



FEATURES THIS MONTH

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NEED GOOD SITES FOR STRATA CORPORATION INFORMATION?

Here are some sites you can access:

Strata U. - Continuing Education Department web site links of interest:

- Canadian Condominium Institute: <http://www.cci.ca>
- Condominium Home Owners Association: <http://www.choa.bc.ca/index.html>
- Clark, Wilson, Barristers & Solicitors: <http://www.cwilson.com/stratafaq>
- *Strata Property Act* information web site: <http://www.fic.gov.bc.ca/strata>
- Vancouver Condominium Services: <http://www.vancondo.com>



1. DOES YOUR STRATA HAVE A PRIVACY POLICY?

As of January 1, 2004 the B.C. *Personal Information Protection Act* ("PIPA") came into force and effect throughout the province. As advised in detail in our November 2003 Information Bulletin #46, the PIPA was enacted to control the collection, use and disclosure of personal information by organizations. And, since this applies to much of the information that strata corporations possess about owners and tenants, strata councils must be cognizant of the requirements of the PIPA applicable to them and vigilant to comply with the same. One of those requirements is that all strata corporations must have a formalized privacy policy and one or more designated privacy officers.

Does your strata corporation have either?

If not, we urge you to review the discussion of the PIPA contained in our Information Bulletin #46. You can retrieve a copy from our web site www.vancondo.com. Once there, follow the links to our "Resource Centre" and then "Bulletins".

Another source of information and help is the Office of the Information & Privacy Commissioner for B.C. Their web site is www.oipcbc.org. Useful documents issued by the Office include:

What are my organization's responsibilities under PIPA?

http://www.oipcbc.org/sector_private/resources/org_responsibilities.htm

Guidelines for developing a Privacy Policy under the PIPA.

<http://www.oipcbc.org/pdfs/private/PIPAprivacypolicyguidelines051804.pdf>

Tips for Organizations responding to a Privacy Complaint under the PIPA.

<http://www.oipcbc.org/pdfs/private/TIPS4ORGs.pdf>

Information for members of the public.

http://www.oipcbc.org/sector_private/public_info/index.htm

You may also find the following issued by the Ministry of Management Services helpful:



Personal Information Protection Implementation Tools.

http://www.msar.gov.bc.ca/privacyaccess/Privacy/Tools/Tools_toc.htm

You can also get information through the Ministry of Management Services PIPA hotline at 250-356-1851. In greater Vancouver information on the PIPA is also available at 604-660-2421.

PIPA is the law in B.C. It applies to all strata corporations. If you are not already in compliance, make it a priority to correct that. The longer you leave it, the more likely it is to come back to haunt you.

2. WE LEARN SOMETHING EVERY DAY TODAY: VOTING AT AGMs/SGMs

It has been generally well known and practised by VCS and its clients that an owner who is in arrears cannot vote at an Annual or Special General Meeting of his or her strata corporation. Under the *Strata Property Act*, it is necessary to have a bylaw to this effect. Note Section 53 and, in particular, subclause (2):

53 *Number of Votes Per Strata Lot*

- (1) *At an annual or special general meeting each strata lot has one vote unless different voting rights are set out in a Schedule of Voting Rights in the prescribed form in accordance with section 247, 248 or 264.*
- (2) *Despite subsection (1), 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).*
- (3) *If, in accordance with a bylaw passed under subsection (2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).*

Under the old *Condominium Act* a bylaw was provided in the standard bylaws; however, the *Strata Property Act* does not provide a bylaw and a strata corporation must create one.

In subclause (2), as shown above, the key words are "entitled to register a lien." A lien can be filed for any amount: the statute does not set a minimum amount. Section 116(1) states:

116 *Certificate of Lien*

- (1) *The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:*

- (a) strata fees;*
- (b) a special levy;*
- (c) a reimbursement of the cost of work referred to in section 85;*
- (d) the strata lot's share of a judgment against the strata corporation;*
- (e) [Repealed 1999-21-25.]*

Based on this provision liens are filed on owners' accounts from time to time and, although the minimum amount that triggers the process varies from one strata corporation to another, generally it happens once an owner is three months in arrears of strata fees or a similar standard in respect of special levies.

