



## FEATURES THIS MONTH

1. Rental Issues for the Olympic Crush
2. Contingency Reserve Fund
3. Renting a Strata Unit
4. AGM Season
5. Spend Spend Spend

## 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. Rental Issues for the Olympic Crush

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A recent news article reported that virtually all the hotel rooms in the Greater Vancouver area have now been booked for the 2010 Olympic Games. Visitors for this event will be plentiful and we assume that, given the apparent unavailability of hotel rooms, many people will be seeking accommodation in condominiums.

Those of you who were on your strata councils during Expo 86 will recall that strata corporations suffered greatly with the inconvenience of temporary, short-term rentals - i.e. people coming and going at all hours; no elevator bookings or security; noisy parties; etc.

Now is the time for your strata corporation to start developing the following:

- (1) Policies & Procedures
- (2) Rules (Council can make)
- (3) Bylaws (3/4 Vote Resolutions)
- (4) Education Programs.

Don't leave it until 2009 to do this as, in most cases, you will need to create bylaws. Bylaws require  $\frac{3}{4}$  votes at AGMs or SGMs and, if you leave this to the last minute, it is very likely that you will encounter strong resistance when owners see golden opportunities to make money fast. You may still receive opposition at earlier dates but try to minimize your odds while you can.

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## 2. Contingency Reserve Fund

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Here are a few odds and ends related to your Contingency Reserve Fund to remember when preparing your budget.

- The CRF must have a minimum of 10% of the annual budget if the balance at the year end of the fiscal year is less than 25% of the annual budget. *Regulation 6.1(1)*

- If the balance is over 100% of the annual budget and the strata council wishes to increase the amount, a  $\frac{3}{4}$  vote of the owners is required. *Regulation 6.1(2)*
- If the balance of the CRF is between 25% and 100% the amount of contribution is optional. (VCS recommends the strata corporation builds up their reserves to a minimum of \$1,000 per unit, or higher if the property has potential problems, or if the strata corporation consists of less than 50 units. *Regulation 6.1(3)*)
- Money belonging to the Contingency Reserve Fund must be kept separate from other money of the strata corporation. *Act, Section 95(1)*.
- Interest that is earned on CRF money must be credited to the CRF: it may not be used for other purposes. *Act, Section 95(3)*.

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### 3. Renting a Strata Unit

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Rental units have become common in many strata communities. Some buildings have unlimited rentals, while in others the owners limit or prohibit the practice. When the owners place limits on the number of units that can be rented, it is usually done by making a bylaw. In one of the buildings we manage, an owner applied to council to permit rental of his suite while he was in an eldercare facility. That building had a bylaw restricting rentals and already met its limit of permitted rental units. The strata council had heard that there may be a “grandfather clause” that required them to allow original owners to rent their suites despite the bylaw, but they could find nothing in their bylaws to support this. They asked us if this was the part of the *Strata Property Act*.

Section 141 of the *Strata Property Act* allows strata corporations to restrict both the number of units that may be rented and the percentage of units that may be rented. The *SPA* also says that strata corporations can’t screen rental applications or insert terms into rental agreements. Strata corporations are permitted to set time limits for rentals. This power allows distribution of rental permissions where there is a surplus of potential landlords. By restricting rental periods, the permissions can be shifted from one unit to another after the expiry of the rental period. One

important exception to rental restrictions is found in section 142 of the *SPA*, which says that a strata corporation may not restrict or prohibit rentals to an owner's immediate family despite any bylaws to the contrary.

Section 139 of the *SPA* exempts owner developers from rental restrictions. An owner developer is a person who is the registered owner of the land to be occupied by the strata corporation on the date the application to register the strata plan is deposited at the Land Title Office, or in the case of leasehold strata plans, the owner developer is the person holding the ground lease. If an owner developer conveys more than 50% of their interest in the strata lots in a strata plan to another person, that person acquires the rights of the owner developer. In most cases an owner who seeks permission to rent is not an owner developer.

The concept of grandfathering originates in the transition from the *Condominium Act* to the *Strata Property Act*. Under Regulation 17.15 to the *SPA*, a strata lot designated as a rental strata lot on a rental disclosure statement form under section 31 of the *Condominium Act* is exempt from rental restriction bylaws until the earlier of the date the rental period expires, or January 1, 2006. This transitional period allowed renters to continue to occupy their units for a time after the *SPA* came into force if the new bylaws of a strata corporation limited or prohibited rentals. Since the transitional period has expired the regulation is not applicable any longer. There is no other provision in the *SPA* for grandfathering of rental rights.

