



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

“Minding Your Ps & Qs”

A long time ago, local taverns, pubs, and bars, people drank from pint and quart-sized containers. A bar maid's job was to keep an eye on the customers and keep the drinks coming. She had to pay close attention and remember who was drinking in "pints" and who was drinking in "quarts"; hence the term "minding your "P's and Q's." "P" can also stand for problems and "Q" can also stand for questions. If you have any problems or questions about the *Strata Property Act*, let us know and we will pass along your "Ps and Qs" to Victoria.

2. How To Combine Two Strata Lots

Occasionally we get questions from owners who want to merge two strata lots into one. It isn't easy. To break down the complexities of the procedures into simple steps, the following shows a brief outline of the process.

This process usually involves an owner buying a neighbouring suite to combine the two strata lots to create a larger home. In some cases, owner will buy a suite directly above or below, or it will be a next-door suite. Here are the steps required. There are three methods:

Method 1

- First the owner needs to apply for a building permit, and get an opinion from an engineer, if required. Structural changes may be necessary, or it may simply be a matter of creating an opening in a non load-bearing wall that avoids ducts, cables and pipes. In any case this is not a do-it yourself job, and the owner will need a licensed contractor before starting any work of this type.
- Next, you need to consider s.259 of the *SPA*. That section requires that both strata lots are owned by the same person, and the holders of registered charges such as the banks who holds the mortgages and other creditors have dealt with the issue of the priority of their interests as they will apply to the consolidated strata lot and the Registrar of Land Titles approves. What that means is that the creditors and the Registrar have to go along with the plan.

- In addition, s. 259(3) requires that a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting. Then the owner will have to make application to the Registrar of Land Titles in the approved form, accompanied by a reference or explanatory plan that amends the original strata plan.
- Finally, the strata corporation's bylaws/rules may require permission authorizing any construction that will occur.

Method 2

There may be a way of avoiding the need for a requirement to get a unanimous vote of the strata corporation approving the consolidation under s. 260 of the SPA: An amendment to the strata plan to consolidate two or more strata lots does not require strata corporation approval if:

- the unit entitlement of the consolidated strata lot is the same as or less than the strata lots being consolidated, and
- the total number of votes and the share of the common expenses of the consolidated strata lot is the same as or less than strata lots being consolidated.

Even if the strata corporation avoids the need for a unanimous resolution, the owner still must own both lots, then get the necessary building permits and engineer's report, then make sure the mortgage holders (i.e. the banks) give approval in writing, and get approval for the construction from the strata corporation, and then make application to the Registrar to amend the strata plan.

Method 3

In the alternative, the owner can get a building permit and engineer's report, then open a doorway between units and not amend the strata plan, as long as the strata council approves the alteration. On paper, there are still two strata lots.

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3. Voting Under the SPA

What does the *Strata Property Act* says regarding voting.

Usually each strata lot has a vote per the schedule of voting rights. If there are two owners of one strata lot, only one will vote, unless there is some provision for vote splitting in the schedule. Only owners, tenants with an assignment of voting rights, or proxies may vote. A proxy is any person appointed by an eligible voter.

For a $\frac{3}{4}$ vote to pass it must be $\frac{3}{4}$ of the voters present not including abstentions (and there must be a quorum). For example, if the strata corporation has 100 potential votes, and 80 persons show up in person or by proxy, then $\frac{3}{4}$ of the votes present at the meeting (i.e. 60) are required to pass. Not 75, which would be $\frac{3}{4}$ of the total possible votes for the strata corporation. Abstentions must be made at the meeting, so if a person does not attend or appoint a proxy who attends, then their vote is not an abstention. It is simply not considered. Abstentions change the way in which votes are counted. For example, if 80 votes attend the meeting (in person or by proxy) and 10 abstain, then there are 70 votes left. A $\frac{3}{4}$ vote requires 53 votes to pass in that circumstance, since the abstentions are abstaining from participation either for or against the resolution. Note that if there are multiple resolutions, a voter may abstain from any of the resolutions and vote on others as they choose.

An abstention is for a particular vote not the entire meeting. Also, the number of votes in favour of a resolution must represent 50% of all votes of the corporation or there is a one-week waiting period before the resolution can be implemented. This is to allow any possible reconsideration. During the one-week period following the vote, persons holding 25% of the strata corporation's votes can petition the strata corporation in writing to have a special meeting to reconsider the vote. If the week passes without a petition, the resolution is implemented.

