



## FEATURES THIS MONTH

1. Insurance Renewal for 2008
2. Quick, Call Security!
3. Test Your Knowledge
4. Insurance Deductible Court Decision
5. Special Levy Surpluses

## 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. Insurance Renewal for 2008

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Not all VCS clients are insured on the calendar year basis but most are and, in any event, this memo is of interest to all clients.

VCS has met with the senior Vancouver management of BFL Canada - the company that insures most of the properties we manage. We have been advised that rates have generally stabilized, although there are no guarantees at this time. Nevertheless, VCS has negotiated with BFL that there will be no increase in premiums for 2008 and BFL in turn has secured a similar commitment from the underwriters. On this basis, it is VCS's intention to renew the insurance policy for your strata corporation for 2008.

In the aftermath of 911 and with the winter Olympics on the horizon, the potential for an act of terrorism in our part of the world is ever increasing. Up to now standard insurance policies exclude loss or damage arising from terrorism, with coverage being very difficult or impossible to obtain at a reasonable cost. With this being a real exposure, BFL has researched placement for this risk in BC for strata corporations and it can be made available. We will send you details once we receive them from BFL.

VCS does not believe that much can be gained by "shopping around". There are only three main players in the strata corporation insurance market (BFL, CMW and Coastal) and, during the past year, several "mid-year" renewals came up and comparison quotations were obtained from each of these firms. In virtually every case, BFL had the best premium. The only time that BFL did not have the best premium was when one of the other firms already provided the policy which makes sense.

Accordingly, VCS will proceed with the 2008 renewal with BFL. If, however, your strata council (by majority consensus) would like VCS to "shop the market", we would be pleased to do so. We only ask that you advise us of your wish not later than November 30<sup>th</sup>.

As an aside, please note that VCS manages the condo building in Richmond that was hit by the twin engine plane on October 19<sup>th</sup>. That strata corporation is insured by BFL. We have been working extensively, as you can imagine, on the reconstruction and, in the context of this memo

dealing with insurance, we are very pleased to report that the policy coverage is excellent. Apart from a \$1,000 deductible, all repair expenses are covered.

On the bad news side, many owners and tenants of this complex did not have personal insurance and they are suffering terribly . . . contents, improvements, external living accommodation are some examples of items for which they do not have coverage and are now responsible themselves for the related costs. VCS repeatedly reminds owners and tenants to secure personal insurance but people choose to ignore this good advice. We raise this matter with you today as VCS intends to redouble its efforts to remind owners/tenants to carry personal insurance. We are certain that you will support our initiative.

Out of terrible tragedies, come “lessons learned”. In the new year, VCS will organize a seminar for our strata councils on this topic. Details will be circulated in due course but we want to let you know now that we are planning on a seminar in the new year to share “lessons learned” with you arising from this most unfortunate incident.

## **2. Quick, Call Security!**

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On a weekly basis VCS agents get requests from council members to call in security guards. These requests are triggered by events such as failed parkade doors, break-ins, loss of building keys, fire alarm systems out of order and other similar assorted emergencies. We do our best to obtain security guards.

Here is the problem. Due to the intense labour shortage in the lower mainland these days (and nights), there are no security guards available on short notice. We often spend hours on the telephone calling around to all the security companies (large firms as well as one-person outfits) for help but they just do not have any personnel. Some firms are now quoting in excess of \$50 per hour to have their management staff fill in. Even at that, they cannot fill the orders. So, heads up if you need security on an instant emergency basis. It is not likely to happen.

As a sad footnote, we note that we very often find security guards at properties to be fast asleep.

### 3. Test Your Knowledge....

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Here is a test for strata council members.

Section 108 of the *Strata Property Act* (Special Levy) says:

- (1) *The strata corporation may raise money from the owners by means of a special levy.*

At a recent Annual General Meeting of one of our clients, the council and owners expressed reluctance to increase the strata fees which the proposed budget included. One of the owners suggested removing some expense categories, including a deficit recovery for the prior year, and paying for the increase by means of a special levy. That would allow the new budget to balance without increasing the strata fees. The owner quoted Section 108 (1), as noted above, and said “Let’s do it right now”.

VCS said “Sorry, you cannot do it right now.”

Do you know why it cannot be done “right now”? If you generally know the answer, do you know what section of the Act comes into play?

The answer next month.

### 4. Insurance Deductible Court Decision

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In May 2007, the Supreme Court of British Columbia rendered a most astounding decision. The case, *Mari vs. Strata Plan LMS-2835* dealt with “Who pays the insurance deductible?” in a strata corporation. Mari lost, the strata corporation won. The decision in this case has far-reaching implications for condominium owners in B.C. It is, in fact, a huge heads up for individual owners and tenants of strata title property. Insurance companies for individual owners and tenants must be aghast at the decision because it will now cost them a lot of money. To understand this tale of woe, you need to go back decades.

Strata corporations came into existence in 1966 at which time the government borrowed heavily from the *Strata Titles Act* of New South Wales, Australia to give us the *Strata Titles Act* of B.C. That legislation changed names over the years, but was not substantively amended until July 1, 2000 at which time the *Strata Property Act* of B.C. became law. In respect of insurance deductibles, there was a huge change. The previous statutes (the *Strata Titles Act* and the *Condominium Act*) did not address the question of “Who pays the deductible?” on insurance claims. The *Strata Property Act* (and its predecessors) require the strata corporation to insure the property - meaning the common property as well as the individual strata lots within the corporation. Insurance policies for strata corporations provide good coverage but have deductibles. It is no different than your car insurance - hit a lamp post and ICBC will repair the car but you pay the deductible.