Section 144 of the *SPA* allows an owner to make a written application for a hardship exemption and for a hearing before the strata council in support of the exemption from a rental restriction bylaw. The definition of hardship has been considered by the courts, and the hardship must be a pressing need, and not simply a desire to make profit. If for example a senior had to go into an eldercare facility and it would not be practical to sell their strata unit, those circumstances might qualify as hardship. In *Als v. Strata Corp. NW106*, a 2002 BC Supreme Court case, the court required that evidence of hardship should be objective, documented, and must be more than slight economic hardship, although economic reasons such as potential financial ruin would be considered hardship. The most important part of the court's reasons were that hardship is not merely a matter of an owner's opinion. Hard evidence is required to prove that the hardship exists.

The provisions of the SPA allowing hardship exemptions are not invalidated by rental restriction bylaws, as long as the actions of a strata council in granting a hardship exemption are justified and legitimate.

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## 4. AGM Season

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For the vast majority of our strata corporations (being those with a December year-end), Annual General Meeting (AGM) planning season is upon us. There can be a tremendous amount to consider when planning for the meeting in addition to:

- preparing the budget for the next fiscal year,
- planning on repaying interfund loans or recovering a deficit (hopefully not),
- drafting new or amending bylaw resolutions, and
- deciding on projects and how they will be financed.

It is important to consider the timeline for all of this work well in advance of when the notice is due out to ensure everything the strata council wishes to address at the meeting is included in the AGM Notice package and that the information is error free. Items left to the last minute are rushed by definition and this can lead to inaccuracies and outright mistakes.

Therefore, let us consider both the *Strata Property Act* and common sense as we look at how best to prepare for, hold, and deal with the aftermath of your AGM. First, we will look at Sections 40 and 41 of Division 4 of the *Strata Property Act* – Annual General Meetings and Special General Meetings and assorted rules of thumb which we hope will assist in guiding your council.

### Annual general meeting

**40** (1) The strata corporation must hold annual general meetings except as provided under section 41.

(2) An annual general meeting must be held no later than 2 months after the strata corporation's fiscal year end.



Section 41 is a rarity whereby all of the owners agree to waive the holding of the AGM. As detailed in Section 41(1) this does require that, at a minimum, all eligible voters agree, in writing, to resolutions that approve the fiscal year's budget, elect the incoming strata council by acclamation and deal with any other business. We all may appreciate the idea of skipping a meeting now and again, but the reality is that dealing with the required business in person is far more efficient.

With respect to Section 40(2), more and more strata corporations are taking advantage of the ability to "defer" the AGM until after the fiscal year actually ends. This allows the council and the agent to take much of the guess work out of budget planning as the extra two months allows an audit to be performed prior to the AGM taking place. Therefore, instead of holding the meeting in November or December and looking at the most current statement to determine/guesstimate the fiscal year end balances, the council is able to review the audited financial statements for the entire year when preparing the budget (additionally, council will also be aware of their new insurance premium and know if they will be in a deficit position). This information can then be provided in the Notice of Annual General Meeting, giving the ownership the most accurate financial information possible so that a fully informed decision may be made with respect to the budgetary requirements for the upcoming fiscal year.

Once the date for the AGM is chosen, the agent will work closely with the strata council to ensure that all items needing to be addressed at the meeting are properly prepared and presented according to the individual strata bylaws and the *Strata Property Act*. As there is often a significant amount of work involved, your agent will begin preparing the Notice up to 3 months in advance. Again, it is wise for council to set realistic deadlines for making decisions (budget, resolutions, etc...) and gathering related information (getting quotes, opinions, etc... months or weeks, *not* days before the notice is due). We work very hard to get all of the draft notice including budget information and any resolution details (quotes, reports, bylaw amendments, etc.) to council for their consideration and approval well in advance of the mailing date of the notice, but there often seems to be something that comes up at the last minute. We try to do our best to have these issues dealt with well in advance to prevent the mistakes that can occur when a Notice is rushed out the door without due consideration.

Let us now turn our attention to AGM Notice requirements and the steps required for getting the Notice out the door and into the hands of the owners. With respect to the notice requirements for an Annual (or Special) General Meeting, Section 45 of The *Strata Property Act* states:

**45 (1)** The strata corporation must give at least 2 weeks' written notice of an annual or special general meeting to all of the following:

- (a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;
- (b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification under section 60;
- (c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.

We will not worry about the Sections referenced above (60)(147/148), but rest assured that if the management company (on behalf of the strata corporation) has received the appropriate notice in the prescribed form (i.e. Mortgagee's Request for Notification), all individuals who should receive a copy of the Notice will receive a copy of the Notice.