This protocol has led to the conclusion that, if a bylaw exists preventing an owner from voting if he or she is in arrears, that is sufficient to meet the test, i.e., "entitled to register a lien". However, a recent brouhaha at a client strata corporation has brought to light some concerns and observations which we want to share with you.

First, Section 53(2) does not suggest a bylaw for arrears but rather a bylaw that connects to the registering of a lien. For example:

- (a) "An owner may not vote at an Annual or Special General Meeting if that owner is in arrears of strata fees or special levies."
- (b) "An owner may not vote at an Annual or Special General Meeting if the strata corporation is entitled to register a lien against that strata lot under Section 116(1)."

There is a big difference between these two bylaws and we sadly observe that most (not all) bylaws in strata corporations are the (a) variation. It is possible that this type of wording would make the bylaw unenforceable.

There is more. For the strata corporation to actually file a lien - i.e., register - proper notice has to be given. The strata corporation is not entitled to file the lien until it meets the requirements of Section 112(2) which reads:

- (2) *Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written*

notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.

Two weeks is 14 days, but the *Interpretation Act* stipulates that, where a time is stated to be “at least” a given number of days, the first and last day must be excluded, so 14 days becomes 16. And “notice” under the *Strata Property Act* means 4 days, so the total is, in fact, 20 days before the strata corporation has met its obligation. Only after this 20 day period is the strata corporation entitled to file a lien (assuming a valid bylaw exists).

What this means is that owners who are in arrears at an AGM or SGM cannot be denied the right to vote if they have not been served with the lien warning letter. Typically, as noted earlier, the lien process is not commenced until an owner is some three months or more in arrears.

All this brings a whole new light to the AGM/SGM registration process and VCS will be acting, henceforth, in compliance with the content of this article. In other words, just because an owner is a month or two or three in arrears (if the strata corporation has a SPA Section 53(2) bylaw) it does not mean he/she can be denied the right to vote. In a positive sense, there is some benefit to this new process as only “the real bad guys” will show up on the registration sheet and we will avoid those arguments from people who say “I mailed it yesterday” or “I dropped it in the mail slot” or “You guys are idiots”. Now we only have to deal with the big arrears and experience shows us they rarely show up at AGMs/SGMs and when they do, they know already.

Last point: we and you need to check your bylaw about no voting if in arrears. If it is not worded consistent with the language of Section 53(2) we recommend that it go on the agenda as a bylaw amendment at the next AGM or SGM.

We learn something every day.

3. COURTS PERMIT SLOPPINESS...SOMETIMES

We recently came across a court case dealing with a leaky condo dispute (between the owners) and were quite surprised at the very lenient approach taken by the judge insofar as the notices issued by the strata corporation when raising huge amounts of money to repair the strata corporation's building envelope.

In short, some of the notices did not provide sufficient notice to the owners. A $\frac{3}{4}$ Vote Resolution requires proper notice for it to be valid. This means "at least" 14 days (which requires the first and last day to be excluded, as discussed in the prior article) plus four days for serving notice, a total of 20 days. VCS has always had a policy of 21 days as the minimum threshold which is a safe position to take.

Interestingly, however, in the case referred to above, the strata corporation did not meet the 20 days requirement but the judge considered that to be only a technical breach and did not allow that deficiency to rule against the strata corporation. Did the court permit sloppiness (called a technical breach)? Perhaps. On the other hand, in this particular case, it seems that the dispute amongst the owners had existed for a lengthy period and all parties were aware of what was going on. The judge presumably allowed "equities" to prevail - meaning that a "fair" result was reached despite the technical deficiencies.

We caution our clients to not hang their hats on this hook. It may have been the right solution for this particular dispute but it should be considered in isolation only. Tomorrow, a very similar situation could arise and the same judge or another could say "Sorry, there is a technical error here. Go fix it and come back." That direction might prove to be costly both in terms of time and money. Indeed, a resolution may have been approved by only one vote the first time. It may not the second time with different owners attending or if circumstances change.

