



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. JUST RECEIVED A PRELIMINARY BUILDING ENVELOPE REPORT?

By Arthur M. Grant and Derek J. Chapman

In our last article (see VCS Information Bulletin #62: "*So you think you have a Leaky Condo?*"), we discussed the various steps that a strata corporation must take to determine whether it has a building envelope problem. Generally, there are three steps involved:

1. Determining that you might have a problem;
2. Retaining qualified professionals; and
3. Obtaining a preliminary report.

This article picks up where the last one left off. Specifically, the strata corporation has determined that it might have a building envelope problem. It has retained a qualified building envelope consultant and it has now received a preliminary report from the consultant that indicates there may be a widespread building envelope problem. Typically, the preliminary report recommends further comprehensive investigations to confirm the nature and scope of the problem.

We note that the process followed for building envelope problems is the same sort of approach that should be followed by a strata corporation when any significant systemic problem is encountered (structural, mechanical or electrical issues).

1. Follow the advice in the preliminary report

Having received a preliminary building envelope report, what does the strata corporation do next? The answer seems self-evident: follow the advice in the preliminary report! However, in practice, some strata corporations often find the answer to this question anything but obvious.

Having gone through the expense of selecting a competent and reputable consultant, the strata corporation would be remiss in not heeding that consultant's advice. If, for whatever reason, the strata corporation has doubts about the soundness of the advice offered, it is always open to the strata corporation to seek a second opinion of another reputable and competent consultant. But barring that sort of second review, if the preliminary report recommends further comprehensive

investigations and destructive testing, then the strata corporation should follow that advice. Usually, the consultant has clearly indicated that he or she will require further information to confirm the nature and extent of the building envelope problem and to suggest a solution. This often involves destructive testing at various locations around the building. The more testing done, usually the more accurate the investigation report will be. This further investigation will normally be more expensive than the preliminary report. However, it is a key step in uncovering the problem.

Regrettably, some strata corporations have ignored the recommendations in the preliminary report for more comprehensive investigations. Usually, keeping costs down is a strata corporation's stated intention for skipping over those recommendations. Sometimes, they have opted to skip the investigation and go straight to the "repair" mode. In fact, this usually ends up costing the strata corporation much more in the long run.

Unfortunately, there are often self-professed "expert" contractors who will pitch their "solutions" to the strata owners. The contractors may assure the owners that they have the expertise to investigate and fix the problem at the same time. "Why waste your money on more expensive investigations when we all know what the end result will be?" and "Trust us. We have done this many times before and we know what needs to be done." Invariably, the results are disastrous.

Sometimes, the "expert" contractor's cheaper solution was simply replacing the rotting parts of the strata complex with new materials. The original substandard design remained unchanged. Not surprisingly, the same building envelope problems arise a short time later when the strata corporation discovers that the contractor's solution was actually no solution at all.

On some occasions, strata corporations have had to rip out all of the contractor's work a few years later when problems persisted or reoccurred. As a result, the strata corporation ends up paying twice: once for the contractor's cheaper solution and then once again when the proper repair work is carried out several years later. There are even situations where the strata corporation has realized halfway through the repairs that the contractor's work was suspect, and then had to go to the expense of removing the contractor from the site and having to hire a consultant to investigate the contractor's work and ultimately to replace all the improperly done work. This type of case invariably results in thousands of dollars of builders' liens being slapped

on the strata property with the further consequence of protracted and expensive builders' liens and construction litigation.

In summary, once a strata corporation receives a preliminary building envelope report that recommends further comprehensive investigations, the strata corporation should promptly follow through with the recommendation. Attempts to short-circuit the process by retaining a contractor who is convinced that he or she can investigate and fix the process at the same time usually ends up costing the strata corporation more money in the long run. The old adage "if you're going to do something, do it right the first time" is especially applicable here. The strata corporation has already gone through the process of obtaining a preliminary report. Failing to follow through with the recommendations in the preliminary report can prove to be an expensive mistake. It could even open up the possibility of strata council members being personally liable for their poor decisions at this stage.

2. Proceeding with more comprehensive investigations

As indicated above, more comprehensive investigations typically involve destructive testing. This could include the removal of portions of the exterior cladding and drilling moisture test holes. In the Lower Mainland, exposed portions of exterior cladding (and even test holes) are fairly well-known symptoms of a leaky condo among the general public. Assuming that the consultant is able to determine the nature and scope of the building envelope problems after comprehensive investigations, the consultant should also be chronicling the problems and providing general recommendations for solutions in a further comprehensive investigation report.

3. Determining the type of repairs and the relative costs of repairs

In the comprehensive investigation report (or in a separate report), the consultant should also be providing one or more proposals for repairing the problems. For instance, he or she may outline proposals that would involve replacing the entire or parts of the building envelope with different types of cladding systems, each with a different cost, replacing some or all of the windows, and numerous other options. Usually, the consultant can give some "ball-park" estimates of these various options and sub-options.

At this stage, the consultant needs the strata corporation's input. Until the strata corporation is able to give more detailed instructions to the consultant as to which option they wish to adopt, the consultant is usually not able to estimate in more detail the actual cost of the repairs. During this process, it is important that the strata owners are kept apprised of the investigations and what has been discovered. It is useful to have the consultant attend information or general or special meetings to explain what he or she has investigated and uncovered and what his or her conclusions and opinions are. It may be necessary or advisable to hold a series of meetings so that the strata council has a good understanding of what the ownership wants to do.