More important is to clarify the meaning of "at least two weeks" noted in Section 45(1). Without quoting extensively from the *Interpretation Act* (Section 25 for the keeners), the two weeks actually translates into 20 days. This is the 14 days noted plus 2 days (as the first and last days are not counted) plus 4 days as the *Strata Property Act* (Section 61(3)) states that an AGM/SGM notice is deemed to be given 4 days after it is left with an adult, under the door, mailed, put through a mail slot or in a mailbox or faxed. Therefore, unless the Notice is provided by personal delivery, the strata corporation should deliver or mail the meeting notice a minimum of 20 days prior to the date of the meeting (most of our clients simply mail the document to avoid delivery concerns). VCS policy is that the Notice must be dated and sent 21 days prior to the meeting day, with the absolute minimum being 20 days.

Section 45 (3) and (4) follow and note the items that must be included in the Notice for the owners' information, including the wording of resolutions and the budget, respectively:

- (3) The notice of the annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote or unanimous vote.

(4) If the meeting is an annual general meeting, the notice must include the budget and financial statement referred to in section 103.

Regarding the items to be discussed at the AGM, the *Strata Property Act* spells this out nice and clearly, as stated in Section 46(1):

#### **Agenda and resolutions at an annual or special general meeting**

**46 (1)** Subject to subsection (2), the council determines the agenda of an annual or special general meeting.

Editor's Note: Subsection (2) deals with Special General Meetings called by the owners and will not be discussed here.

It is likely that you have had a busy year and there are items other than the approval of the next fiscal year's budget and the election of the next strata council to address. You will probably agree that it is a very positive thing that the determination of other items for owner discussion and approval by way of resolution is left to council's discretion, and not simply left to the suggestion of the owners. This is why you were democratically elected at the last AGM! We will have more on AGMs next month.

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## **5. Spend Spend Spend**

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Although our clients are generally pretty good about watching their budgets, we are alarmed to observe this year that many strata councils appear to have forgotten to apply the brakes to the Repair & Maintenance category. In some cases, councils have exceeded their R & M budgets by over 100 per cent, just half way through the fiscal year.

We urge councils to be mindful that you must operate pursuant to the *Strata Property Act*. A budget must be approved by the owners at the Annual General Meeting (as you know) and, once approved, you (the council) are bound by it. We frequently hear from councils who are

overspending, when we advise them to “cool it”, that they had no alternative or that the project was really worthwhile or necessary and so on.

One council President advised VCS that “the council knows best” and that “the owners do not know \*!#@\*”. Hmm.... Tell that to a judge..... its quite difficult to translate.

Councils sometimes try to justify their overspending actions by requesting VCS to transfer surplus funds from other categories within the budget. The answer is “no”. This cannot be done.

Some councils, once reminded by VCS that they are way over budget in R & M, respond that the expenses were “emergencies”. Fair enough, but if you are going to declare an emergency, do it at the time that you decide to incur the expense, not three or four months later when advised by VCS that you are in violation of the Act. Emergencies can be charged to the Operating Budget but you must be careful to ensure that a surplus (either current year or accumulated from prior years) is available to absorb the expense. You cannot declare an emergency to the Operating Fund if it is incapable of absorbing the expense. If it is incapable, at the end of the fiscal year the strata corporation will have a deficit and, as you know, the deficit has to be recovered either by a special levy or as a line item in next year’s budget.

Remember also that emergencies can be charged to the Contingency Reserve Fund, as long as they are genuine emergencies. We often hear councils rationalize that the expense was “really necessary”. Ask yourself this question “If we wait for 21 days and hold an SGM for owners’ approval, will there be any losses or damage as a consequence of waiting?” If the answer is “no”, it is not an emergency.

Another popular reason to overspend and violate the Act is that the VCS accounting is “all screwy and does not properly reflect our financial position”.

In conclusion, we ask you to refresh your memories by reading the appropriate Sections of the *Strata Property Act*, which are:

*Expenditures from operating fund*

- 97 *The strata corporation must not spend money from the operating fund unless the expenditure is*
- (a) consistent with the purposes of the fund as set out in section 92 (a), and*
  - (b) first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or authorized*
    - (i) in the budget, or*
    - (ii) under section 98 or 104 (3).*

*Unapproved expenditures*

- 98 (1) *If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.*
- (2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is*
    - (a) less than the amount set out in the bylaws, or*
    - (b) if the bylaws are silent as to the amount, less than \$2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.*
  - (3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.*
  - (4) A bylaw setting out an amount for the purposes of subsection (2) (a) may set out further conditions for, or limitations on, any expenditures under that provision.*
  - (5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.*
  - (6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3).*

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