It is our advice to be as technically correct as humanly possible in respect of timelines for notices and protocols for conducting meetings. The above story is one example but here is another. Most strata corporation bylaws say that the President of the council shall chair meetings (AGMs/SGMs) yet it is by far the common practice to turn the meeting over to the property manager to conduct



(hmmmm - we wonder why?). Could an owner challenge the outcome of a vote if the meeting was conducted by the property manager? Far-fetched? As we say in an accompanying article this month - we learn something every day. It will only be a matter of time.

Speaking of issuing notices on time, we continue to experience problems with last minute instructions from councils. Everyone seems to understand the 21 concept outlined above but what is not understood is that you cannot leave it until the last day to give your property agent instructions. Here are the reasons:

1. The agent may not be in the office on day 21 or may have other workload duties.
2. The notices and resolutions have to be written and typed.
3. The notices have to be copied, stuffed into envelopes and mailed.
4. Rushed work is more likely to contain errors.

All this takes time. We frequently receive requests from councils on day 21 or 20 to "add a rental bylaw" or "Let's take \$20,000 from the CRF to do some improvements". It is virtually impossible to honour such requests, notwithstanding the judge (above) who turned a blind eye to the improper notice in one strata corporation.



MIRROR, MIRROR ON THE WALL, WHO'S THE LEAST FOUL OF THEM ALL?

ELECTIONEERING and CAMPAIGN SIGNS

4.

Within days of an election being called, disputes invariably begin to arise regarding the displaying by owners and tenants of election signs in condominium windows and on balconies and patios. Many stratas have bylaws that place strict restrictions on what can be put in/on windows and on balconies and patios, such as the following sample:

"Other than real estate signs, which may be placed only in the area(s) specifically designated for that purpose by the strata corporation, no resident or owner may erect or display or permit to be erected or displayed any signs, fences, billboards, placards, advertising, notices or other fixtures or items of any kind on the common property or in a strata lot, unless first authorized in writing by the council."

On this topic, the *Canada Elections Act* says in section 322, that:

- (1) No landlord or person acting on their behalf may prohibit a tenant from displaying election advertising posters on the premises to which the lease relates and no condominium corporation or any of its agents may prohibit the owner of a condominium unit from displaying election advertising posters on the premises of his or her unit.*
- (2) Despite subsection (1), a landlord, person, condominium corporation or agent referred to in that subsection may set reasonable conditions relating to the size or type of election advertising posters that may be displayed on the premises and may prohibit the display of election advertising posters in common areas of the building in which the premises are found.*

But, please note that the *Canada Elections Act* is "an Act respecting the election of Members to the House of Commons", so it does not apply to Provincial elections. There are no companion provisions in the B.C. *Election Act*, or in any other B.C. Provincial legislation to our knowledge. Therefore, VCS believes that a strata corporation bylaw that prohibits the placing of election signs in strata lot windows and/or on common property is enforceable, in principle. The key here as always is ultimately for councils to act reasonably and consistently. In that vein, keep in mind the fact that the upcoming Provincial election will be over by May 17, 2005.

With a Federal election now also on the horizon, please also make a note of section 81 of the *Canada Elections Act*, which says:

(1) No person who is in control of an apartment building, condominium building or other multiple residence building may prevent a candidate or his or her representative, between 9:00 a.m. and 9:00 p.m., from

(a) in the case of an apartment building or condominium building, canvassing at the doors to the apartments or units, as the case may be; or

(b) campaigning in a common area in the multiple residence.

(2) Subsection (1) does not apply in respect of a person who is in control of a multiple residence building whose residents' physical or emotional well-being may be harmed as a result of permitting canvassing or campaigning referred to in that subsection.

5. BYLAW ENFORCEMENT

By Elaine McCormack

What should the council do when they receive a letter from an owner advising that his next door neighbour has noisy parties every Saturday night? Dealing with complaints between neighbours becomes even more awkward for the council when one of the individuals involved is a council member. This article will explain the process that should be used for enforcing bylaws.

I note that the *Strata Property Act* alludes to the 'strata corporation' taking certain steps to enforce its bylaws. For the purposes of this article I have changed the reference from the 'strata corporation' to the 'council'. Subject to the *Strata Property Act*, the regulations and the strata corporation's bylaws, the council exercises the powers and performs the duties of the strata corporation, including the enforcement of bylaws and rules.