4. The development of the detailed design and cost estimates

Once the strata corporation provides instructions to the consultant as to which option it wants to follow, the consultant can commence the detailed design work. This step invariably involves an interactive process whereby the consultant goes over various details of the proposed design. Therefore, there is usually an ongoing series of instructions that need to be given to the consultant. Again, there is a need for ongoing communications with the ownership to ensure general agreement on the materials and design issues being decided upon. Once there is a final design near conclusion, the ownership should be given the consultant's best guess at a cost estimate for the design. A healthy contingency for unanticipated work and for the vagaries of bidding should be included with this cost estimate. The consultant will have also provided an estimate of his or her firm's fees and disbursements to oversee the work and to administer the construction contract.

At this stage, the strata corporation will need to make a decision as to whether to make adjustments to the final decision so as to increase or decrease the scope of work and therefore the cost of the work. Once the strata corporation has directed the consultant to complete the design and to tender the project, there should be a significant degree of certainty amongst the ownership that this option, as outlined in the detailed design, is the option they will proceed with. We note that there is a debate as to whether to hold a special general meeting at this stage to approve the special assessment so as to have the funds necessary for the contract. The fear is that, if the strata corporation approves such a special assessment, all the bids will come in near or at about that amount and the factor of competition is impaired. On the other hand, if the strata corporation does not hold such a special general meeting, the concern is that the contractors do

not know the willingness (and therefore, the money) is there to do the work and so the contractors will either not waste their time preparing the bid or will spend less time doing so, resulting in more conservative estimates and therefore a higher bid. One downside to not adopting a special assessment before proceeding to tender is that there is a delay in organizing a special general meeting to review the bids and to pass the required special assessment. In a construction industry market such as ours, this delay may prove to be costly.

At this stage of the process, time is of the essence. Prices for materials and labour in Vancouver's construction industry are undergoing significant inflationary pressures. A consultant's estimate prepared today may be hopelessly out of date in three months' time. Accordingly, there is a need to coordinate the meetings and decision-making of the strata owners with the preparation of the consultant's designs and cost estimates so as to increase the likelihood that the strata owners have reliable information in making their decisions and so as to maximize the probability that the bids which are ultimately received are in the ballpark of the consultant's detailed cost estimates.

5. Conclusion

"If you are going to do it, do it right the first time." So, if the preliminary report recommends further comprehensive investigations to identify the nature and scope of building envelope problems, the strata corporation should follow that recommendation. Failure to do so will inevitably end up costing more in the long term. Since the proper solution cannot be determined until the nature and scope of the problem has been identified, quick fix solutions are usually no solutions at all and may even exacerbate the problem. Once further comprehensive investigations have been carried out, the consultant can advise on the extent and source of the problems as well as one or more general solutions. From there, the strata corporation can choose a direction to follow and a detailed design and more reliable cost estimate can be developed and decided upon. With the detailed repair option chosen, the strata corporation can proceed to the next stage: tendering of the repair work.

This article was prepared by ARTHUR M. GRANT and DEREK J. CHAPMAN of GRANT KOVACS NORELL, Barristers & Solicitors, and is intended to provide general information only. It is not intended to provide legal advice with respect to specific issues facing a strata corporation. This article is also copyrighted and may not be reproduced without the written consent of its authors. If you have any questions or comments about this article, please feel free to contact Art at 604-642-661 (agrant@gkn.ca) or Derek at 604-642-6368 (dchapman@gkn.ca).



2. EDITING MINUTES

This can be tricky business and you are advised to be very careful about such a process lest it come back to haunt you as a council member. The *Strata Property Act* requires at Sections 35(1)(a) and 35(2)(a) that the strata corporation prepare and keep minutes of its meetings (council, Special and General) but the statute does not prescribe the quality or quantum of those documents. It is left up to each strata corporation and/or its management company to transcribe these events.

Different management companies have different styles and standards and, indeed, even within a management company no two agents will have the identical style. Some agents tend to be wordy and detailed, while others are sparse and tacit. Either way can "get you into trouble". Sometimes saying too much can create unnecessary angst among the ownership, while saying too little can leave the owners uncertain about council's intentions and this, in turn, can lead to a suspicion that council is operating secretly and does not wish to fully disclose their decisions and plans. Finding that precise balance can be tricky.

More and more strata councils are requesting draft minutes, which is fine, but this process sometimes leads to dissent between council members as to exactly what should or should not be included. It is not uncommon in such circumstances to have a property agent caught in the middle when there are "tensions" between council meetings. "Why did you put that in the minutes?" demands a council member. "Because I was told to by another council member" is the reply. As a result of such disputes, particularly when the anger is directed at the strata agent, it is VCS' policy to turn the matter back to the entire council to take a vote on the wording. Democracy ought to prevail although this can result in lingering hard feelings.

Apart from the pressure exerted on a strata agent, it is our recommendation to be particularly careful when editing minutes insofar as their impact on owners and prospective owners. If your strata corporation has a major physical problem (i.e., "leaky condo", bad piping, deteriorated roof) you are wise to report your discussions in the minutes. If, on the other hand, such discussions are edited out, masked or "cool-whipped", you are entering dangerous territory. In recent years there have been successful lawsuits on the basis of failing to adequately disclose



defects which require significant sums of money to correct. New owners are not often amused to be hit with a big special levy a few months after purchasing when the minutes they had read made no mention of any such problems.

On the flip side, it is necessary to understand that there are certain topics which have to be reported very carefully in the minutes. A common example is when a strata council is involved in litigation against an owner, a contractor or developer. To cite details of strategy and other policy in the minutes would, of course, give away the adversarial position and that obviously cannot be done.

Is there a right or wrong answer to the question of editing? No, not really, but rely on common sense and always remember that your minutes could well end up in front of a judge. Your words will come back to haunt you or rescue you.