



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

## 1. More And Mere Propaganda From VCS

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It all depends on your point of view we suppose. As a general rule, we receive very positive feedback from our strata councils about our monthly bulletins but, is it useful and beneficial to everyone? One of our strata council members (actually now an ex-client) categorized our bulletins as “useless garbage and mere propaganda”.

Your comments are invited. Please let us know if you agree with this viewpoint and, if so, what alternate type of information would be useful to you as a council member. Your feedback is appreciated.

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## 2. Interesting “Incoming” Missiles from Lawyers

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We want to share with you some recent missiles that flew in our door from lawyers acting on behalf of owners in strata corporations we manage.

The first one has to do with proxy votes. As you know, when VCS issues an AGM or SGM notice we include a proxy authorization form. The one VCS uses is quite bland, meaning that it is very generic and does not include “boxes” for owners using the proxy to tick off how they want a vote exercised on given resolutions. Many strata councils request VCS to modify the proxy to add these boxes as it is felt that this is reasonable and desirable in order to prevent abuse, misuse or misinterpretation of the owner’s intentions. In one recent case, the following (extract) was received from an owner’s lawyer:

*Should such method of voting be used at the upcoming Annual General Meeting or at any other meeting of the Owners of the Strata, our client has instructed us to apply to the Supreme Court under Part 10 of the Act for an Order preventing the use of such method of voting or such other remedy as the court deems reasonable and just.*

The lawyer stated that “*this method of voting is tantamount to mail-in voting which contravenes the Strata Property Act*”.

Section 56 of the Act states:

56 Proxies

(1) A person who may vote under section 54 or 55 may vote in person or by proxy.

(2) A document appointing a proxy

(a) must be in writing and be signed by the person appointing the proxy,

(b) may be either general or for a specific meeting or a specific resolution, and

(c) may be revoked at any time.

(3) The following persons may be proxies:

(a) only if permitted by regulation and subject to prescribed restrictions, an employee of the strata corporation;

(b) only if permitted by regulation and subject to prescribed restrictions, a person who provides strata management services to the strata corporation;

(c) subject to the regulations, any other person.

(4) A proxy stands in the place of the person appointing the proxy, and can do anything that person can do, including vote, propose and second motions and participate in the discussion, unless limited in the appointment document.

Councils, and VCS, need to walk cautiously here. In VCS' view (and this is not a legal opinion) there is nothing wrong with the format and protocol of having proxies with boxes for owners to indicate their voting preferences. In effect they are directing the proxy holder how they wish their vote exercised on the specific issues. (Note 56(1)(b) which suggests that a proxy can be for a specific resolution.)

What should not happen, and would give rise to a good legal argument, is if VCS or the strata council, instead of convening an actual meeting of the owners, just collects the proxies and

records the votes as if they were “mail-in” ballots. This is quite different and not what the Act contemplates.

Our second missile has to do with fines levied by strata corporations for late payment of strata fees or special levies. The common amount is \$25 per month, although some strata councils have fines ranging in amounts up to \$200. A recent letter from a lawyer on behalf of an owner in debt to his strata corporation for thousands of dollars raised an interesting point. The lawyer stated that, while the Provincial *Strata Property Act* does not allow for interest charges and fines, these allowances “do not supplant the *Criminal Code*” which is a federal statute. The lawyer went on to remind us that the Supreme Court of Canada has confirmed that late penalties do constitute interest. As such, a strata corporation’s practice of adding interest and fines might be violating the *Criminal Code* in respect of the criminal interest rate.

Is this lawyer merely blowing smoke as a good legal tactic to obtain some relief on a whack of fines sitting on her client’s account? We do not know of course and, at this time, we do not advocate that our strata corporations discontinue levying fines in accordance with the *Strata Property Act* and their bylaws. We do advocate common sense, reasonableness, equity and due process - meaning that owners being fined should always be given every opportunity to offer a defence. A proper and decent course of conduct by the strata council will be of immense value in defending a claim that you are in violation of the *Criminal Code*.

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### 3. Revisions to the *Strata Property Act*

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Do you have any sections of the *Strata Property Act* that really bug you? Let us know prior to August 31<sup>st</sup>.

There is no formal invitation or indication from the government that revisions are being contemplated; however, VCS is aware that the legislation will be reviewed in the coming year. The Act has been in place for six years now (since July 1, 2000) and revisions are necessary.

Send us your comments.

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### 4. What's In A Name?

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The *Strata Titles Act*, the *Condominium Act*, the *Strata Property Act*...what gives with all these names? We are, from time to time, asked for an explanation.

In 1966, there was no legislation governing condominium housing, but since this form of housing, already well established in other parts of the world, was emerging in B.C., the government of the day hired a Vancouver lawyer to develop some legislation. He relied on the *Strata Titles Act* of New South Wales, Australia and essentially copied that statute for use in British Columbia. (Elsewhere in Canada, condo legislation was based largely on California and Florida statutes, as well as some home-grown initiatives. No other province relied on the *Strata Titles Act* of New South Wales or *The Strata Titles Act* of Rhodesia, or other countries using that nomenclature.) So, in 1966, we ended up with the *Strata Titles Act of British Columbia*.

