



FEATURES THIS MONTH

1. Insurance Quotes
2. Meeting Protocol
3. Owner Enquiries - Pesky or Legit?
4. No Overdraft - No Argument
5. Cause and Effect - Where Does Property Insurance Begin & End?
6. Who Can Vote at an AGM or SGM?
7. Feeling Fine?
8. Bank & Credit Union Statements (And Investment Account Statements)

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.qp.gov.bc.ca/statreg/stat/S/98043_01.htm
- Vancouver Condominium Services: <http://www.vancondo.com>

1. Insurance Quotes

As you know from our recent bulletins, VCS only obtains quotations every three years. (In September we will initiate this protocol as 2006 is the last of the current three-year program.) Councils sometimes ask us to get quotes anyway, which is fine and we are happy to do so for you. A recent incident, however, is worth noting.

An owner suggested that VCS obtain an alternative quote from a large property insurance company that he works for - a well-known company in Vancouver. We did and were told by the General Manager that:

- (a) the present program with BFL Canada (Stewarts) is excellent and hard to match; and
- (b) there would not be much hope of competing with the BFL program on “one-ups”.

The manager indicated that strata insurance is a very specialized field and his firm, notwithstanding its size and dominance in general property insurance, would be very reluctant to pursue. He did agree though that, in September 2006 when VCS starts the tri-annual review, his firm would consider the opportunity.

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2. Meeting Protocol

In order to make your council meetings more efficient, here are some guidelines and suggestions:

1. Arrive on time so that the meeting can start at the scheduled time. If this is not possible, i.e. you expect to be late, advise your property agent or another council member so that the meeting is not held up pending your arrival.
2. Review materials received from VCS prior to the meeting rather than at the meeting.
3. Adopt the agenda at the beginning of the meeting. Any new business items should be added at this time.
4. Allow a speaker to complete what he or she is saying before you counter with your viewpoint.
5. Avoid dominating every discussion.

6. Allow for discussion, viewpoints; i.e., compromise.
7. Avoid separate conversations while the meeting is in progress.
8. Avoid the consumption of alcohol during the meeting.
9. The meeting should be considered a business meeting.
10. Set timelines for each business item.
11. Remember you are representing the entire strata corporation. Personal biases or interests should be set aside.
12. Avoid discussions that would begin with “I know this isn’t a strata issue....”

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3. Owner Enquiries: Pesky or Legit?

It does not happen all that often but, from time to time, strata councils are faced with the issue of having owners ask questions. It is sometimes obvious to distinguish those enquiries which are genuine (in the sense that an owner simply wants to educate him or herself) from those which are motivated by the desire to undermine or thwart council’s efforts. In the latter cases, strata councils often get their hackles up and resist complying with the owner’s request. We thought that this common experience might be good for an article.

As always, our first step is to see what the Act says. Section 36(1) *Access To Records* says:

- (1) *On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,*
 - (a) *an owner,*
 - (b) *a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or*

(c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).

Section 35, *Strata Corporation Records*, has a long list of what records must be maintained by the strata corporation and much of it is about accounting documents, strata plan data, bylaws and developer records.

Not included in the list are some common documents that strata councils create or receive. For example, the following are not in the list:

- Engineering surveys/opinions
- Legal opinions
- Quotations for new work

In respect of these three items, if a strata council does have such material on file, and an owner (or tenant) requests the items, is there an obligation to release it? On the face of it, the answer is “No”. Indeed, a strata council involved in some dispute may have a legal opinion to guide them in the dispute; therefore, releasing it publicly would be foolish.

Engineering opinions and reports usually contain vital and substantial information which could negatively impact the strata corporation financially. Such reports could also negatively impact the market value of individual strata lots. To release this information seems to fly in the face of common sense. Conversely, however, to withhold such information might very well lead to litigation against council members focusing on the concept of disclosure obligations. Accordingly, a strata council needs to tread thoughtfully and cautiously before declining to release such data.

In the third example cited above, should a council take a hard line when an owner requests copies of quotations for new work? Section 35 does not include a specific line requiring the release of this type of document, although a person demanding such documentation might rely on 35 (k) which states “*Correspondence sent or received by the strata corporation and council*”. Sure, it is stretching it a bit to call quotations “correspondence” but in this business it happens all the time.

