



FEATURES THIS MONTH

1. Double Whew!
2. Test Your Knowledge
3. Your Insurance Report
4. Insurance Deductibles

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. Double Whew!

WHEW! #1: The RESA requires that strata management companies be licensed as “brokerages” which requires having a licensed managing broker on staff. 2007 was a “grandparented” year for managing brokers but, as of January 1, 2008, the grandparenting provision ended and VCS had to have a managing broker pursuant to specific courses and examinations. We are pleased to report that the two principals of VCS have qualified as licensed managing brokers and that VCS is a duly licensed “brokerage”.

WHEW! #2: The RESA requires that strata management companies operate (as of January 1, 2008) only with RESA-compliant contracts with strata corporations. VCS had some 200 contracts to organize and present to councils for execution --- not an easy task. We made it and extend our sincere appreciation to all our clients.

A big, big “thank you”.

2. Test Your Knowledge

Last month we asked you to test your knowledge on the topic of special levies. The question was “Why can’t the owners just decide “on the spot” at an AGM or SGM to raise a special levy?” The answer lies at section 45 which says:

Notice requirements for annual or special general meeting

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.*
- (2) A person who has a right to be notified under this section may, in writing, waive the right and may, in writing, revoke a waiver.*
- (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.*
- (5) *A vote at an annual or special general meeting may proceed despite the lack of notice as required by this section, if all persons entitled to receive notice waive, in writing, their right to notice.*
- (6) *If 2 or more persons share one vote with respect to a strata lot, all of them must consent to the waiver of notice under subsection (5).*

Notice is required for all new matters and for any substantial amendments to a resolution. Any resolution that does not contain adequate notice is invalid under the SPA. This notice requirement prevents the possibility of surprising an owner with an unexpected resolution that was not on the agenda of the meeting. One obvious reason for this is that at a meeting not all owners may have shown up. If an owner does not wish to vote on a particular resolution that was scheduled at a meeting, the SPA does not require them to exercise their vote. But what if a different resolution was proposed that was important to the owner? The SPA says that they would have a right to know.

If a large special levy is suddenly proposed it stands to reason that most owners would take an interest. That one reason, alone is why ‘surprise’ special levies are not permitted. Also, mortgage-holders (i.e. banks) are entitled to have notice of any resolution that may affect their security in the mortgage. A big special levy would affect the security of a mortgage since it would rank higher in priority than a mortgage. In addition, prospective owners who have a sale pending are entitled to know if any special levies are pending prior to committing to a purchase.

Now, test your knowledge a bit more. The first test (above) reflects a usual situation but this month’s test reflects wide misunderstanding of the statute. Let’s say that your strata corporation raises a special levy of \$400,000 to repair the roof. The project completes for \$300,000. Council knows that a number of other very important projects need doing (painting, boiler, etc). Council calls a general meeting and presents $\frac{3}{4}$ vote resolutions to the owners for authority to use the surplus (in this case, \$100,000) to fund the other projects. Why is this “illegal”? Answer next month.

This article does not purport to offer a legal opinion. Readers are advised to obtain legal counsel. This article is published by Vancouver Condominium Services Ltd. and is copyrighted. Reprinting without written consent from VCS would violate the copyright.

3. Your Insurance Report

While there are certainly strata corporations that do not have fiscal year-ends corresponding with the calendar year-end, the majority of you have recently attended your Annual General Meeting, or will soon in the New Year. A very important item on the agenda is the Insurance Report, at which time either your strata agent or the Chairperson will provide detail regarding the strata corporation's insurance policy which will have been included in the Notice of Annual General Meeting. The provision of a report on the insurance of the strata corporation is mandated by Section 154 of *The Strata Property Act*, which states:

Review and report on insurance

154 The strata corporation must

- (a) review annually the adequacy of the strata corporation's insurance, and*
- (b) report on the insurance coverage at each annual general meeting.*

The Insurance Report will include such detail as the Replacement Cost (amount for which the building is insured in the event that total replacement is required, as determined by an annual insurance appraisal) of the building(s), the Annual Premium Cost (as expensed to the Insurance code on the Annual Operating Budget), the various insurance deductibles associated with possible damage to the building, re-keying, etc., and the liability coverage as provided by the policy.