Under section 129 of the *Strata Property Act*, strata corporations may enforce a bylaw or rule by imposing a fine, remedying a contravention, or in certain circumstances they can deny access to a recreational facility. The council can also decide to warn a person or give the person time to comply with the bylaw or rule prior to enforcing it.

Fining is the most popular method of bylaw enforcement. It is important to note that owners can be fined if a bylaw or rule is contravened by the owner or another occupant, a person who is visiting the owner or who is admitted to the premises by the owner. Tenants can be fined if a bylaw or rule is contravened by the tenant or another occupant, a person who is visiting the tenant or who is admitted to the premises by the tenant, but cannot be fined for the acts of subtenants. Presumably, a strata corporation can similarly fine subtenants for contravening the bylaws.

Another method of enforcement is for the council to do what is reasonably necessary to remedy a contravention of its bylaws or rules, including doing work on or to a strata lot, the common property or common assets and removing objects from the common property or common assets. The council may require that the reasonable costs of remedying the contravention be paid by the person who they may fine for the bylaw contravention.

A third method of bylaw enforcement is for the council to deny an owner, tenant, occupant or visitor the use of a recreational facility that is common property or a common asset. The denial

can only be for a reasonable length of time and can only be used if the owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility.

Under section 135 of the *Strata Property Act*, in order to properly use a method of bylaw enforcement the council must follow some basic rules of procedure to ensure that the owner complained of has a chance to properly defend himself. The council should ensure that they:

- receive a complaint about the contravention;
- give the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant,
- if the person is a tenant, give notice of the complaint to the person's landlord and to the owner; and
- give notice of their decision in writing.

Once a council has complied with this section in respect to a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of the bylaw or rule without further compliance with this section.

So, what should the council take into account if the person requests a hearing? If emotions may run high at the hearing, it is helpful if the council does some pre-planning before the hearing. One consideration is what is the best location for the hearing. The surroundings should be comfortable for all the participants and should be in 'neutral territory'. A hearing that takes place in the person's suite who originally complained about the noise, for instance, will not be comfortable for the individual answering the complaint. A seating plan should be considered. Direct, eye to eye contact between the two individuals involved in the dispute may raise their emotions to such a level that it is impossible to continue with the hearing. The council members and the owners involved may be comfortable sitting around a dining room table, or living room couches and chairs.

It is very important for the council to also decide prior to the hearing what procedure will be followed and to inform the participants so that they can prepare for it. For instance, in the 'noisy neighbour' scenario perhaps the council will give the neighbour that made the complaint, (we'll refer to this neighbour as Frank) an opportunity to speak and then the neighbour who the complaint was made against (who we'll call Joe) can ask Frank some questions. The council can then ask Frank questions. The process will then be reversed and Joe will be allowed to speak to

the complaint and then Frank and the council will ask him questions. The council can help Frank and Joe be ready for the hearing and be as relaxed as possible by providing them with a written explanation of the hearing process prior to the hearing taking place. If Frank does not wish to participate in the hearing, Joe can speak to the written complaint only. If Joe does not wish to attend the hearing or give a written response, council can base their decision on Frank's written complaint only. If the complaint is of a different nature, such as the installation of an air conditioner on the outside of the building without the council's permission, the complaint may have been made by council and it may not be necessary for a complainant to testify. In the case of the air conditioner, part of the hearing process may be to visit the site so that the council can understand what has occurred.

After the council has heard from everyone involved, the participants should be thanked for participating and informed that the council will consider everything that has been discussed and will render a written decision. Only the council, and perhaps the strata manager, should be present during their deliberations so that council members can speak freely. If a council member is involved in the dispute he or she should not participate in the hearing as a member of the council and should not participate at all in the deliberations. In the scenario discussed above, the council may decide to take no action against Joe, or give him a warning or render a fine.

Bylaw disputes may also be resolved through a negotiated resolution reached by the parties involved or through mediation. There are other methods of bylaw enforcement, such as commencing court or arbitration proceedings or requesting a hearing at the residential tenancy board. Those methods are beyond the scope of this article.

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