



FEATURES THIS MONTH

1. Repair and Maintenance to Common Property
2. More Grow-Op Hassle
3. Earthquake Preparedness Heads Up
4. AGM/SGM Registration Sheets

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. REPAIR AND MAINTENANCE TO COMMON PROPERTY

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Is it practical and legal to make individual owners responsible to repair and maintain common property? Strata council members frequently ask this question when they are considering revisions to the strata corporation's bylaws. The following is a discussion about the legal and practical considerations involved when deciding whether or not to make an owner responsible to repair and maintain common property.

Often times, as a cost savings measure, strata councils propose bylaws making owners responsible to repair and maintain common property. For instance, instead of paying for a built-in sprinkler system, some strata corporations create bylaws making owners responsible to water the landscaping that surrounds their strata lot. Other strata corporations, concerned about the cost of replacing hundreds of windows with broken seals, create bylaws providing that individual owners can upgrade their windows at their own cost.

Leaving aside the legal question of whether or not an owner can be made responsible to repair and maintain common property, on a practical level it may not always be desirable to do so. Certainly, strata corporations should control the quality and timing of repairs that affect crucial building systems, such as the building envelope. For instance, sometimes owners are responsible to repair and maintain the balconies adjacent to their strata lots. If the balconies are not repaired and maintained properly, this may affect the building envelope. However, sometimes it can be very difficult to tell whether a problem arose with the balcony or with some other part of the building envelope. If an owner fails to properly maintain and repair a balcony, further damage to the building may result and eventually the strata corporation may incur a very large repair bill. Also, it may be very difficult for a strata corporation to successfully claim damages against a developer for negligence unless the strata council has knowledge of who else has worked on the building and unless this additional work has been done to an acceptable standard. Consideration must be given as to whether or not the work done by owners will affect any warranty that the strata corporation has on the building.

Especially in older strata corporations, patios and balconies are often included as part of the strata lot. Ordinarily, individual owners are responsible to maintain and repair their strata lot, including patios and balconies contained in the strata lot. Strata council members of these strata corporations may want to consider, for the reasons set out above, creating a bylaw that gives the strata corporation the responsibility for some of the repair and maintenance to these patios and balconies.

On October 11, 2001 section 72(2)(b) of the *Strata Property Act* came into force and effect and several changes were made to the Regulations. Section 72(2)(b) of the *Strata Property Act* originally provides that:

The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of ...

- (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.

The Regulations to the *Strata Property Act* are currently silent regarding section 72(2)(b). However, section 292(2)(j) of the *Strata Property Act* allows the Lieutenant Governor to make regulations identifying common property the repair and maintenance of which may be made the responsibility of an owner under section 72(2).

As a result, it is still unclear under what circumstances an owner can be made responsible to repair and maintain common property that has not been designated as limited common property. Section 5 of the Standard Schedule of Bylaws to the *Strata Property Act* deals with alterations to a strata lot. These alterations may involve alterations to the structure of a building and/or the exterior of the building, in other words, they may involve alterations to the common property. Although the strata corporation must not unreasonably withhold its approval for such an alteration under this section, the strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration. This section lends support to the proposition that an owner can be made responsible to repair and maintain common property in certain instances.

One way of ensuring that an owner can be made responsible to repair and maintain common property is to designate the common property as limited common property. This works well in certain circumstances. For instance, the landscaped area around a strata lot can be designated as limited common property, but the designation is not designed to be used for features such as windows.

Another way of dealing with the issue is for the strata corporation to impose user fees for the use of common property or common assets. Under section 110 of the *Strata Property Act* and section 6.9 of the Regulations, strata corporations may impose user fees for the use of common property or common assets if the amount of the fee is reasonable and the fee is set out in a bylaw or alternatively in a rule that has been ratified.