Of course, in reality the term "condominium" remained on everyone's tongue and by the end of the 1970s, the government decided to go with the flow and had the name of the *Strata Titles Act*

of B.C. changed to the *Condominium Act of B.C.* The word “condominium” never appeared once in the actual legislation. All references were “strata”.

Eventually, the statute was rewritten in the late 1990s (there had been no substantive changes since 1966) and the new legislation was destined to still be called the *Condominium Act* but this time all the content would have deleted the word “strata” and replaced with “condominium”. Makes sense right? Ah...but during the late 1990s the “leaky condo” crisis emerged and the government did not want to introduce brand new legislation which would have been associated with that disaster, so it was decided to leave the content as “strata” and the act itself was named the *Strata Property Act of B.C.*

Governments!

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## 5. Internet Banking and the RESA

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Well, it is not exactly “breaking news” but internet banking is not only here, its popularity will surely increase in coming years. VCS manages about 16,000 strata lots, and roughly 70% or about 11,000 of these strata lot owners pay their monthly strata fees by PAC - Pre-Authorized Cheque. Of the remaining 5,000 units, about half are paid by way of post-dated cheques and the balance (except for a few people who do not pay at all) are paid by regular cheque or cash. One owner pays every month with pennies because he is mad at his strata council.

We now have about 200 people who use internet banking. We expect this to increase steadily. You may recall a line somewhere in one of our articles that said the *Real Estate Services Act (RESA)* could not accept internet banking. Well this is breaking news, the legislation has been amended and internet baking is now permitted (whew!) with certain provisions, the key one being that the money, zapped via the net from an owner’s bank to the financial institution used by VCS, must be transferred to his/her strata corporation within three days.

If all this sounds a little convoluted and puzzling, follow along...When VCS receives payments from owners, i.e., cash and cheques and pennies, this money is deposited directly into your strata corporation's trust account at Coast Capital Savings Credit Union on West Georgia Street. PAC payments are also deposited directly into your strata corporation's account. These monies do not go into a central pooled account operated by VCS (the brokerage). This process is generally referred to as "pull banking". The PAC system "pulls" money from an owner's account into the strata corporation's account. Internet banking is the reverse - it is "push" banking. An owner (not VCS) controls the flow of money. He/she "pushes" the money out of his/her account every month but this money cannot be pushed directly into a strata corporation account. (To do that, a separate banking relationship would have to be set up between

each owner and his/her strata corporation at the Coast Capital Credit Union - an administratively cumbersome procedure.) Consequently, internet transfers ("pushes") go to one central account at Coast Capital but that, of course, creates a pooled trust account which is (or was until now) a "no-no" under the RESA.

Common sense has prevailed and the RESA now acknowledges "push banking". Consequently VCS and other management companies are free to offer internet banking privileges to owners. We have to ensure that this pushed money is quickly (within three days) transferred into the respective strata corporations' accounts.

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## 6. Insurance Costs to Skyrocket

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We again are compelled to alert you to the skyrocketing costs for insurance. We have received no notice of increasing premiums; however, the value of construction is going to create significant escalation of the cost to your strata corporation. An example is a large downtown highrise



building managed by VCS. The most recent appraisal shows an increase from \$77,000,000 to \$88,500,000 in one year!

If you are preparing your next budget, we strongly advise you to keep this trend in mind. Not all, but the vast majority of strata corporation insurance policies come up for renewal on December 31<sup>st</sup> so, if your strata corporation's fiscal year starts between now and January 1, 2007, be sure you pro-rate the number of months in 2007 to reflect a very likely significant insurance cost hike in 2007 as a consequence of construction values.

At this time, and this is no guarantee as things can change quickly, we are not expecting any significant increases in rates/premiums.

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## 7. Management Contracts and RESA

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SPA	=	The Strata Property Act
RESA	=	The Real Estate Services Act of BC
REC	=	The Real Estate Council
VCS	=	Vancouver Condominium Services Ltd. (the brokerage)

The RESA requires that there be a written service agreement between a strata corporation and a brokerage (in this case, VCS), unless the strata corporation waives such an agreement, which is highly unlikely.

The service agreement must contain a standard inventory of provisions including duration and charges and auxiliary charges (such as fees charged by the brokerage for forms, photocopies, etc.). The RESA, which is administered by the REC, originally required such service agreements to be in place by January 1, 2007; however, this deadline has now been extended to July 1, 2007. The reason for this is that the REC has not yet worked out all the very complicated details



required in these service agreements. This delay does pose problems for the management industry and for strata councils who are expecting new or renewal contracts with VCS.

The delay is inconvenient and regrettable but, unfortunately, until the REC has addressed every issue, we will all have to live with the status quo.

