



FEATURES THIS MONTH

1. Avoiding The Low Bidder
2. Making Peace

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. Avoiding The Low Bidder

The July 2007 edition of Legal Framework published by Clark Wilson LLP contains an excellent article called Avoiding the Low Bidder. We strongly recommend you read it. The person to contact at CW is Michal Jaworski at 604-891-7747 or mxj@cwilson.com.

The intent of this article is not, of course, to repeat the Clark Wilson article or “steal its thunder” but rather to alert strata councils to some of the pitfalls in awarding contracts. With all due respect, it is our observation that most strata council members are not sufficiently knowledgeable in such legal matters and the awarding of contracts is frequently done in a haphazard manner which exposes the strata corporation and council members to litigation and possible damages.

At VCS we have often observed close calls in careless contracting and sighed with considerable relief when some contractor who has not been awarded a contract, when he/she should have, just shrugs and walks away rather than litigate. We are inclined to think that it is just a matter of time before a contractor won’t take “No” for an answer and litigation will result.

Many of the contracts entered into by strata corporations are for relatively minor amounts in the grand scheme of things, which may be one reason why we have not seen litigation for alleged wrongful decisions. Another reason is the booming economy. Contractors have so much work they are generally inclined to walk away from an incorrect strata council decision and not waste their time, energy and money on litigation. There is lots of other work to do. Times change, however, and who knows when this bubble will burst and contractors will be “hungry” and less inclined to walk away. That is when we may see a different response.

The case that we refer to in the Clark Wilson bulletin involves a contract in a bidding process around \$260,000. Usually in such legal bulletins issued by law firms, the disputes reported involve court cases where the dollar amount at stake is in the millions. Strata councils look at these reports and conclude that these cases do not really impact on them at their level. It is important to note, therefore, that this particular case is very much reflective of the level of contracts that are entered into by strata corporations.

At general meetings of strata corporations we often hear owners and/or council members say “let’s follow Roberts Rules of Order”. Great idea but actually no one knows them. Similarly, we hear owners and/or council members say “we reserve the right to reject the lowest bid” thinking with some comfort that the mere issuance of these words will get them off the hook if there is any dispute and litigation results from the lowest bidder who did not get the job. It is just not that simple.

In the case that Clark Wilson writes about, an important decision was made by the B.C. Court of Appeal which, in effect, supports the notion that “the lowest bid does not necessarily get the contract” but, there should be an awareness by strata councils that, in order to benefit from this decision, a strata council must have acted in “an honest, business-like way” in reviewing bids and rejecting the lowest bidder. This is critical. As Clark Wilson puts it... *“In other words, the court is supporting the notion that so long as an owner (the strata corporation) is not improperly*

favouring one bidder over another and has a business case for avoiding a bid, the owner's judgment (to not accept the lowest bid) should be upheld".

Far too often we observe strata councils make decisions on the awarding of contracts without relying on a "business case" methodology. It is a dangerous practice and should be avoided.



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2. Making Peace

In all communities, disputes are inevitable. This is especially true in strata corporations. In strata communities, people live in close proximity and they must agree on such things as rules, the maintenance of their community structures, allocation of money, and the resolution of day-to-day disagreements that are all a part of the community landscape. Whether the dispute involves individual owners, groups of owners, the strata corporation, or a combination, it is important to resolve disputes in a way that satisfies all of the participants. Only then can harmony be achieved.

"PEACE" is the name of a set of guidelines developed by Jill McIntyre of the Pacific Centre for Dispute Resolution. These guidelines are very helpful, and we have summarized them here.

1. Prevent the dispute from escalating or festering: The best way to do this is to deal directly with the dispute. Often, a person who feels they are in conflict with their neighbour doesn't deal with the offender directly, but tells a neighbour or friend. Word gets around. Gossip spreads and "camps" form as different groups take sides. While this may be a way to find allies, it does not resolve the dispute. Eventually the other person is confronted by hostile neighbours, without knowing why. The better course is to approach the other party either directly or through a trusted intermediary. After all, if your neighbour's dog is barking, the only way to silence the dog is to make the master aware of the problem.

2. Engage the issues, not the personality: Not everyone has a personality that is helpful in making peace. Some people can be difficult or defensive. Understanding the point of view of the other person may be helpful, but it is important to focus on the issue that is

causing the friction, and not get caught up in a clash of personalities. Easier said than done, but separating the person from the problem is critical to resolving disputes.

3. **Act:** Many disputes worsen because people hesitate to confront them, and instead just wish them to go away. The problem with this way of thinking is that the problem usually doesn't go away by itself. Resentment builds. This takes us back to the first point about not letting a problem fester. Speak to your neighbour directly and arrange a time that you can sit down and talk about the issue, or write a letter to your strata council asking them to intervene. The important thing is that you do something constructive to deal with the problem.
4. **Communicate:** When it is time to discuss the issues, clearly state your concerns and listen carefully to what the other side has to say. Try to keep your emotions in check and have an open mind. Without open communication there is no hope of a resolution. Once the parties communicate, they can work together to find common ground, and eventually work out a solution. It is important to be co-operative, not confrontational, and to focus on the issues, not the history of past grievances or other irrelevant matters.
5. **Expert involvement:** If all your efforts at dispute resolution fail, it's time to call in an expert. The expert can be a lawyer, mediator or arbitrator. An expert can help to diffuse emotions, focus on the issues, and find solutions. For example, mediators are impartial, and can be relied on to act as intermediaries. Lawyers can act where there are legal issues to be resolved. Before consulting an expert, you should exhaust your other alternatives. The first thing to do is communicate with the other disputant directly, or get the help of the strata council. If that fails, the strata council can investigate, send a warning letter, levy a fine or take other appropriate action on behalf of the owners. Only when direct communication and strata council action fails is it time to call in outside experts.

In summary make PEACE the core of your dispute resolution regimen: Prevent the dispute from escalating, Engage the issues, not the personality, Act, Communicate, and if all else fails, get an Expert to help.

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