The issue of an owner being made responsible to repair and maintain common property is dealt with in the Standard Schedule of Bylaws to the *Strata Property Act* ("Standard Bylaws"). Under the Standard Bylaws, the strata corporation is responsible to repair and maintain the common property, with a few exceptions. The strata corporation is also responsible for the repair and maintenance of limited common property that, in the ordinary course of events, occurs less often than once a year and in some circumstances is also responsible to do repair and maintenance of limited common property that is ordinarily required more frequently.

It should also be kept in mind that owners who negligently damage common property may be responsible to pay for the repairs to it, subject to the proper application of insurance proceeds and the proper treatment of insurance deductibles.

This article is meant to be used for discussion purposes only and should not be construed as legal advice. Strata corporations considering making amendments to their bylaws or allocating responsibility for repairs and maintenance to an owner or the strata corporation are encouraged to seek legal advice on their particular situation.

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2. MORE GROW-OP HASSLE

Bad enough having to deal with the punks who use their strata lots to grow marijuana and/or operate clandestine drug labs but now, inevitably, local governments have also weighed in with new bylaws that affect you. At present, the new bylaws/policies vary from one municipality to another; however, the theme is consistent and essentially everyone is heading in the same direction. Here is a list of the possible consequences:

Periodic, surprise inspections by municipal staff that could result in notices to remedy and/or demands to shut off water or electricity. (Not easy in a strata corporation.)

Owners may be asked or forced to repair and remediate. Sounds simple, eh? The strata lot owner (resident or not) has to comply and pay for the work but who takes responsibility for adjacent common property?

Re-Occupancy permits may be required. This would be the strata lot owner's problem.

Landlords (i.e., non-resident owners in strata corporations) must inspect periodically and also must inform new tenants of past grow-ops or drug labs.

Municipal costs can be added to taxes.

Penalties will range but can be as high as \$10,000.

While it is true that most of the above requirements fall on the shoulders of non-resident owners, VCS nevertheless urges strata councils to be cognizant of the problem. You can be sure that a municipal inspector or authority will care less about the distinction between strata lot property and common property. To them, it is just one property. Even if it can be shown that a specific problem is a strata lot issue, your strata council and the property agent might have to jump through many hoops and incur costs just to prove the point.

There are, of course, no absolute solutions; however, VCS proposes that a bulletin be sent to every non-resident owner with the monthly meeting minutes to make it abundantly clear to non-resident owners that they are responsible to inspect their premises and that the strata council will hold them responsible for any costs incurred by the strata corporation, if necessary. The following is our recommended bulletin:

ATTENTION NON-RESIDENT OWNERS

Do you know for sure that your tenant is not using your strata lot for a marijuana grow-op or as a clandestine drug lab? Far fetched? Possibly not. Once a month VCS learns of such usages in buildings it manages. So take heed.

Conduct periodic inspections of your strata lot to ensure this is not happening. Virtually all municipalities now have bylaws making you responsible for such illegal activities and you can be fined - in some instances as much as \$10,000 - for violations. Also, if your strata lot has been used in this illegal manner and remedial work is required to the strata lot and adjacent common property of the strata corporation, you will be responsible for the costs. You will also be required to disclose information to the next tenant and, if you sell your strata lot, you will have to disclose this information to any potential purchaser. Some municipal bylaws will require disclosure details to be registered on the title to your strata lot in the Land Title Office in order to alert subsequent purchasers and/or your mortgage lender.

Also note that insurance underwriters are now adding exclusions and/or significant deductibles to strata corporation policies for the consequences of drug labs, i.e., water damages, toxic moulds or spores, explosions, etc. Your strata council is unlikely to sit back and pick up the tab for such costs which could be considerable. In reality, you will be asked or sued for reimbursement.

So heads up.



3. EARTHQUAKE PREPAREDNESS HEADS UP

MEMO TO: Council

FROM: VCS

Last year, VCS issued a bulletin (see below) to all strata councils suggesting that it be included with the next council meeting minutes. As far as we recall, every strata council agreed with our recommendation.

