



FEATURES THIS MONTH

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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. Builder's Reputation

According to an article, April 1, 2006, in the Vancouver Sun (Homes section) a builder's reputation is "issue No. 1" for condominium buyers. Oh, really? It all depends on how you ask the question, right?

The article reported on a survey taken by MPC Intelligence on behalf of the Cement Association of Canada. The author of the survey and resulting report, Jennifer Podmore, was quoted as saying among other things, "Consumers are looking for developers that can give them confidence in the product that they are buying."

While we are in support of such lofty ideals as this survey apparently reveals, our experience with thousands of condo owners is somewhat different. It has been our observation that most purchasers of new condo units in strata corporations have very little understanding or knowledge about the developers/builders of their strata corporations and invariably turn to their newly-elected strata councils and/or management companies for assistance to rectify a wide range of unhappinesses involving deficiencies, lack of follow-up service, etc. Indeed, even when and where lawsuits against developers are in progress by strata corporations, most condo purchasers are blissfully unaware of "builders' reputations".

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2. Cops and Robbers & Strata Corporations

Okay, see if you can spot the "bad guy" in the following story....

Recently one afternoon, a police officer from the Burnaby RCMP attended VCS and asked for the property manager of a large downtown Vancouver high-rise strata corporation managed by VCS. The officer explained that, due to the nature of the investigation afoot, he could not reveal too many details but the gist of the situation was that the RCMP were hot on the trail of some bad guys in the building involving "high-end, luxury vehicles". In order to facilitate their



investigation, the officer requested that VCS provide him with a key fob to permit access to the underground parkade of the building. Additionally, VCS must not tell the strata council about the investigation or the request for the key fob. The property agent refused. Following some discussion the officer then requested to speak to senior VCS management who also refused. The officer agreed to wait until the next morning in order to allow VCS to consult first with the strata council.

From time to time, VCS is approached by police forces from around the lower mainland requesting access to buildings managed by VCS. Sometimes we are actually requested to provide a master key to allow entry to a specific strata lot. It has been VCS policy to co-operate with any law enforcement officer when necessary but it is also our policy to not grant access unless a proper search warrant has been obtained and is produced. This rarely happens. Consequently police officers are generally not amused by our stance.

It is also VCS policy that we would never permit surreptitious surveillance of a property without first obtaining a strata council's consent. At the very least, it is VCS policy that the strata council must be informed of the proposed activity. In the case mentioned at the outset of this article, the RCMP officer enquired why we would want to do that (i.e., tell council) knowing that it might jeopardize the surveillance activity if council members were aware. He pointed out that "in any event, nothing will go wrong - we just want to watch". Actually, it strikes us that things can and do go wrong. What if guns went off? Surely in that event, the strata council would find out about the surveillance and we wonder how pleased they would be at VCS for not informing them in advance.

Is a strata council, its agent (VCS) or an employee or security personnel obligated to open doors without warrants? We are unaware of any case precedents in this area since neither we, nor any of our strata councils, have ever engaged a lawyer to offer a legal opinion.

About one year ago, the VPD had reasonable belief that the occupants of a west-end strata corporation managed by VCS were drug dealers and possessed an arsenal of guns and ammunition. VCS was not contacted but the VPD SWAT team went directly to the building which has a resident caretaker. As it turned out, it was his day off but he carried his pager and was downtown shopping. The SWAT team commander paged him and told him to remain where he was. A minute later a squad car pulled up, put him in the back seat and raced to the building, sirens wailing. He



was asked to produce his master key to open the door of the suspect's strata lot. The caretaker at this point was "shaking in his boots" and did as ordered. Can you blame him? Upon entering the unit, the Chief asked which of his team had the search warrant. Everyone looked at the next guy. They forgot the warrant. The unit was occupied by criminals and, sure enough, there were guns, ammo and all that scary stuff. (No one was home.) Did the act of the caretaker, an employee of the strata corporation, create any liabilities to the strata corporation by providing access without a proper search warrant? In this case, the criminals living there were not particularly concerned about this fine legal point so the matter ended, but what if the story had a different ending? What then?

We hope that our clients, i.e., strata councils, understand and support VCS in its policy of not providing blanket access to police officers without warrants and our policy that strata councils be kept informed of such police activities in advance. It is not because we want to be difficult or obstruct justice. It is because we believe in due process and proper protocol. If you disagree, please let us know.

Oh yes, and how did our story end about the Burnaby RCMP officer wanting a key fob and not telling the strata council? He had visited our office at 2:00 p.m. that day and agreed to contact us at 9:00 a.m. the next morning. We never heard from him again. Later the next day, the night concierge/security guard at the building filed his overnight report which stated that a Burnaby RCMP officer arrived in the middle of the night, flashed his badge and demanded access to the parkade. No problem. He was admitted by the security guard who was afraid to refuse.

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3. E-Mail Dilemma: We Need Your Help

Times have certainly changed with the use of e-mail. Whereas we used to have council meetings “once per month”, we now have council meetings once per week, sometimes once per day. This is leading to some real and perceived problems.

First, with the reliance and utilization of e-mail instructions there is frequently no decision by group consensus as normally happens at conventional council meetings where an issue is discussed, debated and voted upon by majority. At a council meeting, the strata property agent acts in accordance with decisions which are recorded in the minutes. These minutes are circulated to the owners and, importantly, form a part of the record of the strata corporation. With e-mail replacing this process, such decisions are frequently omitted from the next meeting and, of course, not recorded. We have observed that some very significant decisions of councils disappear from the radar as a consequence.

Second, it is not uncommon to discover that “decisions” are often made by a small group within the strata council and that not all council members have been consulted. We have numerous examples at VCS where some council members are surprised, even shocked, that we did something that they had no input on, or knowledge about, in advance.

