



## FEATURES THIS MONTH

1. Expressions We Use - Where Do They Come From?
2. Insurance Claims That Irritate
3. The Impact of Licensing
4. Emergency (?) Requests
5. Reconsider This

## 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. Expressions We Use - Where Do They Come From?

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“Playing With a Full Deck”

We sometimes refer to people we think are stupid by saying that they are not playing with a full deck. Why? Well, at one time popular entertainment included playing cards; however, there was a tax levied when purchasing playing cards, but it was only applicable to the "Ace of Spades." To avoid paying the tax, people would purchase 51 cards instead. Yet, since most games require 52 cards, these people were thought to be stupid or dumb because they weren't "playing with a full deck."

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## 2. Insurance Claims That Irritate

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### Quiz

(1) An owner's kitchen sink is plugged with "food stuffs" and it backs up, overflows and floods the apartment. A considerable amount of water overflows and damages the owner's (original) hardwood floor and the ceiling of the unit below. The deductible on the strata corporation's insurance policy is \$5,000.

The owner is entitled to rely on the strata corporation's insurance policy:

True  False

If true, the owner does not have to pay the deductible.

True  False



(2) An owner's dog has a nasty "accident" on the living room carpet. It cannot be cleaned . . . the ugly stain remains. New carpet is required.

An insurance claim can be made.

True \_\_\_\_\_ False \_\_\_\_\_

The strata corporation has to pick up the deductible.

True \_\_\_\_\_ False \_\_\_\_\_

(3) An owner drops a cup of tea on her living room carpet. The tea stain will not come out. New carpet is required.

An insurance claim can be made.

True \_\_\_\_\_ False \_\_\_\_\_

The strata corporation must pay for the deductible.

True \_\_\_\_\_ False \_\_\_\_\_

Okay, how did you do on the answers?

If you got "true" three times, you are a well-informed council member who knows what the *Strata Property Act* says.

If you are happy about being right, you are in a very tiny minority of strata councils.

If you are really irritated with the answers (true x 3) you are with the majority of strata councils.

If you had any "false" answers, read on...

Section 158 of the SPA says, 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).*

We have added the underline to emphasize the point of the section. It is a common expense. Common expense means strata expense, not an owner's expense.

Strata councils generally have a very hard time with this mandatory section of the Act but there it is in black and white. All you can do is make an argument in a court that the owner (or tenant if applicable) is responsible; hence, sub-section (2) which reads:

(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.*

The three examples above are all true stories. The first one is still under review and progress at the time this bulletin is written. In the other two cases (carpets stained by tea and doggy-doo), the owners got brand new carpets and the strata corporations paid the deductible.

Irritating, eh?

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### 3. The Impact of Licensing

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Over the past year or longer, we have beaten the drum about the impact of licensing as required by the RESA (The *Real Estate Services Act*). Some of our negative predictions are turning out to



be true. We understand the philosophy behind licensing but there are some hard realities that must be recognized.

In view of the enormous pressures of the RESA, in early 2006 VCS took steps to ensure sustainability for the company and, recognizing the additional workload, we raised our rates. Some clients have seen these higher rates already while others have benefited from old rates that will expire this year; however, they will face the new higher management fees shortly. This has not been pleasant for our clients and, frankly, we are not happy about it either as we “take a lot of heat” on the issue. Bottom line - the cost of doing business continues to escalate and this increase, as is the case in every industry, gets passed on to the consumer.

Another initiative we took was to drop accounts - typically the smaller accounts, which is most regrettable; however, the pool of available, competent, licensed property managers is very limited and we had no choice. Today, when the phone rings and we are asked to quote, our minimum charge is \$1,500 per month. We get dozens of calls every month from many small strata corporations around the Lower Mainland who are unable to secure a management company. Some are desperate. All the good management companies have raised their rates or just not taking on new business.

Nevertheless, there are firms out there which are still providing strata management services at seemingly excellent rates. Just what the trade off is remains a matter of opinion. Recent news articles identified one Vancouver area firm (with 18 strata corporation accounts) as being under investigation by the Real Estate Council for alleged missing client funds. The outcome of this investigation is likely months away; however, we are not surprised to hear this news. VCS is aware of the practices of many of the industry players and we know that some companies are simply not abiding by the RESA. In fact, there are firms purporting to offer strata management services that are not even aware of the RESA requirements, never mind abiding by them. We suspect that the reason they have “excellent rates” is that they have not yet realized what they are supposed to do under the RESA and have not hired the extra staff needed to deal with the stringent, additional requirements.