In view of the recent events in the southern U.S. we felt that it would be appropriate to once again remind owners that they are "on their own". Please review this bulletin and advise if you have any objections to it being circulated again over the next few months.

* * *

WHAT YOU NEED TO KNOW ABOUT AN EARTHQUAKE

1. You are on your own. Do not count on your strata council or management company for assistance.
2. There is not a supply of food, water, blankets or other survival provisions stored anywhere on the property. You are on your own.
3. If there is natural gas service to your strata corporation there is no plan for shutting off the gas supply.
4. There are no arrangements for alternate living quarters if you are unable to return to your strata lot. You are on your own.
5. Depending on the severity of the earthquake, you may not be able to telephone/email the management company for assistance.
6. The contents of your strata lot, your automobile(s) and other personal property are not insured by the strata corporation. If you have made improvements to your strata lot, such improvements or betterments are not insured by the strata corporation either.

7. The strata corporation is insured for earthquake damage; HOWEVER, there is a deductible which means that there is no coverage for damages within that deductible. Generally the deductible is 10% of the value of the strata corporation although in some instances (i.e. Richmond) the deductible could be 15% or 20% of the value of the property. In most cases this will amount to millions of dollars. Your strata corporation does not have reserve funds available to meet such a huge deductible. Repairs will have to be funded by one or more special levies. These could be substantial.
8. There is NO government plan or fund to assist either you or your strata corporation. You are on your own.

While it would be nice to hear that there are plans and that there is a safety net, your strata council and VCS bring you the above information in an effort to alert you to the reality of an earthquake scenario. Accordingly, you need to develop your own personal plans for survival. Like many people, you will not be adequately prepared and that is "human nature". Please remember, however, that "You are on your own" is the only rule that counts.

For further information, visit the following websites:

Ministry of Energy & Mines (Gov. of BC)

<http://www.em.gov.bc.ca/Mining/Geolsurv/Surficial/quake/>

Ministry of Public Safety & Solicitor General

http://www.pep.bc.ca/hazard_preparedness/earthquake_preparedness.html

City of Vancouver Emergency Preparedness

<http://www.city.vancouver.bc.ca/corpsvcs/emerg/prepyourself/earthquaketips.htm>

Neighbourhood Emergency Preparedness Program

<http://www.city.vancouver.bc.ca/corpsvcs/emerg/nepp/NEPPworkshops.htm>

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4. REQUESTS FOR AGM/SGM REGISTRATION SHEETS

Following contentious annual or special general meetings, it is not unusual for the management agent to get requests from owners or council members for a copy of the sign-in, registration sheet. The request is usually premised on the idea that "it would be nice to know who attended" which then leads to a campaign for securing support in another round on the same issue. "Leaky condo" repair programs have generated a torrent of such requests since it is usually a very emotional topic. A few years ago, a non-legal "consultant" to strata corporations advised councils to always obtain the names of people at AGMs/SGMs and to record how they voted. *"If they vote against the ¾ vote resolution, you can sue them"* she advised. With respect, we don't think so, but that kind of advice gives rise to the frequent requests for the registration sheet.

VCS discourages the release of the registration sheet to all owners, including council members. The *Strata Property Act* does not address the issue. The closest authority can be found at Section 35 of the *Act* (Division 2 - Records) at Subsection (1)(a) which states that "the strata corporation must prepare all of the following records: minutes of annual and special general meetings and council meetings, including the results of any votes". The registration sheet is not part of the minutes, even though it is an adjunct.

To avoid debate, therefore, a strata corporation could create a bylaw to prohibit the release of the registration sheet to any owner including council members. This is achievable easily where there is a management company but it can also be workable for strata councils with only "financial management" or which are self-managed. A sample bylaw would read to the effect of:

Bylaw (): The registration sheet of all Annual or Special General Meetings of the strata corporation shall not be released to any owner, including council members, and the document shall be filed as a confidential document of the strata corporation.