



## FEATURES THIS MONTH

1. Licensing: A Heads Up for January
2. The Cost of Licensing
3. Principles Can Be Pricey

## 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. LICENSING: A HEADS UP FOR JANUARY

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As stated in our previous bulletins, we want to alert you to the new way of doing things come January 1, 2006. Strata management companies and their property agents will have to be licensed and, as part of that protocol, the firm and its employees will be accountable to the Real Estate Council of B.C. Any violations of the licensing regulations will result in disciplinary action which may conclude with fines or loss of license. You need to know and understand that this could occur (amazingly) even if the breach of the *Strata Property Act* is done by you - the strata council - and not by VCS or the property agent.

Give this some thought for just a minute. The strata council does something (or not) which violates the *Strata Property Act*. VSC and/or the agent could be fined and/or lose its license to operate. Is this type of situation likely to occur? Will VCS and its assigned agent allow itself to get caught in that trap? Not likely, eh? So, effectively and cleverly, the government has made strata management companies de facto police officers.

On a daily basis we see violations of the *Strata Property Act* by strata councils and, given the above-stated consequences, we are advising you that councils must live and abide with all aspects of the *Strata Property Act* whether or not you like, understand or agree with it. You have no choice because VCS will have too much to lose if you do not accept the new rules.

Today we will give you an excellent and typical example of a violation. Try this on and see how it fits.

Your strata corporation has an annual operating budget. You must spend only in accordance with that approved budget. The SPA allows you to exceed that budget either by virtue of Section 97 and 98 or by virtue of a specific bylaw you may have enacted in accordance with those sections.

Note:

### 97 Expenditures from operating fund

The strata corporation must not spend money from the operating fund unless the expenditure is

- (a) consistent with the purposes of the fund as set out in section 92 (a), and

- (b) first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or authorized
  - (i) in the budget, or
  - (ii) under section 98 or 104 (3).

For the purpose of this article, the reference above to section 104(3) is not relevant; however, the reference to Section 98 is critical. Note Section 98, in part, states:

**98 Unapproved expenditures**

- (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.
- (2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is
  - (a) less than the amount set out in the bylaws, or
  - (b) if the bylaws are silent as to the amount, less than \$2,000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

The reference in subsection (2) to subsection (3) is in respect of emergency situations which is not relevant to this article. We will deal with emergency expenditures in a subsequent article.

As stated above, strata councils are routinely violating the *Act* insofar as spending within the limits of the annual budget. You are getting away with it, luckily, because the vast number of owners do not pay attention to what goes on. The same apathy that drives you crazy in many respects also works to your advantage in situations where you violate the law.

It is not uncommon for VCS to receive letters or telephone calls from disgruntled owners on this topic (i.e., "my council has overspent the budget"). In many cases these persons are the ones that you dislike the most and consider to be a pain in the neck. Maybe so, but they are correct and invariably they demand that VCS do something about it because VCS works "for all owners not for the council". This is exactly what the licensing protocol is all about starting January 1, 2006. These owners will file complaints with the Real Estate Council of B.C. and that governing body will



look to the management company for answers. Under the new regulations we are accountable and it will be no defence to say we were following council's instructions.

So you see good clients, VCS and your property agent has much to watch out for in January and you have to abide by the law, all the time and in all respects. If you make a decision at a council meeting to spend money which violates Section 98, we will have to refuse to carry out your instructions. Won't that be just delightful?



## 2. THE COST OF LICENSING

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In recent bulletins we have stated that the cost of licensing (effective January, 2006) will be an added expense to our clients. At this time we do not know the exact costs but by mid-fall we expect to have some hard numbers.

Some strata councils objected to our statement that they would essentially be charged directly for these expenses. It is VCS' view that an open, full disclosure approach would be preferable to "burying it" in the management fees - at least for the first year or two. In other walks of life today we see certain costs being added to customer invoices. Most garbage removal contracts have fuel surcharges added every month. Buy an airline ticket and note the fuel surcharges, security fees, etc. which are separately identified. This approach is becoming quite common.

