank, dark, and smelly).

What this enquiry suggests, and we think it is very typical, is that strata councils have for many years been guided by what seemed to be common sense solutions. Now, with much more demanding legislation, common sense is not necessarily the right approach.

The application (interpretation?) of the *Strata Property Act* takes over and must be the only direction for a council to follow.

Check out the following two (edited) emails on other topics of consuming interest:

- (1) One topic may be insurance - as in owners' personal insurance. Councils may want to be made aware that although owners are advised through the minutes that their own personal effects, improvements, etc., are their responsibility to insure, many of the homeowner policies don't cover damage due to water ingress. I'm not sure if this is new, but I've heard of two separate instances recently - it can make for some very unhappy homeowners.
- (2) FYI, following the recent landslide incident, a GVRD water main break in the Capilano College area has occurred. As a result, the water pressure has been reduced significantly for some properties in the Capilano College area.



The reduction of the water pressure has a direct impact on the ability to fight a fire, if one would occur.

The District of North Vancouver Fire Department issued a notice requesting that all properties affected should set up a 24 hour fire watch until the water pressure is back to normal. The Engineering Department of DNV (ph 604.990.2450) was not able to estimate when the water main break would be fixed. (Information provided by the DNV receptionist today at 15:00).

VCS is managing 2 Stratas in that area, that is, VR 329 and VR 44. Both strata councils are aware of the situation.

We welcome your feedback on these issues and, indeed, if you have other strata corporation issues of concern that you would like to share, by all means send them to us.