



FEATURES THIS MONTH

1. It's Getting Busy
2. It's Money in the Bank
3. How are Your Ethics?
4. Insurance Deductibles (Again)
5. It Must be True
6. Licensing is Coming Soon!

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. IT'S GETTING BUSY

In a previous bulletin we noted that it is becoming increasingly more difficult to obtain the services of general contractors - at least at reasonable prices. We think this problem will only become worse with the pressure from the 2010 Olympic construction boom.

To back our prediction, we came across a bulletin issued recently by the Greater Vancouver Regional District about a pump station upgrade project in downtown Vancouver. The GVRD advised various affected residents that the project was put out to tender in February 2005 and no tender was found to be acceptable, due in part to the high levels of construction activity in Vancouver at this time.

The next few years will bring similar dilemmas to strata corporations and you can be sure that, not only will there be time delays, but also there will be cost increases.



2. IT'S MONEY IN THE BANK

Having lots of money for your strata corporation is surely a good thing but we want to remind you that issues can arise if you have too much. Bank and trust company deposits are currently insured up to \$60,000 via the CDIC - Canada Deposit Insurance Corporation. Any amount above that level is potentially lost (meaning uninsured) if that institution should fail. This amount will soon be changing to \$100,000.

For credit unions, the threshold is \$100,000 through the provincial agency CUDIC - Credit Union Deposit Insurance Corporation.

VCS monitors your "bank" balances to keep track of those accounts on which action should be taken by council. We do not go to bed at night terribly nervous that the financial world will have



collapsed when we wake up the next day. On the other hand, we live in a dramatic world of global politics and terrorism so it is prudent to keep an eye on these things.

Each month we review your strata corporation's bank or credit union balances and we can offer opportunities to transfer or invest money to ensure that your deposits are within the above-noted thresholds. Most strata corporations do not have to worry, but whenever special projects are in progress (i.e., leaky condo repairs, re-roofing, etc.) the balances build up fast. Our approach is to consult with council before making any transfers. Most councils respond to our request for direction but some do not and we urge these councils to not ignore our communications. You never know what the morning news headline might be.

3. HOW ARE YOUR ETHICS?

The *Strata Property Act* does not make any reference to “ethics”. These things are hard to define and legislate. The statute does, at Section 31 state:

31 Council member's standard of care 01

In exercising the powers and performing the duties of the strata corporation, each council member must

- (a) act honestly and in good faith with a view to the best interests of the strata corporation, and*
- (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.*

At Section 32, the legislation states:

32 Disclosure of conflict of interest

A council member who has a direct or indirect interest in a contract or transaction with the strata corporation must

- (a) disclose fully and promptly to the council the nature and extent of the interest,*
- (b) abstain from voting on the contract or transaction, and*
- (c) leave the council meeting*
 - (i) while the contract or transaction is discussed, unless asked by council to be present to provide information, and*
 - (ii) while the council votes on the contract or transaction.*

There are also other provisions which impact on the conduct of council members, such as at Section 33 dealing with contracts. It states:



33 *Accountability*

- (1) *If a council member who has an interest in a contract or transaction fails to comply with section 32, the strata corporation or an owner may apply for an order under subsection (3) of this section to a court having jurisdiction unless, after full disclosure of the nature and extent of the council member's interest in the contract or transaction, the contract or transaction is ratified by a resolution passed by a 3/4 vote at an annual or special general meeting.*
- (2) *For the purposes of the 3/4 vote referred to in subsection (1), a person who has an interest in the contract or transaction is not an eligible voter.*
- (3) *If, on application under subsection (1), the court finds that the contract or transaction was unreasonable or unfair to the strata corporation at the time it was entered into, the court may do one or more of the following:*
 - (a) *set aside the contract or transaction if no significant injustice will be caused to third parties;*
 - (b) *if the council member has not acted honestly and in good faith, require the council member to compensate the strata corporation or any other person for a loss arising from the contract or transaction, or from the setting aside of the contract or transaction;*
 - (c) *require the council member to pay to the strata corporation any profit the council member makes as a consequence of the contract or transaction.*

So, all this is very nice but let us put this discussion into actual real world context. Here are ten examples of situations that arise from time to time in stratas. There is no "right" answer, no "wrong" answer: it is a matter of opinion or ethics. Test yourself to see your rating.

