



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. RESA - Importance of Information Part 2

Last month, we discussed the style and content of management contracts (“service agreements”) that are now required by the *Real Estate Services Act* (RESA) for strata management companies (“brokerages”). The gist of that article, if you missed it, is that such service agreements must be compliant and executed by July 1, 2007.

This month we want to alert you to the concept and requirement of “authorization” to spend strata corporation money by a brokerage (i.e. VCS). In short, a management company cannot incur expenses, to be paid by a client, without the express “authorization” of the client, i.e., the strata council. In reality, at least for VCS, this is exactly what routinely transpires but keep in mind that this article is about all management companies in B.C. There have apparently been numerous incidents where a management company authorized and incurred contracts and expenses on behalf of its client without the strata council having first sanctioned such an expense. The Real Estate Council (REC) which administers the RESA will now ensure that this no longer happens. Every brokerage must maintain sufficient records to demonstrate to the REC that every cent that was expensed was indeed “authorized” by the strata council. There is no distinction made between the various funds that strata corporations maintain, i.e., operating, CRF, special projects, etc. Money is money and it is all protected by the “authorization” umbrella. Strata corporations will presumably benefit from this security measure implemented by the government in respect of strata corporation monies.

So what exactly constitutes “authorization”? There are three principal ways that strata councils “authorize” their management agents to spend their money:

1. By virtue of minutes of council or general meetings.
2. By specific instructions of a strata council either verbally or in writing (other than minutes).
3. By virtue of contract wording.

Let us examine each of these methods:

- (1) Minutes: Other than routine invoices for such services as utilities and fixed contracts (elevator, landscaping, insurance) most decisions to enter into contracts and spend strata corporation money are made at strata council meetings and these are recorded in the minutes. This process constitutes “authorization”; therefore, a strata council could not legitimately file a complaint with the REC that the management company had spent money without authorization. Where this process becomes a bit blurry is if the work performed by a contractor is unsatisfactory in the eyes of the strata council and a portion of the invoice is not authorized for payment. If the management company then pays the full amount of contract, can it be said that authorization was not given? The minutes initially authorized the contract amount but the strata council subsequently decides that the whole expense is not authorized. A bit murky.

Another twist: A contract is authorized (and minuted) for a fixed amount (i.e., \$10,000 for roof repairs) but for various reasons the job, when actually done, runs over budget (i.e., \$11,000). If the management company simply pays the total invoice for \$11,000, the additional \$1,000 was not part of the original authorization; therefore, the management company is at risk if it just pays the extra amount without authorization from the strata council. The prudent approach, of course, would be to first get the strata council to authorize the additional expense. Sounds like common sense and we do this routinely but now, under the RESA, more care (meaning more paperwork) must be done in order to ensure that proper “authorization” has been obtained. This means, for the protection of the management company, that such cost over-runs are recorded in the minutes, or in contract addendums with the contractors executed by the strata council, or in writing by the strata council to the management company. Typically such written authorizations should contain at least a majority of signatures from council. E-mail authorizations will be acceptable, as long as there is a majority of council members giving approval. Merely copying other council members is not tantamount to consensus. Each member will have to activate an e-mail.

Given these new regulatory requirements, VCS will now insist that at least a majority of council members authorize expenses in writing. We routinely act on the instructions of one council member, usually the President, but no longer can we rely on this limited

authorization. Presidents: please do not be offended now if you ask us to do something which incurs an expense and we ask you to get your colleagues to also agree/authorize. We are licensed and could lose our license if we violate any part of the law. All of which brings us to method #2.

- (2) Instructions - Verbal or Written: Well, clearly now, verbal instructions from one council member for VCS to do something which incurs an expense can no longer be relied on as sufficient “authorization”. It must be in writing and, as noted above, e-mail is fine, but - we need at least a majority. You may think that we are over-reacting but you might be amazed to know how frequently we are asked to do something by one member of council which no other council member is aware of and has not approved or authorized. Henceforth then, instructions will have to be in writing and from at least a majority of council members. This is the new protocol.

