



FEATURES THIS MONTH

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3. Insurance Costs for 2006
4. CCI - The Canadian Condominium Institute

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: THE NEW REALITY

As you know, licensing for strata management companies is law effective January 1, 2006. If you have been reading our previous articles on this topic you also know that the new law (*The Real Estate Services Act* or "RESA") places some responsibilities on the shoulders of management companies such as VCS to ensure that its clients follow the *Strata Property Act*. We are not always able to control our clients; however, this is the new reality and VCS will be doing whatever it can, whenever it can, to ensure that clients (strata councils) do, in fact, follow the law. It will be very interesting to see just how easy this will be for VCS when a client ignores our advice.

In theory, if a strata council acts in breach of the *Strata Property Act*, VCS should not be a party to that conduct. If it is, VCS could be disciplined, fined or lose its operating license, clearly not something we relish. Nevertheless, there are many, many aspects about strata corporation administration that can lead to accusations that the law has been violated. Let us start with a simple example - a bit simplistic but it serves the purpose. A strata council does not agree to insure the strata corporation. Clearly that is not only an obvious breach of the *Strata Property Act* but also it places at risk the investment value of all the owners and mortgagees. In such a case, VCS would place insurance coverage despite instructions from the strata council to the contrary. VCS obviously could not allow a property to be totally uninsured despite what a council might direct.

Consider now, however, another example which is not quite as clear cut. A strata corporation is currently insured for \$50,000,000 based on the last appraisal (two years ago) for replacement value. The strata council does not want to spend the money to renew the appraisal program and several years go by with the property still insured for only \$50,000,000. In all likelihood, by now, the actual replacement value is in excess of the insured value; therefore, the strata corporation is "uninsured" for the difference. With escalating construction costs these days, let us say the difference to actual replacement cost could be \$5,000,000, a significant shortfall. What does VCS do in this circumstance? The strata council says "do not do an appraisal" but the reality is that it should be done. Does VCS get it done anyway and incur the wrath of the council?

Who will pay for the appraisal? VCS or the strata corporation? The additional coverage (i.e., \$5,000,000) will mean an increase in the premium. Who will pay for this coverage? Again, one is tempted to say that such an example is a bit extreme - it is not likely to happen. Hmmmm.

Turn now to a scenario which is very common and not an extreme or odd example, i.e., spending within budget. We apologize in advance if we step on your toes but this violation is in our opinion the second most common violation of the *Strata Property Act* by most of our clients. (The first is the charging of insurance deductibles to owners). Strata corporations have annual operating budgets which are approved by the owners at Annual General Meetings. With some exceptions, a strata council can normally only spend money consistent with that budget. (The exceptions are genuine emergencies, or where bylaw provisions permit latitude for excess spending beyond the statutory limit of the lesser of \$2,000 or 5% of the budget).

When strata councils recognize that they are exceeding budget limits, it is often said that "*we can't stop now in the middle of this job*" or "*this is urgent - it really needs doing*" or "*this place looks like hell - we need to fix it up*". Probably, all these and other rationales are true but it does NOT permit a council to violate the *Act*. Recently, when we advised one strata council that they were well over their spending authority, the President asked sarcastically "*What are we supposed to do?*" Good question. The answer is "*Call a meeting of the owners and seek approval to spend more money*". The President replied that the owners probably would not approve further spending - especially since it would mean a special levy. He is right but that does not justify continue spending and running a deficit. Furthermore, creating a deficit does not really solve the problem. All it does is postpone the inevitable task of going before the owners to ask for money to liquidate the deficit.

In this particular strata corporation, the VCS property agent had for the past six months diplomatically urged the strata council to slow down and watch the budget. His efforts were to no avail and, as a consequence, VCS management drafted a letter to the owners to advise them of their strata council's conduct. The draft letter to the owners was sent to the strata council in advance as a courtesy and in an effort to get them to listen. The reply from the strata council President: "*You send this out and I will consider the management contract (with VCS) terminated immediately with prejudice.*" Ah, the new reality.



We obviously cannot speak for other management companies in the strata industry; however, VCS takes the position that, if we lose an account, so be it. As far as we are concerned, the law is the law and, although we do not believe that the management company as agent, should be responsible for clients who ignore the law, that indeed is the new reality and we are not prepared to run afoul of the law. Being disciplined by the Real Estate Council is embarrassing. Being fined by the Real Estate Council is costly. Having our license suspended by the Real Estate Council is unacceptable. Given these potential nasty outcomes, it is our intent to comply fully with the RESA effective January 1, 2006. We are "practicing" now and the above example shines some light on what strata councils might expect.