1. Strata fees are due on the first day of each month and there is a \$25 fine bylaw for late payment. Your payment arrives on the 5th and you are fined. Would you put "pressure" on the strata agent to waive the fine?

Yes _____

No _____



2. Same situation as above but you know that, as a matter of procedure, the actual fines are not added to the owners' accounts until the 15th of each month. You, therefore, submit post-dated cheques for the 15th. Is this acceptable?

Yes _____

No _____

3. Your cheque bounces and, just as any other owner is charged, you get zinged a service charge of \$25 plus GST by the management company. Would you ask the strata agent to waive the service fee?

Yes _____

No _____

4. As a council member you receive engineering advice/reports which, although generally discussed at council meetings, do not reveal to the owners via the minutes the ultimate cost of addressing a given problem - which could be sizeable. Based on this "inside" knowledge you sell your strata lot. Have you violated an ethical code?

Yes _____

No _____

See Footnote (1) on page 8

5. Same as above, but right now is not a convenient time to sell so you insist at council meetings that the matter be deferred to a much later date before it is dealt with publicly through the minutes. This gives you an opportunity to properly plan your strategy. Is this fair and proper conduct?

Yes _____

No _____

See Footnote (1) on page 8



6. You have an extra parking stall or locker but the management company has overlooked recording and charging you for it. Should you fess up and advise the strata agent?

Yes _____

No _____

7. Your council is planning on a certain project and the strata agent has brought three quotes to the council. You personally know somebody else in the contracting industry and tell council you will obtain a fourth quote. In the process you disclose the existing prices to the fourth bidder. Have you committed an ethical sin?

Yes _____

No _____

See Footnote (2) on page 8

8. A certain special project has taken an incredible amount of energy and time and you have given much more volunteer time to see it through than is normal for a council member. After the project has been completed you tell the strata council that it would be appropriate for you to be paid for your time. Is such a request ethical?

Yes _____

No _____

9. Same as above but in this case your efforts have resulted not only in seeing the project completed properly but also, they have saved the strata corporation a good chunk of money. This aspect adds to the validity of your request for payment. Or does it?

Yes _____

No _____

10. Two owners in your strata corporation have committed a breach of the bylaws. One of the owners is a really nice person and you have even socialized with him/her. The other owner is a real jerk and you have "exchanged words" from time to time. When it comes now to assessing fines for the bylaw violations, would you treat them equally?

Yes _____

No _____

Tough questions, eh? We are, after all, human and prone to making allowances, to looking after our own interests and so on. Further, being on council is a volunteer, non-paying, job which can be frustrating and unrewarding. All these factors permit us a bit of flexibility, right?

FOOTNOTES

Ethics aside, there are important legal consequences in some of these scenarios.

- (1) & (2) The courts have determined (Cope v Morton) that a seller owes a duty of care to a buyer. If a representation is made by a seller that is untrue and a buyer relies on it and it was reasonable to do so, then the seller can be held liable for damages suffered by the buyer as a result. And, it seems to us that, where the seller making the representation is a council member, it would certainly be reasonable for a purchaser to assume that what he or she is told about any potentially major issues would be the latest and best information available.
- (3) In this case you have clearly interfered with the bidding process, which could make the strata corporation, and maybe even you individually, liable for damages suffered by another bidder.

4. INSURANCE DEDUCTIBLES – AGAIN

For those of you who are regular readers of our monthly financial statement cover page articles, you will recognize the topic of discussion as a sort of déjà vu. We are very sorry to go through this again but it is important. Without seeming to offend, we must advise that most strata councils still do not understand or accept the provisions of Section 158 of the *Strata Property Act*.

Admittedly we are not lawyers so we cannot suggest that our opinion is solid law. Admittedly, some well known lawyers have proclaimed that it is how you read and interpret the statute that makes the difference. The point they say is that, if the *Act* does not say specifically you cannot do it then go ahead and do it. However, even they admit that, until there is a court case precisely on this point, they cannot be 100% sure that the courts will ultimately agree with their interpretation. All we can say to that advice is “hmmm...”. Indeed, we have seen independent legal opinions to strata councils that say “go ahead and do it and see if anyone challenges it” (and if they do, we will fight it, at your expense). Our position is “No thank you”.