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4. Owner's Responsibility

A recent decision of the BC Supreme Court may give owners a reason to buy insurance and make sure their plumbing is working properly. In *Mari v. Strata Plan LMS 2835* [2007] BCSC, 740 the owners of a strata unit appealed a Provincial Court decision that they pay \$5,000.00 to their strata corporation. Water damage totalling \$9,888.86 occurred in their building as a result of a faulty water level switch in a washing machine contained within the unit owned by Mr. and Ms. Mari. The strata corporation sought to recover a \$5,000.00 insurance deductible payable by the strata corporation for the damage that was caused, the balance of the water damage having already been paid under the insurance policy maintained by the strata corporation.

The key issue at trial was what was meant by the word "responsible". Section 149 of the *Strata Property Act* requires strata corporations to obtain insurance on the building, the common property and any fixtures in a strata lot that were installed by the developer as part of the original construction. Section 158 also requires payment of the insurance deductible as a common expense that can be charged back to any owners responsible for the damage that gave rise to the claim the claim:

Insurance deductible

158 (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.

The word “responsible in 158(2) was the subject of the decision. In the original Provincial Court trial the judge said the word should have the meaning of legally *accountable or answerable*, which is a determination with no consideration to either the type of action or non-action or the degree of fault involved. The judge likened the meaning of responsible to a situation where the driver of a new vehicle suddenly loses control of his car and causes a collision that is due to a mechanical failure. The driver could not be charged with any offence, but the driver would still be held responsible or legally accountable for damages to the other vehicle.

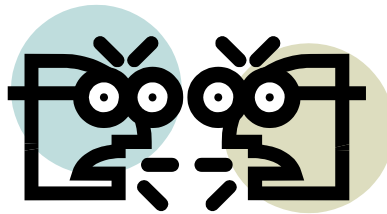
The judge decided that it was the same situation with the Mari’s. They did not intend that their washer would overflow, but because it was their machine, they were responsible.

The appeal judge followed the reasoning of the judge at trial and found that the choice of the term “responsible” by the drafters of the *SPA* provides the owners with the opportunity to allocate to a particular owner the cost of an insurance deductible in cases where an owner was thought to be responsible for a loss. The presence of washing machines, dishwashers, air conditioners, and water dispensing refrigerators are examples of items that pose a risk for water escape. Unless there is a mechanism to direct the payment of the deductible by an owner who keeps or installs an appliance that has the potential for water escape, the judge stated that owners are free to act without the consequences that affects homeowners in single-family homes where the homeowner’s insurance will repair the damage but the homeowner will be responsible for the amount of the deductible. The court decide the Mari’s or any other owners in their

situation will be responsible for the deductible notwithstanding that the owner was not negligent because s. 158(2) of the SPA simply allows the strata corporation to set the same standard for the payment of a deductible as would exist in a single-family residence.

This decision of the court will likely cause a lot of sleepless nights for strata owners.

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5. Dealing With Disruptions at Meetings

Many councils face the problem of unruly or rude owners at strata council meetings. Usually the offender has a specific grievance they want to have explored in minute detail, or they may simply have unfocussed grievances. In many cases the disruption can turn a short meeting into an all-nighter. Tempers flare as the other attendees go from fidgeting to fury at their long-winded neighbour.

This can all be avoided if you follow some simple rules for meetings. Let's start with the basics:

- 1) All questions will be addressed to the meeting chair;
- 2) Only one person may speak at any time;
- 3) Anyone who wants to speak at a meeting will first state their name and unit number;
- 4) One comment or question is permitted per person until all interested owners have had a turn to speak;
- 5) Speakers will follow etiquette and be polite and respectful when speaking.



If these basic rules are followed, no one person can dominate a meeting. The chair will control who speaks and in what order they get the opportunity. The meeting will be orderly, because owners will not try to talk over each other. In addition, by identifying themselves, each owner will know that he or she will be accountable for what they say. By taking turns, each owner who wants to have their say will be heard. Finally, by enforcing courtesy and decorum, the odds of a shouting match erupting or a slanderous remark being made are greatly reduced.

The next important way to prevent chaos at meetings is to set an agenda and stick to it. If someone speaks out of turn or begins to talk about something other than the topic under discussion, they can be told that their issue will be dealt with at the appropriate time, such as when that agenda item is reached, or if it is not on the agenda, when new business is discussed. It is very important to keep to the agenda. Without structure the meeting will degenerate into a free for all.