- (3) By Contract: The basic contract (“service agreement”) between a management company (“brokerage”) and a strata corporation provides wording to the effect that the management company is directed and responsible to act on behalf of the strata corporation and can incur (i.e., authorize) certain expenses without direct reference to the strata council for each incident. Again, this is a bit fuzzy given the new big brother/sister role of government, so it is vital that our management contract spell out the details of our authorization. It is unlikely that a legitimate complaint could be filed against a management company because it paid the B.C. Hydro bill without written authorization either in the monthly council meeting minutes or by way of a memorandum from the strata council. Common sense would prevail, right? Hmmm....

What about after-hours emergencies? VCS, as do all strata management companies, receive numerous requests in the evenings, at night and on Christmas Day to attend to emergencies. This involves such items as out of order elevators, ringing fire alarms, inoperational parkade gates, water leaks, etc. We generally act on these situations more often than not without first contacting council members for authorization. Most service agreements (strata management contracts) provide a clause authorizing the management company to act unilaterally in such circumstances. By executing the agreement, the strata council effectively authorizes in advance the expenditures that will flow from these

after-hours emergencies. Even here though, there are possible loose ends which may give rise to complaints by a strata council that its management company acted without authorization. Accordingly, management companies will be a bit more circumspect when faced with making spending decisions “after-hours”. The vast number of VCS strata councils are very reasonable and understand the decisions we make after hours on their behalf but there are some who always say the next morning that they would have done it differently. This effectively means that the management company incurred an expense which was not authorized. In such cases, these councils will be called at 3:00 a.m. to obtain authorization or, alternatively, emergency repairs will not be authorized by VCS.

If you have any comments or questions, feel free to contact us. We welcome your input.

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2. Whistler Blowing: We Hate To Do It, But...

To some extent the new RESA requirements have made us (VCS) more sensitive to abiding by the law (the *Strata Property Act*) but the morale of the story in this article is actually based on a long-standing philosophy about who we act for in a strata corporation. Here is a true story to enforce that philosophy.

A client strata corporation had two hot water tanks for the supply of domestic hot water to the residents. One tank failed suddenly; the other showed signs of nearing its life-cycle but continued to operate. The failed tank could have been replaced (at a cost of about \$8,000) and expensed to the Contingency Reserve Fund as an emergency, in our opinion. Also, in our opinion, the second tank could not be replaced as an emergency expense to the Contingency Reserve Fund. It was continuing to work and would have probably lasted up to six months. Enough time to call an SGM to seek owner approval to replace it and expense the cost to the CRF.

In this case the strata council, contrary to the advice of senior VCS management, decided to proceed to replace both tanks without calling an SGM. Worse, the council decided that a better system should be installed. Instead of two tanks, a complete new boiler system was ordered - also against the advice of senior VCS management. The cost for the new system was \$24,000 and charged to the CRF as an emergency expense. The council President did not contact VCS but instead procured only one quotation from a plumbing firm known to him. This, in our opinion, was a clear violation of the *Strata Property Act*.

As a consequence, we had to “blow the whistle” and send a letter to all owners in this strata corporation. As you can imagine, this is not something we like to do but our contract is with the owners, not with the strata council. The council is not pleased with VCS but we have an obligation first to all owners to ensure that things are done properly. We cannot just follow instructions from a council knowing that there are serious violations of the Act.

As noted at the outset of this article, this philosophy is not new for VCS but, with the government now sniffing around in every corner of our office, it is all the more important that, when necessary, we must inform all owners of violations and we must refuse to go along with improper acts.

As an aside, the owners of this strata corporation demanded a Special General Meeting to pass resolutions to remove each of the strata council members. The votes failed to pass and the strata council remained in office. Although the owners were very upset at what council had done, the council escaped the bullet by blaming VCS for poor service generally and by taking the position that they had acted honestly and in good faith and did the right thing and “next time we’ll know better”.