Recently, VCS took over the management of a large strata corporation and we were appalled at what we found in the documents and records turned over to us by the previous management



company. One of the misconceptions that has emerged from the new licensing regime is that the level of professional administration within a management company would now be at a much higher standard. That, in fact, is not the case: licensing under the RESA does impose some very strict and difficult criteria on management companies, but it does not delve into the **quality** of services. On this same take-over, we learned something else of astonishing significance. Despite the vast requirements of the RESA, there is no provision within that legislation that a strata corporation's money held by a management company must be turned over within a stated timeline, if at all, to the incoming management company. It seems obvious that it must, but in this case, it took some three weeks and dozens of phone calls and e-mails to goad the previous management company to attend to this matter. The company is well-known in the industry and promotes itself as an inexpensive alternative to the more traditional selection of management firms in the marketplace. The problem, as always, with inexpensive, is that there is risk.

One small client that had been with VCS for many years, left VCS in early 2006 when faced with higher management fees. The strata council has now decided to return to VCS at the higher fee because they could not believe what a mess they got into with the inexpensive alternative.

Now, all of this may sound very self-serving and that would be a fair criticism. Nevertheless, we feel it is important for you to know what is going on in the industry and we genuinely believe that we have a duty to keep you informed on this matter. And, to be as objective as possible, we consider the following firms to be very worthy competitors: Crosby Property Management, The Wynford Group and Colliers International.

We do not get out of bed each morning with a view to losing business or dropping accounts. We appreciate your business and we thank you for your loyalty and support. We try very hard to not make mistakes, but we are human so they do happen. We thank you for your patience and tolerance when this happens and recognize these are trying times for you...and for us.

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## 4. Emergency (?) Requests

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Here are some recent weekend calls from residents in strata corporations we manage requesting that we do something right away.

- I have a guest and he is horrified at the state of our building.
- A knife came up out of my sink and it's not mine.
- There's been a stabbing somewhere in the building . . . there's blood on the stairs.
- My house has steamed up.

OK. We'll be right over. . .

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## 5. Reconsider This

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It does not happen very often but you should be aware of Section 51 of the *Strata Property Act* which deals with the passing of  $\frac{3}{4}$  votes when less than 50% of the votes attend and vote at the AGM or SGM. We all know that it is very common at strata corporations to have poor turnout at general meetings and, frequently, a quorum is barely achieved. Here is the starting point for this scenario. Section 51(1) states:

*This section applies only if a resolution required to be passed by a 3/4 vote is passed at an annual or special general meeting by persons holding less than 50% of the strata corporation's votes.*

“Less than 50% of the strata corporation's votes”. Wow. That's quite a threshold. Think about the number of votes available in your strata corporation and then do the easy math to determine the threshold you require to address this section. Then think about the usual poor turnout at

AGMs/SGMs and it is quite evident that Section 51 of the statute applies. If so, then what? Section 51(2) states:

*The strata corporation must not take any action to implement a resolution referred to in subsection (1) for one week following the vote unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage.*

The reason for this is to allow the matter to be reconsidered since “less than 50% of the votes” have made a significant decision. So, section 51(3) states:

*Within the one week following the vote, persons holding at least 25% of the strata corporation's votes may, by written demand, require that the strata corporation hold a special general meeting to reconsider the resolution.*

Section 51(4) requires the demand to be signed by each person. Now the brakes are applied and Section 51(5) states:

*After receiving a demand for a special general meeting under subsection (3), the strata corporation must not take any action to implement the resolution unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage.*

Sub-sections (6), (7), (8) and (9) direct the procedures to be followed and then sub-section (10) states:

*(10) The resolution stands and may be implemented only if one of the following conditions is met:*

- (a) a demand for reconsideration is not made under this section;*
- (b) the resolution is approved by a 3/4 vote at the special general meeting held under this section;*
- (c) the meeting held under this section does not proceed for lack of a quorum as set out in subsection (9).*

Mercifully, sub-section (11) says that this procedure can only be done once. Thank goodness!



As noted, it is quite rare to see the “25% minority” ask for reconsideration but you should be aware of the existence of this provision of the statute. Note the sequence also. You are not directed by the *Act* to stop in your tracks if a demand is made. You are directed to stop in your tracks before a demand is made if “less than 50% of the votes” at the AGM/SGM approve a resolution. In practical terms this means that, if you want to spend money, raise a levy, file a bylaw or do anything that requires a  $\frac{3}{4}$  vote to pass, you should wait for one week to see how the dust settles. Again, it is quite rare but you need to be aware.

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