One matter which has been resolved has to do with the duration of a service agreement (management contract). Originally, the REC wanted a service agreement to be for a fixed term, meaning that a specific end date be enshrined in the contract, i.e., "December 31, 2009". Upon due consideration, the REC has agreed that the current industry practice of having indefinite terms is satisfactory since a strata corporation can terminate a contract pursuant to either Section 24 of the SPA (for new strata corporations less than two years old) or Section 39 of the SPA (SGM and  $\frac{3}{4}$  Vote Resolution). The REC accepts these statutory provisions within the SPA to meet the RESA requirement for "duration".

One issue which remains unresolved, but under review, has to do with retention of records. Under RESA, when a service agreement (management contract) terminates, the brokerage (management company) must retain copies of all accounting/financial records for 6 or 7 years (undecided at this time) after their creation and not from date of termination of contract. That may sound simple enough, until one considers exactly what that entails. "All" records means every financial statement, every deposit slip (deposits now must be done daily), every cancelled cheque (front and back), every bank reconciliation, every general ledger entry, every journal entry and on and on. Are you getting the picture? Copies of all "significant correspondence" sent or received by the management company respecting the services provided by it to the client (this could include 1000s of e-mails and letters in the case of a longstanding client), must also be retained. At present (but under review) is a further requirement that this data must be provided to the terminating strata corporation or its new management company, within two weeks of request in the case of some records, and within two weeks after "the last reconciliation" in the case of others.

Just consider the magnitude of the RESA in this one requirement. The time and cost to photocopy all this material is enormous. Consider the storage requirement for 6 or 7 years! Scanning and disc storage may not be permitted (under review).

And so it goes. We hope you will forgive us if, once again, we reiterate our long-standing opposition to licensing. Just look at what it involves. The management industry (not just VCS) simply cannot absorb the cost. It will have to be passed on to the consumer - the strata corporations.

If you are waiting for a new contract or an addendum, sorry, but you will just have to continue waiting until these details are finalized. It will take many more months - that is why the extension to July 1, 2007.

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## ***g. It Is 2:00a.m. And You Are Fast Asleep***

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The telephone rings at this ungodly hour. Wrong number? Family emergency? Tele-marketer? How about Vancouver Condominium?

It is not that often, thank goodness, that we have to call council members at 2:00 a.m. but there are times when we feel it is necessary to get you out of bed. In actual fact, our policy is to try as much as possible to not call council members between 11:00 p.m. and 7:00 a.m.

Recently, one of our council Presidents refused to accept a telephone call at 2:00 a.m. (his wife took the call) from the on-call VCS property manager who wanted to report a serious problem to the council President. The next morning VCS management received an irate phone call from the President (not his wife) about being disturbed in the middle of the night. What possible emergency could exist that required his input that VCS could not handle? He demanded to know the answers.



Just to clarify then, for all our clients, first we try as much as possible to avoid waking you up. Second, if we do, it is done by a decision of VCS management, not just the on-call property manager. In other words, senior VCS management, including the CEO, are first woken up to obtain consent by the on-call agent to wake you up. It is a thoughtful process.

Next, it is vital, in our opinion, that you are involved and/or consulted, on certain situations. These include major fires, semi-catastrophic pipe bursts, landslides, major crime incidents and so on. It is our view that you must know about such matters at the time they occur, not just the morning after.

In the case of the recent incident we refer to above, the calamity was that a very large sewer line had collapsed, taking out a significant portion of the roadway in the townhouse complex. A twelve-foot deep hole was all that remained. Municipal police, fire and city engineering crews were dispatched for assistance. The council president agreed in hindsight that he would have been upset if we had not called.

So folks, sorry to wake you up from time to time but we hope you agree with our protocol. We must say that, despite the occasional grumble, our experience with councils is great. You are always willing and able to take the calls and be of assistance, for which we thank you.

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## 9. Accountant's Report: A RESA Requirement

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RESA - *The Real Estate Services Act of B.C.*, is here to protect the consumer, meaning strata lot owners and strata corporations. One element is that an Accountant's Report must be done annually based on the fiscal year-end of the brokerage which manages a strata corporation - in your case, VCS. The fiscal year-end of VCS as a private business is June 30<sup>th</sup>; therefore, in July we must engage a third party accounting firm to perform certain "tests" of the accounting systems



maintained by the company to ensure that we are meeting the criteria, standards and requirements of the RESA, as governed by the REC (Real Estate Council). This is not a direct audit or review of your own strata corporation; however, since your strata corporation's accounting records, practices and procedures are administered by VCS, you are indirectly a beneficiary of the Accountant's Review.

Unfortunately, there is a cost to all this protection for which, of course, the government accepts no responsibility and which is not included in your management services basic fee from VCS. At this time we do not know exactly what your portion will be but, as a rough preliminary guess, we think it will work out to about \$1.25 per strata lot. We will only know once the Accountant's Report has been completed, which we expect will be in late August or September.

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