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3. Quorums at AGMs/SGMs

We are all familiar with the requirement for a quorum to start an AGM or SGM but what about quorums that disintegrate during such meetings?

Most strata corporations have similar bylaw requirements for starting a meeting, i.e., wait for 30 minutes and if there is still no quorum (usually one-third of the eligible voters) then either start the meeting or wait another 30 minutes and then start the meeting. We are not sure of the logic of waiting for a second 30 minute interval but a number of strata corporations do have such a bylaw.

In any event, the real point of this article is to give thought and discussion to those situations where a General Meeting of the owners does start but the number of people who are there is barely above the quorum. As long as they stay, the meeting is “quorumed” and all business conducted is valid. Sometimes, though, meetings drag on and on and people leave. Then the number of eligible voters drops below the quorum level and, technically, the meeting can no longer proceed since there is no quorum. In such cases, the meeting should be adjourned and then be reconstituted at a later date. That is fine if the quorum bylaw is the standard bylaw (from the *Strata Property Act*) that says if one third of the owners is not available to establish a quorum, the meeting is to be held one week later, etc. The problem for many strata corporations, however, is that they do not have this “standard” bylaw and they have customized versions that permit a quorum after 30 minutes (or 15 minutes). If a General Meeting is actually conducted using this formula, how can it be said that the meeting is no longer quorumed if people leave? It is quite bizarre.

So far there have been no challenges - meaning court cases; however, one day, there will be some burning issue at stake and this odd situation will have to be resolved by a court.

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4. “C” Stands For Christmas, “C” Stands for Common Expense, “C” Should Also Stand For “Careful”

Over the past month, we noted in various council meeting minutes that strata corporation money was allocated for such items as Christmas lights on the building, social events, prizes for the best decorated balcony and so on.

We do not mean to be “Bah Humbug” about these initiatives and, in the overall scheme of things, these expenditures are likely not a big deal. Nevertheless, you should be careful because you never know when such an expense will come back to haunt you and perhaps cost a lot of money in legal fees.

Christmas is not celebrated by everybody in your complex. When you spend money on one particular religious festival, does that mean that you will also spend strata corporation money on another religious festival?

Second, can it be said that such expenses are common property expenses? Probably not, in which case, should you be incurring such expenses?

Be careful and think about it this year before next Christmas.

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5. Cold Case

From time to time we like to share with you some of the odd “emergency” calls we receive from owners. Recently, one Saturday, a non-resident owner living in Kelowna called on our emergency line to request assistance. He had sold his strata lot (in Richmond) but forgot to make arrangements to pass the keys on to the new owner. He instructed the tenant who was vacating to leave his keys in the freezer compartment of the refrigerator and leave the door unlocked. Could VCS please make arrangements to retrieve the keys to pass them on to the new owner.

Of course the answer is no but this incident illustrates the lack of understanding many owners have about how strata corporations work and what VCS does in its role as property manager. And while this incident has an element of “humour” to it, we need to remember that such inappropriate actions, albeit minor, add to the cost of doing business when combined with other silly requests.

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6. Just A Minute

As we begin a new calendar year, this might be the time for a reminder or two about strata corporation minutes.

Most (not all) strata corporations operate under the Schedule of Standard Bylaws and bylaw 19 states: “*The council must inform owners of the minutes of all council meetings within 2 weeks of the meeting, whether or not the minutes have been approved.*” In a sense, it is a poorly constructed bylaw. Does “inform” mean the same thing as “distribute”? We think that it does but these are the kind of semantical vagaries that give rise to arguments, some of which become litigative. In any event, VCS recommends that distribution take place “within 2 weeks”.

Interestingly, the standard bylaws do not refer to minutes of Special or Annual General Meetings. Clearly an oversight of the legislation. Fortunately, all strata councils take it for granted that such minutes also be distributed.