So what is the big fuss all about?

Strata corporations have insurance to cover a wide and comprehensive range of perils. Typically these include fire and water escape claims. The standard insurance policies have deductibles, which vary from one strata to another depending on a variety of factors but mostly based on claims experience. The more claims of one type, the higher the deductible. Water claims are the greatest by far.

When an event (fire, water escape) occurs in a strata lot, the insurance policy comes into play. The policy is purchased by the strata corporation, not by each individual owner. Owners do not need to purchase insurance for their (basic) strata lots. They purchase insurance for such coverage, and pay for it, through their monthly strata fees. They are entitled to the benefits of the insurance policy and a council cannot deny an owner access to these rights. For example, a kitchen fire occurs and there is substantial damage to the strata lot. The cost to repair is the responsibility of the strata corporation and the insurance underwriter, not the owner of the strata lot. Councils frequently say “Tell the owner to call his/her insurance company”. That is

incorrect. (Contents insurance is a different matter, of course. That is the owner's responsibility.)

Then comes the question of the deductible. Councils routinely advise and direct that deductibles are to be paid by the owner, not the strata corporation. This is particularly evident if the incident arises out of stupidity or perceived negligence on the part of the strata lot owner. For example, an owner goes out while the washing machine is running and it overflows. Another common example is that of a hot water tank bursting (typically in townhouses).

It does not matter. Section 158(1) of the *Strata Property Act* states:

Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).

We have bolded the key words to make the point. No matter what the cause or perceived negligence, the deductible must be paid by the strata corporation. If the corporation wishes to recover the amount from the owner responsible for the damage, it should do so by way of a lawsuit, and authority for this is provided at Section 158(2). A judge will decide whether or not the owner ought to shoulder the expense.

Section 158(2) reads:

(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

What we understand to be operative here is the concept of "responsibility". Based on advice we have seen various lawyers acting for owners give, it is our understanding that it is likely to be interpreted by the courts in this context to require some degree of culpability or legal liability, such as negligence. Thus, a pipe or water fitting that bursts or leaks due to normal deterioration over time or due to faulty installation by a contract or builder, as opposed to some overt act or

negligent failure to act on the part of the strata lot owner, is not likely to be seen as something for which the owner can be said to have been “responsible” in this context.

This has been the law since July 1, 2000 when the *Strata Property Act* became law. For these past five years, many strata councils around B.C. have ignored the law and, unless challenged, taken the position that the deductible can be unilaterally charged to an owner’s account. In some cases, the owners have paid without squawking but more and more we are seeing resistance. As the deductible amounts go up (now \$25,000 for water damage in some stratas), this will happen even more frequently. Owners are told to call their own insurance brokers and when they do, they are told by the brokers that such expenses belong to the strata corporation. If the owners are unsuccessful in getting the strata council to acknowledge the strata corporation’s responsibility, they are turning to lawyers for assistance. In one case in the Supreme Court of B.C. in addition to removal of the deductible assessment, the owner’s claim also included:

- Punitive damages for acting in a highhanded and highly reprehensible manner with total disregard to the provisions of the *Strata Property Act*.
- Aggravated damages.
- Special costs.

What is even more worrisome for VCS is that the strata management company was named with the strata corporation as a defendant, even though the management company was merely following its client’s instructions.

So, finally, once again we urge our strata councils to follow the law in respect of insurance deductibles. We are not saying that we like it or that it is good or bad. We are simply saying that it is the law. Every deductible, no matter what gave rise to the claim MUST be paid by the strata corporation. “The payment of an insurance deductible is a common expense.” If you feel that the owner should pay, start a lawsuit.

5. IT MUST BE TRUE IF YOU READ IT IN THE PROVINCE

Maybe. Maybe not.

Do you read Condo Smarts in the Province every week? The Sunday, June 26, 2005 article by Tony Gioventu was headlined: Ignore the bylaws, you'll get burned".