One council member commented that VCS ought not to be so concerned about the consequences of spending violations as it is unlikely a strata council would file a complaint with the Real Estate Council about the fact that the council had overspent the budget in violation of the *Strata Property Act*. True, but the complaints are likely to flow from condominium owners who are not council members. These owners will be ones to file complaints with the Real Estate Council when they are asked to pony up another assessment as a result of council overspending. These owners have every right to object to any additional levy; however, they can only file a complaint against the management company - not their strata council. There is no provision in the RESA for an owner to file a complaint against the council - the precise people who might violate the statute. The management company is the licensed, regulated entity that will be the target for such legitimate complaints. There will be little defense value in saying that "*we were only following instructions.*"

The above example deals with monetary matters but there is a range of other non-monetary issues that cause owners to get upset. Attached is a copy of a letter recently received which illustrates again how some owners will react if they do not like the decisions of their strata councils. Can't you just see this type of complaint being lodged with the Real Estate Council?

Interesting stuff eh? Time to do things differently. Get ready for January 1, 2006.

2. A BYLAW IDEA

When a strata lot sells, it is necessary for the vendor to obtain from the strata corporation a Certificate of Full Payment - called a Form F. This document essentially provides assurance to the purchaser that no money is owing to the strata corporation in respect to that particular strata lot, or that if any money is owing, arrangements satisfactory to the strata corporation have been made regarding payment. Registration (conveyance) cannot take place until the strata corporation provides such a document (except in the case of a transfer of title on foreclosure).

VCS, of course, acts on your behalf and when we receive a request we naturally ask a wide variety of questions to ensure that the records of the strata corporation are properly updated. In virtually all cases, the requests for these Forms come to VCS from lawyers or notaries acting on behalf of the buyers and/or sellers and the processing of the Forms is done efficiently for the benefit of all concerned. One of the prime questions we ask the lawyer or notary is "Who is the new owner?"

Recently, in one of the routine calls, that question was asked and the lawyer refused to provide the information, stating that he did not have to divulge that detail since, under the *Strata Property Act*, an owner has a right to ask for a Form F - there are no conditions or stipulations in the statute that go along with such a request. The lawyer was correct although you must wonder why anyone would want to be so uncooperative. He filed a complaint with the Superintendent of Real Estate who in turn filed a complaint with the Real Estate Council (sigh!). Our staff was able to obtain the name of the purchaser by contacting the current owner and the Form F was provided to the lawyer as requested.

The incident prompted us to see if the bylaws of this particular strata corporation had any provision to address this type of situation. We were horrified to read their bylaw which states:

"An owner shall notify the strata corporation of any change of ownership of the strata lot within two weeks of that change."

Yikes! That is not a very good bylaw. Indeed, we checked some other bylaws and found either similar wording or no bylaw at all. Accordingly, we are recommending to all our strata



corporations that, at the next opportunity (SGM or AGM) the following bylaw be proposed and enacted:

"An owner must notify the strata corporation forthwith of the date of sale of his or her strata lot and the name(s) of the new owner(s)."

You are welcome to use this wording; however, the above-noted bylaw is not offered as legal advice or direction. Your strata council is encouraged to obtain independent legal advice in this matter. Either way, we strongly urge you to implement a bylaw that will give your strata corporation some protection from this type of bizarre incident related above, albeit rare.

3. INSURANCE COSTS FOR 2006

At this time we have received no indication that insurance premium rates will be increasing for 2006. As always though, be prepared for possible increases because, in addition to natural disasters, mega fires and the usual perils of property, unstable world politics can suddenly change the current dynamics. We have a long way to go to December 31st in the context of insurance premiums at renewal; however, at this time VCS is suggesting to clients that the 2006 (2006/07) budgets be increased by at least 10% for insurance premiums.

Rising construction costs also suggest that strata corporations ought to be budgeting more for insurance premiums in 2006. We mentioned this matter in a previous bulletin, but we just came across an article of interest that we want to share with you. We quote from a recent report issued by Suncorp Valuations Ltd. on this topic.

“Expect significant cost increases over the previous appraised values contained in your valuation reports, because of:

- *High steel prices, driven in part by massive demand from the construction boom in China*
- *Increasing labour costs due to local construction boom and shortage of skilled trades*
- *General material cost increases (concrete, wood panels, etc) due to strong demand*

Construction inflation is likely to remain as interest rates remain relatively stable and we move closer to the Olympics in 2010.”



4. CCI – THE CANADIAN CONDOMINIUM INSTITUTE

CCI has been in existence across Canada, with the exception of B.C., for the past three decades. A Vancouver chapter was formed a few years ago, so the organization is now truly national in scope.

CCI is a non-profit organization whose purpose is not unlike the Condominium Home Owner's Association of B.C. (CHOA). The principal difference is that CCI is national in its scope, rather than provincial. Some issues and topics do overlap, but there is room for both organizations in B.C. and Vancouver Condominium encourages its clients to join both. The annual membership fee for CHOA is \$5 per unit (with a minimum fee of \$55 and a maximum of \$550). The annual membership fee for CCI is \$110 per strata corporation.

If you need further information on CCI, you may contact the organization at:

Suite #1700 - 1185 West Georgia Street
Vancouver, BC
V6E 4E6
Attention: Jamie Bleay

We also refer you to the web sties of the National and Vancouver organizations, respectively, at:

<http://www.cci.ca/>

<http://www.cci.ca/vancouver/>