Note that this requirement is a bylaw and bylaws can be changed. The vast majority of VCS clients do in fact distribute the minutes in accordance with this bylaw; however, there are a few that prefer to take longer. If that is your desire, your strata corporation should pass a $\frac{3}{4}$ vote resolution to amend the bylaw in order to be compliant. Pick a longer period that suites you - probably 4 weeks.

If you do amend your bylaw for this purpose, take the opportunity to add the words “and Special and Annual General Meetings”.

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7. Strata Council 101

It is often the case that members of the outgoing council are willing to stand for election for another year, especially when there is a major project underway and continuity is important. In fact, it is not uncommon that year-in and year-out, the same individuals are elected by acclamation all too happily by their fellow owners. Is this due to a lack of interest or willingness to be involved in the management of the strata corporation or is the existing council just doing such an amazing job?

In any event, the last order of business addressed at your Annual General Meeting is the election of the incoming strata council and this is where you were called to arms last year. Division 1 of the *Strata Property Act* addresses a myriad of issues regarding strata councils including the

election of council, exercising of powers, the control of council, eligibility for council, etc... This article will focus on specific Sections of Division 1 that you should be aware of and will consolidate some information on conflict of interest previously provided in a monthly bulletin so that you can have it here for easy reference.

The strata council makes decisions and provides direction to the agent on behalf of the owners and this is the heart of the relationship. In other words, the agent or management company should not be, nor should they be seen to be (and we remind owners of this constantly), the deciding force behind council's actions. This is detailed in Section 26, which states:

Council exercises powers and performs duties of strata corporation

- 26 Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

In the case of enforcing the bylaws and rules, the agent will forward letters and levy fines on behalf of council (in accordance with the *Strata Property Act*) when directed to do so following an informed discussion by council on the matter or the formal implementation of a policy regarding fining. The agent also assists with the interpretation of the strata corporation bylaws and additions/amendments required where a legal opinion is not necessary. However, at the end of the day, it is the strata council that is captaining the ship and members should be aware that the decisions required are theirs to make and not the agent's.

Section 31 outlines how council members go about exercising the powers and performing the duties that the ownership have entrusted them with and contemplates what is referred to as the "council member's standard of care". This section is somewhat intuitive and obvious; however, it is important to note that conducting oneself in the manner of an "honest" and "reasonably prudent" person and considering the wants and needs of the entire ownership will go a long way to justifying council's actions in the event there is a serious disagreement down the road. Section 31 states:

Council member's standard of care

- 31** In exercising the powers and performing the duties of the strata corporation, each council member must
- (a) act honestly and in good faith with a view to the best interests of the strata corporation, and
 - (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

From time to time, strata councils must deal with issues or concerns that arise that are specific to an individual council member due to less than ordinary circumstances. It is not outside the realm of possibilities that an individual sitting on council may have business interests that in some way cross the path of the strata corporation. Whether it is as an employer or employee of a potential contractor, a shareholder or agent that may benefit from the award of a contract, etc... the duty of the council member to disclose the conflict and the actions required are detailed in Section 32 as follows:

Disclosure of conflict of interest

- 32** A council member who has a direct or indirect interest in a contract or transaction with the strata corporation must
- (a) disclose fully and promptly to the council the nature and extent of the interest,
 - (b) abstain from voting on the contract or transaction, and
 - (c) leave the council meeting
 - (i) while the contract or transaction is discussed, unless asked by council to be present to provide information, and
 - (ii) while the council votes on the contract or transaction.

The bottom line here is that full disclosure is the best and only policy when it comes to conflicts of interest. This does not necessarily result in a business relationship hindering the involvement of that business and its' associates with the strata corporation. As detailed in Section 32 above,



there are provisions in place to deal with voting and abstaining from issues related to the conflict. The proper disclosure of the perceived/potential/existing conflict simply keeps everything “above-board” and the optics of the situation clear to the ownership and the Courts.

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