



## FEATURES THIS MONTH

1. Strata Collection Myths
2. Annual General Meeting Season: Time For The Meeting
3. Voting at an AGM or SGM
4. Expressions We Use
5. How to Create Sections

## 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. Strata Collection Myths

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Many strata corporations face the task of collecting money owed by delinquent owners. The cause of the debt can be unpaid strata fees, fines, special levies and a myriad of other sources. The one thing these types of collections have in common is that money is owed to the strata corporation, and the owner has not paid. Below is a list of some common misconceptions surrounding collections, and the real facts about them. When in doubt about the process for collections, it is always a good idea to seek the advice of your strata agent and experienced legal counsel.

### **Myth 1: The fastest and cheapest way to collect strata fees is in Small Claims Court.**

**Fact:** An easy way to enforce collection of arrears of strata fees is by filing a *Form G Certificate of Lien*. If the lien amount remains unpaid the next step is to get an Order for Sale in the BC Supreme Court. To enforce the lien, you do not need a trial, you simply make an application to a judge in chambers. Rarely does the process go that far. Owners usually pay the money owed once the lien is filed. If the owner is unwilling to pay, you can often obtain the money owed from the bank or credit union holding the mortgage. One additional benefit of the lien is that new charges accruing can be added to the lien amount without the necessity to file a new lien. Another benefit is that a lien tells potential buyers that there is money owed. Remember, the property cannot be sold by the owner unless a *Form F Certificate of Payment* is issued. To release the lien, a *Form H Acknowledgement of Payment* must be filed by the strata corporation, otherwise the lien survives, even if there is transfer of ownership. These are powerful tools to enforce a debt.

If the debtor-owner or the mortgager will not pay the lien amount, the strata corporation can obtain an order for sale and sell the strata lot. The strata corporation lien has priority over the mortgage holder for any proceeds of the sale.

In contrast, when collecting a debt in small claims court, that court does not have the jurisdiction to make an order for sale, so a settlement conference and (in many cases) a trial is required to enforce the debt by way of a court judgment. After obtaining a judgment, the strata corporation must then take steps to enforce it, including registering the judgment against the strata lot title.

The judgment ranks in priority after the mortgagees. If the judgment goes unpaid, a second set of court proceedings are required to obtain an order for the sale of the strata lot.

**Myth 2: You can obtain a lien and a court order to sell a strata lot because of unpaid fines.**

**Fact:** Section 166 of the *Strata Property Act* says that a lien may only be registered for failure to pay strata fees, special levies, reimbursement for work performed under a work order or the strata lot's share of a judgment against the strata corporation. Liens may not be registered for unpaid fines. Similarly, an order for sale to enforce a lien will only be granted for amounts owing under the certificate of lien. That does not include fines.

**Myth 3: You cannot charge interest on overdue strata fees.**

**Fact:** Section 107 of the *Strata Property Act* says that a bylaw that establishes a schedule for the payment of strata fees may set out a rate of interest on unpaid fees if an owner is late in paying, as long as the interest rate does not exceed the limits set out in the *SPA Regulations*. The limit is currently 10% per year, compounded annually. The interest is part of the strata fees so can be included in a lien amount.

**Myth 4: A 3/4 vote resolution of the owners is needed to authorize the strata corporation to start a court proceeding to obtain an order for sale of a strata lot.**

**Fact:** The BC Supreme Court in *The Owners, Strata Plan VR 1008 v. Oldaker et al*, held that the process of filing a lien and obtaining an order for sale to enforce the lien is a separate summary process primarily for the collection of strata fees, special levies, cost of works or an owner's share of a judgment against the strata. There is no need for the  $\frac{3}{4}$  vote of the unit owners to authorize suit under s.171, which is a distinct section of the *SPA* relating to the ability of the strata corporation to bring a lawsuit against another property. The strata council alone decides when to start a court proceeding to enforce a lien by way of an order for sale. A  $\frac{3}{4}$  vote resolution is required to commence a lawsuit, not to enforce a lien by way of an order for sale.

**Myth 5: A Strata Corporation can recover all of its legal costs in a forced sale proceeding.**

**Fact:** Section 118 of the *Strata Property Act* allows a strata corporation to collect the reasonable costs of enforcing a certificate of lien. Costs are calculated based on the tariff set out in the court rules, and almost never come close to the actual costs incurred. In practice, costs recovered are about 30-50 percent of a strata corporation's actual legal costs.