Requests for quotations typically arrive in the few weeks before an AGM or SGM at which the strata council intends to present a $\frac{3}{4}$ vote funding resolution for owner authorization (either by

special levy or by a charge against the Contingency Reserve Fund). Prior to the meeting an owner objects and wants to scuttle the resolution by challenging the quotations on hand. This usually entails the owner obtaining his or her own additional quotes for presentation at the AGM or SGM. More often than not, these owner-generated quotations tend to be less expensive than the ones obtained by the strata council and the whole episode is designed to make the strata council and the management company look stupid. Also more often than not, these alternate quotations are not based on “apples for apples” criteria or they omit certain key elements about the quality or depth of the strata council’s proposition. In the topsy-turvy of general meetings, a highly vocal owner can make a shambles of the process.

But the question remains. Notwithstanding the scenario above, should a strata council release quotations in advance of an AGM or SGM on demand of an owner, even if it is not required by the Act. VCS’ advice is “yes”. If a proper process has been followed by council and management, you have nothing to hide. Therefore, in our opinion, it is better to release the material as requested. If you do have something to hide, then you are very likely in breach of your fiduciary duties to your strata corporation.

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4. No Overdrafts - No Argument

It is very important for you as a strata council member to remember that VCS cannot permit your trust account(s) to go into an overdraft. This is a requirement of the RESA. No overdrafts.

Prior to January 1, 2006 VCS would occasionally permit a client account to go into an overdraft. This would happen if a client’s operating fund was virtually zero and bills had to be paid at the end of the month. We knew that strata fees would flow in on the first of the next month so an overdraft for a few days was not a big deal. Coast Capital was comfortable with this arrangement because (a) it understood the above, and (b) VCS guaranteed to cover the overdraft.

Today, and from now on, this process cannot be relied on any longer. There are only three options if a client operating fund is at zero:

1. Do not pay the bills.
2. Borrow money from the CRF as a loan to the operating fund. (This is permitted, with certain conditions, by the *Strata Property Act*.)
3. Call an SGM and raise more money.

The option of not paying bills is not always a good choice. Contractors are entitled to settlement of their invoices, utility companies and other creditors can and do charge interest or late penalties, and employees (if you have) expect their paycheques. For this reason, borrowing money from the CRF to cover the temporary cash shortage in the Operating Fund is the best option.

One client recently chastised VCS for lending its CRF money to its operating fund. When we explained the problem and the RESA law, the council member said “*That’s your problem, not ours.*”

Well, actually not.

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5. Cause And Effect - Where Does Property Insurance Begin and End?

Questions frequently arise about the extent of a strata corporation’s insurance coverage in respect of repairs to the source of damage as opposed to the results. The following discussion is hoped to clarify the situation somewhat and is based on the Property (All Risks) Form of insurance

that BFL Canada Insurance Services Inc. has placed for the majority of our strata corporation clients.

A typical example of this is when flooding results from a burst or leaky pipe. In general, the damage resulting from the flood is covered, subject to specified exclusions. So, for example, repairs required to carpets, gyproc, developer installed built-in counters and cabinets will be covered, whether on common property or within a strata lot. Specifically excluded items include owner improvements, money, furs, jewellery, paintings and other personal property of the owner or tenant of the strata lot affected.

But, what about the repair of the pipe itself? The answer depends on the circumstances. Doesn't it always? The plumbing and piping systems within a strata corporation are part of the strata corporation's property and are covered by its Property (All Risks) Insurance policy. However, if the loss results from such things as an inherent defect in the pipe, wear and tear, faulty workmanship or normal deterioration, then there is no element of "accident" and repair of the pipe is not covered by the insurance. An extreme example of this, and the reason why it cannot be otherwise from the insurance industry's perspective, would be where a roof is 20 years old and hasn't been properly maintained, and starts to leak. The roof will not be replaced by the insurance company at its cost in such circumstances, though the damage caused by the leaks will (subject to specified exclusions). Another case would be where the piping system is defective and starts to spring leaks throughout the building. Again, the strata corporation's property insurance policy will not cover replacement of the entire piping system, just as it does not cover repair of the building envelope in the case of a "leaky condo".