The problem with the previous legislation (1966 to June 30, 2000) is that it did not say who would pay the deductible if an insurance incident occurred, such as a fire or a flood. Faced with a claim, and a deductible, strata councils would consider whether the incident giving rise to the insurance claim was the fault of the owner or tenant. So, for example, if condo owner Harry was sitting in his bathtub drinking wine and smoking an illegal substance and the tub overflowed causing thousands of dollars of water damage to the units below, the strata council would say “Aha, Harry is responsible so he has to pay for the insurance deductible portion of the claim”. Sometimes councils would even say that Harry would have to pay for the entire expense, not just the deductible, since the strata council was loathe to invoke a claim on their strata corporation’s insurance policy for fear of jeopardizing future premiums and/or increasing deductible levels.

Well, of course, in situations like Harry’s it is easy to see why the strata council would take this route, but condo life is always more complicated than simple examples and, sure enough, other situations emerge which affect those decisions that strata councils have to make. What if the strata council liked Harry? Perhaps he did a lot of odd jobs for free around the strata corporation. Maybe he was a much loved strata council member. On the other hand, Brenda, who lives next door to Harry, is young, likes to party, generally gets under the skin of the strata council and is not very well liked by the owners generally.

If she caused the same kind of loss as Harry, would she get different treatment? These social elements would often colour the judgment of strata councils and, so, as the years unfolded the

good folks in Victoria who write our legislation received quite a lot of correspondence from condo owners who were being treated unfairly. In some situations, it was not as clear cut as a Harry bathtub incident; it would be a water pipe buried deep in the walls of the condo but the strata council still charged the owner for the deductible because they did not want to call upon the insurance policy for the reasons stated above. Now just how fair was that?

Accordingly, the policy makers and legislative drafters in Victoria decided that such decisions should be removed from the jurisdiction of strata councils. When the new *Strata Property Act* came into force in July 2000, it clearly stated (Section 158) that insurance deductibles are a common expense to be paid for by the strata corporation. Effectively, this section prevents (or was intended to prevent) a strata council from making an owner (or tenant) pay for the deductible. The strata corporation itself had to just suck it up.

However, that was not the end of the story. The policy and law makers understood that the Harrys of this world ought not to get away with such irresponsible conduct which other people would end up having to pay for the new law went on to say that the strata corporation could sue Harry to recover the deductible expense. What a great idea! By doing this, the lawmakers removed the decision-making process from the shoulders of the strata council and gave it to the courts. A judge would naturally be open and fair minded and not tainted with the emotions of liking Harry or not liking Brenda; consequently, an impartial judicial decision would be made on the basis of “negligence”. That is why, exactly why, the legislation was changed in July 2000.

Now take the case of the unfortunate Maris. There they were in their nice condo minding their own business and being good strata corporation citizens. Unknown to them, their washing machine had a defective part - a water level switch. We assume that a water level switch is located somewhere in the guts of the machine and, when the tub is filling up, this switch senses the height of the water and shuts off the flow of additional water into the tub. In the Maris’ case, the switch was faulty and the water continued to flow and, in fact, overflowed with the result that a lot of water cascaded to the condominium units below. The damages totalled \$9,888. The strata corporation’s insurance policy stepped in to effect repairs but there was a \$5,000 water loss deductible and the strata corporation asked the court to make the Maris responsible for this amount. The strata corporation succeeded. The judge did not decide this case on the basis of negligence by the Maris: he took the view that the Maris were “responsible” for the incident.

Condo owners and tenants better make sure they have insurance to cover them in case a pinhole leak develops in an obscurely-located water line. If you do not want to pay the insurance deductible, you better pull out the stove, fridge, dishwasher and clothes washer on a frequent basis to make sure all is okay because you are “responsible”. Just how frequently you should do this is unknown: the judge on the Mari file did not say if you should do it monthly, weekly or daily.

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## 5. Special Levy Surpluses

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In the last few years VCS has observed a trend (alarming we might add) of strata councils using special levy surpluses for other purposes or just plunking them into the Contingency Reserve Fund. It is our view that this is a violation of the *Strata Property Act*. Here are some common examples . . .

A strata corporation requires a new roof costing \$100,000 and the entire amount is raised by means of a special levy on eighty owners. The project is completed at a cost of \$90,000 so \$10,000 has to be refunded to the owners pursuant to Section 108(5) and (6) of the *Strata Property Act* which states:

### *Special Levy*

(5) *If the amount collected exceeds that required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation must return the money to the owners in amounts proportional to their contributions.*

(6) *Despite subsection (5), if no owner is entitled to receive more than \$100 in total under subsection (5), the strata corporation may deposit the excess in the contingency reserve fund.*



Let's say, for simplicity, that one owner is entitled to a \$125 refund. Clearly a refund must be made to all owners in compliance with the legislation; however, in this case, the council feels that the \$10,000 could be used effectively to repair some fencing at the strata corporation which "really needs doing" but is not included in the operating budget. At an AGM or SGM, the strata council proposes a  $\frac{3}{4}$  Vote Resolution to the owners to use the left-over money for the fence job, rather than refund it to the owners. The vote passes and no refunds are issued.

Has the strata corporation acted properly and in accordance with the *Strata Property Act*? We do not believe that it has.

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