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## 2. AGM Season: Time for the Meeting

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Where does it say that an owner who is in arrears cannot vote at an Annual or Special General Meeting? Under Section 53 of the *Strata Property Act*, the owners can create a bylaw denying an owner the right to vote:

### 53 Number of Votes Per Strata Lot

(1) *At an annual or special general meeting each strata lot has one vote unless different voting rights are set out in a Schedule of Voting Rights in the prescribed form in accordance with section 247, 248 or 264.*

(2) *Despite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring a unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).*

(3) *If, in accordance with a bylaw passed under subsection (2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).*

Look carefully at paragraph (2), the magic words are “*entitled to register a lien.*” A lien can be filed for non-payment of strata fees or special levies, reimbursement of the cost of work referred to in section 85 of the *Strata Property Act*, or for the strata lot's share of a judgment against the

strata corporation. There are no guidelines stipulated in the *Strata Property Act* or the regulations about the amount that an owner must be in arrears before a lien can be placed on the strata lot. Section 116(1) simply states:

116 *Certificate of Lien*

(1) *The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:*

*(a) strata fees;*

*(b) a special levy;*

*(c) a reimbursement of the cost of work referred to in section 85;*

*(d) the strata lot's share of a judgment against the strata corporation;*

Each strata corporation sets different guidelines as to the key dollar figure that would commence the process for placing a lien on an owner's account, although in our experience, the rule of thumb is usually three months in arrears of strata fees or levies.

As mentioned earlier, the magic words in section 53 (2) are *"if the strata corporation is entitled to register a lien against that strata lot under section 116 (1)"*.

It is not good enough to just have a bylaw that states *"An owner may not vote at an Annual or Special General Meeting if that owner is in arrears of strata fees or special levies."*

The strata corporation must take it one step further and commence the process to file a lien on the owners account by meeting the requirements of section 112(2), which reads:

(2) *Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.*

VCS interprets this to mean that, in the case of strata corporations that have a bylaw such as is contemplated by SPA section 53(2), owners who are in arrears at an AGM or SGM cannot be denied the right to vote, if they have not been served with a lien warning letter.

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### 3. Expressions We Use

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“To make no bones about a matter”

Means to speak frankly and directly. A form of this expression was used as early as 1459, to mean to have no difficulty. It refers to the amount of bones in stews or soup. Soup without bones would offer no difficulty, and accordingly one would have no hesitation in swallowing soup with no bones.

### 4. How To Create Sections

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Many of the properties we manage are divided into sections. Sections help the owners to allocate expenses and responsibilities that are unique to the sections, and can make the administration of strata corporations more efficient. Sometimes the section divisions envisioned by the developer are not workable and sections may be cancelled. The *Strata Property Act* says that a strata corporation can create sections to represent the different interests of residential and non-residential owners. Non-residential owners who use their strata lots for significantly different purposes can form sections. For residential owners, SPA Regulation 11.1 says that residential strata sections can be formed to separate residential apartment strata lots, townhouse strata lots, and detached house strata lots.

Sections can be created by the developer when the strata plan is deposited in the Land Title Office. If a strata corporation wants to create or cancel sections after that time, they can do so at an annual or special general meeting.

A notice of the meeting must be circulated and it must include a  $\frac{3}{4}$  vote resolution to amend the bylaws to provide for the creation and administration of sections, or for the cancellation of sections. A  $\frac{3}{4}$  vote by the eligible voters in the section and a  $\frac{3}{4}$  vote by the eligible voters in the



strata corporation as a whole are required. Once the bylaw amendment creating a section is filed in the Land Title Office, a section is created. Similarly, filing a bylaw amendment cancelling sections is the required method to cancel sections. On the creation of sections, a strata corporation can also pass a  $\frac{3}{4}$  vote resolution to allocate limited common property to a particular section as long as the property is for the use of all lots in the section. Each section is a corporation that has all the powers and duties of the strata corporation for matters affecting that section.

The administration of sections must include a separate executive, which is a sort of mini-strata council that deals with issues that only concern the section. Sections can establish their own budgets, operating fund, and contingency reserve fund for expenses common to the section, and can make special levies and impose fines. They can also sue or be sued, enter into contracts and buy or sell property on behalf of the section. Sections can not enter into contracts on behalf of the entire strata corporation. The calculation of strata fees are affected by the creation of sections, and SPA has a formula to calculate a section's share of common expenses and fees for expenses that relate solely to the section. In addition, bylaws and rules that pertain to the section may be established. Each section must have insurance cover for any perils not insured by the strata corporation policy or excess insurance for amounts not covered by the strata corporation's insurance.

The creation and cancellation of sections is a powerful tool that should only be used when necessary. Always obtain legal advice before creating or cancelling sections.

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