Third, the strata agent is often directed via e-mail by one member of council to get quotes or do some other task when, in reality, the majority of his or her strata council is not even in favour of “going there”. Again, at VCS we have numerous examples of the agent being instructed to do certain things, or reallocate expenses on the financial statement, or pay an invoice, and so on.

So, good clients...we ask you to help us and help yourself also and avoid misuse of e-mail. Sure, if it is urgent we are happy to receive your instructions to act on something immediately. If it is not urgent, be prepared to have the matter added to the next agenda for full and proper discussion and minuting. When sending instructions to your strata agent by e-mail be sure to CC your fellow council members. They have a right to know what is happening.

Thanks for your help.

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4. Insurance vs. Repairs

There are two sections of *The Strata Property Act* that collide from time to time. They are Section 72, the duty of the strata corporation to repair and maintain and Section 149, the duty to insure. More on this shortly, but first a short, true story.

Late one recent Saturday night, a resident in a strata corporation managed by VCS fell asleep while smoking in bed. He escaped the resulting fire, which is good, but the townhouse unit was completely destroyed and several adjoining units were badly damaged. The cost for reconstruction was substantial, well over \$200,000, and all this expense, except for the standard \$1,000 deductible, will be covered by the strata corporation's insurance policy. At least that was the initial belief of the strata council and VCS. It turned out that there is one more aspect.

Once cleanup and restoration commenced, the construction crew discovered that the strata lot had asbestos in the attic - installed at the time of the original construction decades ago. Removal of asbestos is excluded from the strata corporation's insurance policy and the cost for this delicate task was estimated at \$30,000. Forgetting the aspect of the negligent smoker, who will pay this \$30,000? Is it a repair cost or is it an insurance deductible? Is it even a strata corporation responsibility versus the owner's responsibility? The questions do not end there. The asbestos was located in the attic of the townhouse. Is the attic common property or strata lot property? The site plans (1966) do not make any distinction. All in all, this is quite a difficult mess to sort out. It may very well end up in court where a judge will have to listen to arguments and then decide.

The incident does, however, alert us to examine the strata corporation's responsibilities. Section 72 states in part:

72 *Repair of property*

- (1) *Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.*

In the ordinary day-to-day administration of strata corporations, it is common for strata councils to budget for “R & M” expenses to cover a wide range of repair costs for common property such as roofs, exterior walls, parkades, plumbing and so on. Clearly for all strata councils, there is no need to budget for costs associated with repairs and maintenance within individual strata lots. For example, if an owner approached council and said “my carpets are worn out”, the council would not accept responsibility to replace them. The same thinking applies to various in-suite items such as appliances, plumbing fixtures, kitchen and bathroom cabinets, etc. Clear enough.

Yet, if an “incident” occurs such as a flood from a broken water pipe, or a fire caused by accident or by negligence, the strata corporation does, in fact, step in to fund the expense for repair. It does so because of Section 149, which states:

149 Property insurance required for strata corporation

(1) The strata corporation must obtain and maintain property insurance on

(a) common property,

(b) common assets,

(c) buildings shown on the strata plan, and

(d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.

(2) For the purposes of subsection (1) (d), "fixtures" has the meaning set out in the regulations.

(3) Subsection (1) (d) does not apply to a bare land strata plan.

(4) The property insurance must

(a) be on the basis of full replacement value, and

(b) insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

Moreover, Section 158 also prevails and requires the strata corporation to fund any deductible within an insurance policy. It states in part:

158 Insurance deductible

(1) *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).*

(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.*

It is important to remember that deductibles are imposed by insurance underwriters, not by the governing statute *The Strata Property Act*. As far as the *Act* is concerned, the strata corporation is responsible to insure. The fact that there is a deductible (as in the case of the somniferous townhouse smoker who created a \$30,000 bill for asbestos removal) is not a concern for the statute. The strata corporation is required to insure fully for replacement cost and, if that includes “self-insurance” as a consequence of a deductible or an exclusion from an insurance policy, then so be it. The strata corporation has to pick up the tab.

In the case at hand we will have to wait to see how a court might decide in this matter but, for now, we simply want to point out that, while the strata corporation has a duty to effect repairs and maintenance only to common property and not to strata lot property, the oddity is that it does simultaneously have a duty to insure not only common property, but also strata lot property. Interesting stuff!

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5. The Canadian Condominium Institute (“CCI”)

From time to time VCS sends you bulletins about CCI. This month we offer a few words of explanation as well as an excellent article (a “must-read”) which CCI National has graciously given us consent to reproduce.



CCI was started in 1982 and, as you will see from the next page, has accomplished much in its 25 year history. As a national organization, CCI has chapters in most province although the B.C. Chapter was only formed a few years ago by Gerry Fanaken, the CEO of VCS, and Jamie Bleay of the Access Law Group. Mr. Bleay has devoted considerable time and effort to developing the B.C. Chapter and, in fact, is now the Secretary of the National Board.

The CCI Vancouver chapter continues to build its membership although it is slow-going largely as a consequence of the very strong and effective presence of the Condominium Home Owners Association of BC - the provincial non-profit organization serving condominium owners and strata councils. Nevertheless, the Vancouver CCI Chapter is alive and well and, as you may know from other bulletins issued by VCS, is hosting a seminar on Saturday, May 13th at the Plaza 500 Hotel. This is a great seminar which highlights developing legal issues in B.C. The cost to attend is modest and attendees will “get their monies worth”. We hope you can attend. For more information you should contact Mr. Bleay at 604-801-6029.

Attached is the article mentioned above. It contains extremely valuable information and we urge you to read it. Although the law referenced in this article is federal legislation, and British Columbia has its own legislation, the content is very useful in understanding privacy issues. Our thanks to CCI National for granting us consent to reproduce this article.

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