For any client who "objects" to being assessed the cost of the new licensing regime for property management, we are prepared to factor that cost (ie "bury it") in the monthly management fee. We did feel, however, that seeing it out in the open is a much better approach. It is entirely up to you.

Some strata councils have also expressed concern as to why their strata corporations should be charged in any event, buried or open. That is a very good question and we are happy to answer it. VCS has been in business for over 25 years and has never required such licensing. When we quoted on new business, we naturally did not include any cost to the client for something which was unnecessary. As of January, 2006 licensing is necessary and we have to recover the cost. We hate to do it and we are quite aware that customers do not like paying more for the same service; however, we have no choice. We are simply unable to absorb the cost of the new government scheme.

As noted above, once we know the costs in the fall we will let you know.

### 3. PRINCIPLES CAN BE PRICEY

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Often disputes within strata corporations revolve around issues of “principle”. How many times have you encountered, or even been right in the middle, of one such dispute? It is critical in such situations, though difficult in practice and thus the impetus for this article, not to lose sight of the forest for the trees. Too often we see the opposite happening.

We urge council members to continually remind yourselves of the Golden Rule, which is that you must “act in the best interests of the strata corporation” you serve. The strata corporation is of course the collection of owners within it. So, ask yourselves, firstly, in a given situation what the *owners’* best interests are (not what your personal interests or opinion may be), and then what course of action will be likely and objectively to result in those interests being protected.

In our experience, owners often think in much more pragmatic terms than strata councils. What is the cost versus the expected benefit, they want to know? Councils, on the other hand, can sometimes get so fussed over issues of “principle” and concerns about “setting precedents” that they follow a course of action that may ultimately become very hard to characterize as having turned out in the best interests of the strata corporation.

Typically, these sorts of situations involve lawyers. At \$300 or more per hour plus disbursements, plus taxes, it takes little more than the blink of an eye before a bill for \$1,000 has been presented. Most strata corporations budget nothing for legal expenses, so unanticipated spending results. Owners do not like spending, and that is especially so when it is unanticipated spending that might reasonably have been avoided. Perhaps a good rule of thumb is to ask yourselves as council members if you would refer a given dispute to a lawyer even if you had to pay him or her out of your own pocket.

Two specific examples illustrative of the point being made in this article come to mind. In one, the strata corporation incurred several hundred thousand dollars in legal fees in a fight with an owner who was feeding birds on his balcony in contravention of a bylaw, and refused to reimburse the strata for a few thousand dollars spent on in-suite plumbing repairs. Some of these legal fees were ordered paid by the owner, but he has deep pockets and keeps appealing pretty well every decision that is rendered. Further, the legal “costs” an unsuccessful litigant can be ordered to



pay the successful party are very different from the actual legal “fees” that will have been paid. So, any way you look at it, this strata was out of pocket a substantial amount of money, and was embroiled in a series of nasty legal battles over many many months. Will the council behind that fiasco be re-elected? We doubt it.

The second involves the payment of over \$20,000 in legal fees, before even getting to trial, to fight a claim that the plaintiff has offered to settle for \$10,000. Council didn’t even bother to counter offer. In other words, this matter could have been settled for less than \$10,000 (with a disclaimer and release wherein the strata corporation could have expressly stated that it was not admitting any responsibility or fault), but council has concluded that it is in the best interest of their owners to spend two or three times that much fighting it, without any guarantee that they will even win the battle or the war at the end of the day. You’re scratching your head. So are we.

We urge councils to look at such matters much as insurance companies do. Their shareholders, like your owners, want to know how much money was earned and how much spent. It doesn’t matter to them if all claims paid were strictly proven. What matters is whether paying a given claim was the most cost effective way to deal with it. If it will cost them \$5,000 to settle, without any admission of liability, and \$10,000 to dispute it, even if the insurance company is confident it can win the law suit, they will pay the \$5,000. We understand that the City of Vancouver, using the same logic, will often contribute \$5,000 to a leaky condo law suit in which they are named as a defendant, just to make the matter go away. By doing so they do not admit any liability, in fact they expressly deny it, but they see this as the most cost effective way to deal with it.

Makes sense, doesn’t it?