On the other hand, if the leak is caused by someone accidentally damaging a pipe and causing a leak when hammering a nail into the wall, for example, or if someone accidentally knocks off a sprinkler head when moving a piece of furniture, repair of the pipe should fall within the ambit of the insurance policy, as would repair of the resulting damage (again, subject to specified exclusions). Of course in such cases the insurance company may in turn be able to recover some or all of what it pays out to its insured, the strata corporation, from the person who caused the leak or flooding, but that is a separate issue. If in doubt, check with your insurers.

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6. Who Can Vote at an Annual or Special General Meeting?

Where does it say that an owner who is in arrears cannot vote at an Annual or Special General Meeting? Under Section 53 of the *Strata Property Act*, the owners can create a bylaw denying an owner the right to vote:

53 Number of Votes Per Strata Lot

(1) *At an annual or special general meeting each strata lot has one vote unless different voting rights are set out in a Schedule of Voting Rights in the prescribed form in accordance with section 247, 248 or 264.*

(2) *Despite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring a unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).*

(3) *If, in accordance with a bylaw passed under subsection (2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).*

Look carefully at paragraph (2), the magic words are “*entitled to register a lien.*” A lien can be filed for non-payment of strata fees or special levies, reimbursement of the cost of work referred to in Section 85 of the *Strata Property Act*, or for the strata lot’s share of a judgment against the strata corporation. There are no guidelines stipulated in the *Strata Property Act* or the regulations about the amount that an owner must be in arrears before a lien can be placed on the strata lot. Section 116(1) simply states:

116 Certificate of Lien

(1) *The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:*

(a) *strata fees;*

- (b) a special levy;
- (c) a reimbursement of the cost of work referred to in section 85;
- (d) the strata lot's share of a judgment against the strata corporation;

Each strata corporation sets different guidelines as to the key dollar figure that would commence the process for placing a lien on an owner's account. Although in our experience, the rule of thumb is usually 3 months in arrears of strata fees or levies.

As mentioned earlier, the magic words in Section 53 (2) are *"if the strata corporation is entitled to register a lien against that strata lot under Section 116 (1)"*.

It is not good enough to just have a bylaw that states *"An owner may not vote at an Annual or Special General Meeting if that owner is in arrears of strata fees or special levies."*

The strata corporation must take it one step further and commence the process to file a lien on the owners account by meeting the requirements of Section 112(2), which reads:

(2) *Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.*

VCS interprets this to mean that in the case of strata corporations that have a bylaw such as is contemplated by SPA Section 53(2), owners who are in arrears at an AGM or SGM cannot be denied the right to vote, if they have not been served with a lien warning letter.

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7. Feeling Fine?

In a perfect world, residents would never be disturbed by excessive noise from neighbours, there would be no unscheduled late-night moves, pets would all behave, be quiet, and walk themselves (on a leash through the common areas, please) and owners and tenants alike would treat the strata corporation bylaws as a document worthy of worship. Alas, it is not a perfect world as someone always seems to think someone else is causing a nuisance or hampering the enjoyment of their unit. Sometimes the individual has a legitimate concern or complaint, and sometimes they have a personal agenda. The strata council must therefore work with and direct the management company to address violations of the strata corporation bylaws by way of the proper, equal and reasonable enforcement of the bylaws.

Unfortunately, strata councils often have a knee-jerk reaction in responding to bylaw violations (particularly when faced with an egregious offense) and promptly instruct the property manager to levy a fine immediately. While we often wish this were possible, this practice is essentially ignoring the *Strata Property Act* as there is, in fact, a list of criterion that must be met prior to the application of a fine to the owner's account.

The *Strata Property Act* deals with fines at Sections 129, 130, 131, 132 and 135, but we draw your attention specifically to Sections 129 and 135.