The story was about a tenant in a strata corporation barbequing on his balcony which, unfortunately, resulted in melted vinyl siding of the building. The cost to repair will be "more than \$5,000" and a dispute has arisen, naturally, about who will pay for this damage. Mr. Gioventu concludes his story by saying "*Bottom Line: If you burn it, you pay for it*".

Oh really?

What about insurance? VCS posed the question to Mr. Gioventu and he back-tracked and blamed the editor for deleting his comments on insurance benefits. He also suggested that the matter of insurance in this case was moot since the strata corporation "*has a \$10,000 deductible because of the number of claims*". That amount in itself is remarkable but, in any event, misses the point. If the cost of repairs was higher than the deductible, would there be an insurance claim? For example, if the barbeque incident resulted in a major fire, would the insurance policy come into play? Yes, is the long answer.

Strata corporations must have insurance. It is a statutory requirement. If you need it, you use it. Strata councils, and Mr. Gioventu in this case, often overlook this concept and suggest that owners or tenants be held responsible for damages or at least the deductible portion of the insurance claim. That is not what the *Strata Property Act* says. It says that the deductible is a common expense of the strata corporation. The *Act* recognizes that the strata corporation may, at times, consider the owner or tenant to be culpable for damages so it also says that the strata corporation may litigate for recovery of the deductible. Litigate means going to court. It does not mean "add the amount to his account" or "tell him to call his own insurance company".



If all this is still hard to swallow, try this approach. Consider a fire or a water leak that emanates from within your strata lot.

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Please read: This is important. Very important.

6. LICENSING ARRIVES JANUARY 1, 2006

Our regular readers will recognize the topic headlined above and know the issue. New details are emerging as we get closer to touch-down, so we felt it very important to bring this matter to your attention. Although the direct focus of licensing is targeted at property management companies and their agents, there is a huge impact on strata corporations and strata councils. Do not for a moment think that “this is your problem, not ours.”

First, some background. The topic of licensing for strata property managers has been on the back burners for many years. We dug through our archives and found discussion papers as far back as the mid 90's. For one reason or another, the government was unable to finalize the details and create the law but all this has now been done and it is the law effective January 1, 2006. There are no further delays. This is a “done deal”.

Second, you need to know the philosophy behind licensing. The government believes that the licensing of strata property firms and agents is necessary - principally because a lot of money flows through our hands and, as always, whenever this happens, there are lots of opportunities for the bad guys to steal this money. The government also feels that licensing will mean better educated and trained personnel to ensure that strata corporations are administered in a manner consistent with the law, specifically the *Strata Property Act*. VCS has not agreed with these assumptions and we repeatedly made our views known to government officials; however, the decision has been made and we are not about to jump on our high horse and continue to argue the point. We recognize that the law has now been enacted, like it or not, and our duty is to comply with the law to the fullest extent possible. The task will not be easy for either VCS or its clients - i.e., strata councils.



The licensing protocol first requires property agents to take specific courses and pass examinations, following which licenses will be granted. There will be a one-year (2006) interim period during which existing property agents (meaning those who were employed for at least three months prior to January 1, 2006) will be granted a temporary license. If those persons do not obtain a proper license as of December 31, 2006, they will no longer be able to be strata managers/agents. Needless to say, this requirement will add to the stress and workload of such individuals through 2006. The cost for courses, time off from work, etc. is estimated at several thousand dollars per person and will be paid for (absorbed) by VCS.

Effective January 1, 2006, the cost for the license will be approximately \$1,500 per person per year. (The final fees have not yet been established.) The strata agents individually will not be required to pay these expenses and VCS will pay the fees on their behalf; however, VCS is unable to absorb these costs and they will have to be passed on to our clients. Yes, that means higher management fees over and above other "normal" increases. Remember, all this expense is required because the government feels you need protection and that licensing will provide it. It is interesting to note and remember also that the largest theft of money (over \$1,000,000) from a strata corporation was by a management company licensed under the *Real Estate Act*.

Leaving the cost issue aside, we now direct your attention to other "non-financial" matters arising from the new requirements which, by the way, flow from the *Real Estate Services Act (RESA)*. There are many, many new requirements and we cannot list all of them in this article. Over the next six months we will bring you segments from RESA which you need to know about. In this article, we start by giving you an overview.