Another important skill is to know when to say no. If a question has been addressed and someone won't move on even after they have had their say, it is time to remind them that there are other agenda matters that must be addressed. Learn to interrupt and politely but firmly tell the speaker they have had their opportunity to talk, but they must share the floor with other owners who also have important issues to bring forward. Usually, if you are polite and businesslike others will be too. Whatever you do, do not raise your voice.

If the issue brought forward does not have an easy answer, or if you do not know, the chair or another member of council should indicate this clearly, and say that they will follow up. Write down the question and be sure to follow up either at the next meeting, or by correspondence to the owner.

One way to prevent squabbling and to enforce the one-at-a-time rule is to have speakers stand when addressing the meeting. This may not always be possible when dealing with an old or infirm owner. Standing focuses attention on the speaker, and most people are far less likely to say something objectionable when all eyes are on them.

Treat everyone equally, and fairly. It may be tempting to yield the floor only to those owners who are pleasant, or who are fiends of the council, but this will only lead to resentment. Also

remember that you may get a moment's satisfaction by berating an annoying neighbour, but they will still be your neighbour tomorrow, and you will see them in the elevator, at the mailbox, in the hall, etc. Why make enemies?

Know when to move on. If the other owners are really interested in what someone is saying, let them continue. On the other hand, if people are rustling papers, fidgeting, or rolling their eyes, it's time to move on to the next topic. The other owners will thank you. It can be difficult to cut someone off. Try using a little humour. It goes a long way.

Finally, do not tolerate anyone who acts in a threatening manner. If someone shows up to a meeting and they are intoxicated, aggressive, or threatening others, it's time for them to leave. If the meeting is going to be contentious, a security guard may be a good idea, or you can hold the meeting in a public place where people will be less comfortable.

If you follow these strategies, you will find that meetings may actually be pleasant for all concerned.

Ed. Note: These tips are borrowed from an article by Ron Danks, a condominium law lawyer in Ontario and are used with his permission.

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6. Removing and Pruning Trees

Summer is here and many strata councils turn their thoughts to landscaping. Often tree pruning or removal is considered. It is often the case that some owners complain of trees blocking their views, while other owners want to keep their leafy friends, no matter how big they become. Sometimes, trees must be removed where they present a hazard to nearby buildings or power lines, or where their roots interfere with underground structures such as parkades, or with buried pipes and cables.

The cost of removing or pruning trees may be significant and the money may need to come from the CRF or from a special levy. Annual tree pruning may also be accounted for in the annual budget as part of the landscaping costs.

Before acting, councils need to consider the consequences of tree removal. For example, the *Strata Property Act* requires a $\frac{3}{4}$ vote resolution before a significant change to common property occurs.

71. *Change in use of common property*

Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless:

- (a) the change is approved by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting, or*
- (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.*

Some proactive strata councils have bylaws in place that explain owner's responsibilities regarding trees, and outlining the strata corporation's policies.

Tree removal may also require permission from the local municipality. The City of Vancouver has a tree bylaw prohibiting removal of trees that have a trunk diameter of 20 cm or more. A permit is required before a tree may be removed, and violations are punishable by fines. There are exceptions to allow removal of trees under certain conditions. For example a tree permit may be granted if:

- the tree is located within the building envelope;
- the tree is dead or dying;
- the tree is interfering with or in such close proximity to utility wires as to be a danger and cannot be pruned and still maintain its health and reasonable appearance;
- the roots of the tree are interfering with, blocking or damaging a drainage or sewer

system; or

- the tree is located such that a proposed garage or other accessory building cannot be located so as to retain the tree.

Richmond and Burnaby also have tree bylaws, with similar provisions regarding the minimum size of protected trees, and exceptions allowing the removal of trees that are dying, damaging property, and interfering with approved development of land. In most cases a replacement tree will have to be planted.

It is important to note that pruning of trees is permitted, and does not require a permit. This is because pruning is important to the health and growth of trees. Root cutting is not an approved method of pruning. Most experts recommend pruning in the winter months when trees are dormant, but pruning may be necessary at any time where trees are interfering with utility lines or causing a hazard to persons or property.

Pruning and tree removal should always be done by a qualified arborist. An arborist will have the skill and experience to prune or remove a tree without damaging utility wires or adjacent buildings. No strata corporation should risk such liability on their own. When hiring a professional arborist, the strata should require proof of appropriate WCB coverage as well as professional liability coverage.

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