With respect to the options available to councils when faced with enforcing the bylaws and rules of the strata corporation, Section 129(1) (a) states:

129 (1) *To enforce a bylaw or rule the strata corporation may do one or more of the following:*
(a) impose a fine under section 130;

As we are addressing the proper application of fines, please note that Section 130 states, in part, that the strata corporation may fine an owner if a bylaw or rule is contravened by the owner, a person who is visiting the owner or was admitted to the premises by the owner or the tenant, or a person who is visiting the tenant or was admitted to the premises by the tenant. Simply put, if an individual within a unit or on common property has violated the bylaws, a fine may be imposed on the associated unit.

Now that we know who may be fined and/or held accountable, the important thing to consider (and the purpose for this article) is how a council goes about legally enforcing the bylaws and levying a fine to the owner's account. As noted above, there is a list of criterion that must be met prior to the application of a fine to the owner's account. Section 135(1) states, in part (paragraphs (b) and (c) are not specifically relevant to the levying of a fine):

135 (1) The strata corporation must not

(a) impose a fine against a person,

for a contravention of a bylaw or rule unless the strata corporation has

(d) received a complaint about the contravention,

(e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

(f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

Section 135(2) states:

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

And finally, Section 135(3) states:

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

So, as a strata council, you must ask yourselves, "Have we gone through the necessary steps prior to levying a fine?" Remember, the strata council must first receive a complaint, then provide the individual(s) involved (owner, or owner/tenant or landlord/tenant) with the particulars of the complaint in writing (allowing them time to answer the complaint and have a hearing with council, if requested) before the fine may be levied. It is excellent practice to send a letter upon receipt of the complaint advising the individual(s) of the complaint, the associated bylaw violation and warning of the alleged incident and the possible ramifications (fines to their account), and advising that they may meet with council to discuss the situation, if they so request. In this way, council can discuss the complaint at their next meeting and, if they agree the situation warrants, instruct the management company to apply a fine to the owner's account. Once this process has

been observed properly (per Section 135(3)), further fines may be levied if the violation continues (per Section 24 of the Schedule of Standard Bylaws, every seven days, or to whatever longer period your own might happen to specify).

If these steps are not followed, you risk having a fine invalidated and bylaw violations being flaunted without risk of financial consequence. Better safe than sorry, as they say.

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8. Bank and Credit Union Statements (And Investment Account Statements)

You have probably noticed that your monthly financial statement now contains copies of the statements from Coast Capital, VanCity and other financial institutions that may house your money. Investment account statements are also included.

Several clients have asked us why they are getting this material. Answer: RESA (*The Real Estate Services Act.*)

Several clients have asked us if the documentation can only go to the Treasurer instead of all council members. Good question. We asked the Real Estate Council for clarification on this matter and they have advised that yes, the bank statements can be sent just to the treasurer of the strata council.

We raised the yellow flag on all this bureaucracy over the past year or so, and many of our clients are aware of these requirements. Nevertheless, it is important to point out that all these protocols were created by the Provincial Government to protect you.



When reviewing the Coast Capital statements you may see a page that actually has photocopies of cheques we have written from your account. Puzzled? Here is the answer. The vast majority of your payments are done through a centralized computer system. These payments show up on the Coast Capital statement but without photocopies of the cheques. These cheques are issued through a VCS central clearing account (for efficiency) and then show up on your account statement as a transfer. Ideally we would like to have all cheques go through this process; however, we receive periodic, unscheduled requests for instant cheques (rather than the usual Friday computer cheques) and these are manual, handwritten cheques that are issued directly from your strata corporation account - not the VCS central account. Coast Capital has to add these manual cheques to your monthly statement. To do this Coast Capital has to photocopy the cheques and post them - that is why you see the page with copies of cheques.

* * * *

Ask Coast Capital how much extra work RESA has created for them also. On the receivable/deposit side, prior to January 1, 2006, VCS would typically do a weekly deposit of owners' condo fees, again for efficiency. Under RESA, VCS has to do daily deposits. So, instead of one deposit per week per strata to process, Coast Capital can now receive as many as five deposits per week per strata. Under RESA, if an owner walks into VCS and pays \$5 for a front door key, we have to deposit that money within 24 hours which is another deposit for Coast Capital to process. RESA was created by the Provincial Government to protect you. Protection does not come without a price - all of which you eventually have to pay.

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