As you know, the *Strata Property Act* contains certain specific requirements for strata council members and a multitude of do's and don'ts for strata corporations. There are no enforcement provisions in the statute other than going to court or arbitration. There are no fines or jail terms. It is essentially a self-policing statute and, if things go wrong, then it is up to an aggrieved party to seek remedies and redress through the court system (mostly the Supreme Court of B.C.). Rather than altering this protocol to ensure compliance with the *Strata Property Act*, the government is using RESA to achieve the same purpose but, instead of making the strata

corporation and/or council liable for breaches of the statute, the responsibility (liability) will rest on the shoulders of the management company and the strata agents.

Interestingly, in respect of strata monies, the people who actually handle the money are not required to have licenses. They are employees of the management company and the government is apparently satisfied that the controls placed on the management company itself are sufficient protection to the consumer. At VCS then, the person who administers over \$25,000,000 of strata corporation money will not be required to have a licence. Property agents - the people that you deal with on a day-to-day basis will require a license even though they do not handle any money.

There are, as you well know as a council member, many requirements in the *Strata Property Act*. If any of these requirements are not met, after January 1, 2006 the strata agent and VCS is responsible and will be held liable for compliance. If there are violations, the strata agent (i.e., your property manager) could lose his/her license or be fined. The same applies to VCS as a company. Think about this for a moment. What has evolved here is a mechanism for compelling compliance with the statute - a very clever mechanism which avoids altering the *Strata Property Act* to make strata councils and corporations from being held culpable. The strata management industry will now have to police the *Act* and, if it fails to do so, it will be the companies and their staff that pay the price. Insurance will be required to protect against the potential financial consequences of any such actual or alleged non-compliance. The cost for such will have to be built in to the fees charged by the strata management companies.

What follows now are some common examples of non-compliance:

1. "Bank" accounts which do not separate operating funds from Contingency Reserve Funds.
2. Insurance policies for less than appraised values for replacement cost.
3. Overspending of annual budgets.
4. Non disclosure of engineering reports.

There are other examples and, as stated at the outset of this article, we will give you more specifics in future articles between now and December. Let us, for now, examine the four examples above.

1. "Bank" Accounts: This is not likely to be much worry as most management companies are maintaining separate accounts. VCS arranges for separate accounts and none of our clients direct us otherwise.
2. Insurance Policies: The *Strata Property Act* requires that a strata corporation be insured for replacement cost. The only way to establish that amount is to have an appraisal done. Some strata councils choose not to do this for one reason or another. The net result is that a strata corporation may well be underinsured. Under RESA, effective January 1, 2006 the property agent (and VCS) will be culpable for this violation of the *Strata Property Act*. VCS, as will any and all responsible management companies, will have no option but to proceed contrary to council's instructions or "walk-away" from the contract. This process will, of course, become visible to the general ownership of your strata corporation and council will be placed in a poor light. Indeed, if VCS should quit and a new management company is hired, nothing really changes as the new management company will also be obliged to enforce the *Act* or walk away.
3. Overspending: Well, same story as above. Councils routinely spend money in contravention of the *Act*. If this should happen, is it reasonable to assume that VCS would not act on your instructions and award contracts as decided and directed at council meeting?
4. Non-Disclosure: Your council gets an engineering report that says you have bad pipes or that your building is likely a "leaky condo". Council says "*Let's just set that report aside and we'll deal with it later. If an owner asks for it, tell them it does not exist or if it does, they cannot see it.*" Guess what the new protocol is per RESA on January 1st?

So isn't all this just dandy. Talk about a new way of doing business. VCS just became a police force and, if you do not comply with the *Strata Property Act*, it is our responsibility to act in contravention of your directions and/or to resign. If we resign, you will, of course, hire a replacement management company but is that a solution? Any company taking over will be



advised of the circumstances so you will be right back where you started - meaning that you have to comply with the statute.

Enough for today. In next month's article we will write about the process that will occur if one of your owners does not like a decision you make. Hint...they will file a complaint with the Real Estate Council against the licensed property management company and the strata agent. Please stay tuned.