As noted above, the Replacement Cost of the building(s) is determined by an annual insurance appraisal. This allows the management company to communicate the required information to the brokers to ensure that there is accurate and up-to-date coverage for the building for its total replacement cost. During these days of ever rising construction and material costs, this means the Replacement Cost has likely increased, and the insurance coverage must be "topped up". This is not only common sense and good business practice, but also a requirement of *The Act* per Section 149 (4)(a), which states:

The property insurance must

- (a) be on the basis of full replacement value**

Note that Section 149 (1) details the requirements of strata corporation insurance as follows:

Property insurance required for strata corporation

- 149 (1)** *The strata corporation must obtain and maintain property insurance on*
- (a) common property,*
 - (b) common assets,*
 - (c) buildings shown on the strata plan, and*
 - (d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.*

The “fixtures” referred to in Section 149(1)(d) above are defined in Regulation 9.1(1) to mean “items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.” You will note the absence of coverage for the contents of a strata lot or any betterments/improvements undertaken by current or previous owners. This is underlined in the Insurance Report, at which time the ownership is advised that the strata corporation’s insurance policy does not provide coverage for individual contents, betterments or improvements (i.e. storage locker contents, clothing, furniture, decorating, upgrading of carpets, flooring, etc.). Owners and residents are reminded that they must carry their own “Owner Package” insurance for this coverage, including any improvements and it is suggested that individuals should contact their home insurance company to determine if they have this coverage or not. This information is also provided in the minutes of the Annual General Meeting for the benefit of those non-resident owners and other individuals who may not have been able to attend.

As you can see, there is a substantial amount of information that should be provided to the ownership via the Insurance Report. Owners have a right to receive a copy of the strata corporation’s insurance policy, hear the specific details related to this information. They also need to be aware of the areas and items covered by the strata corporation policy so that items falling outside of the coverage can be addressed with their own home insurance company. And while you cannot force an owner to spend their money on additional home insurance to address their betterments, improvements, contents and alternate living expenses, we have no shortage of stories we can share of owners that wish they had spent that money.

One of the local papers recently commented in an article discussing insurance that, as we head into a new year, the best gift that anyone who owns a strata lot can give themselves that they will never regret is a condominium homeowner, landlord or tenants insurance policy. We could not agree more.

This article does not purport to offer a legal opinion. Readers are advised to obtain legal counsel. This article is published by Vancouver Condominium Services Ltd. and is copyrighted. Reprinting without written consent from VCS would violate the copyright.

4. Insurance Deductibles

“Bad news travels fast” goes the cliché. So, apparently, do bad decisions ... this one being the May 2007 ruling by the Supreme Court of British Columbia that strata lot owners only need to be “responsible” for an incident, not “negligent” in order for the strata corporation to back charge an insurance deductible. We refer you to the Mari case, which we wrote about in last month’s newsletter.

Just to briefly refresh your memory on this case, it involved owners Mr. & Mrs.(Mari) who had to pay the \$5,000 deductible portion of an insurance claim in the order of \$9,000 resulting from a flood when the owners’ washing machine malfunctioned. A defective flow-switch, deep in the bowels of the washer, caused the water to overflow the machine while the Mari’s were not paying attention. The court apparently felt that “negligence” by the Maris was not a relevant factor: they were held accountable for the \$5,000 deductible merely because they owned the washing machine and were, therefore, “responsible”.

This decision has spread faster than soapy water cascading from a washing machine and strata councils across the province are rubbing their hands with glee at the prospect of being able to now charge owners (and tenants) for deductibles. Law firms have pounced on the opportunity to flog bylaws authorizing strata corporations to charge back those pesky deductibles. Quite why we

need a bylaw to do what the court has already decided as okay to do escapes us but, what the heck, nothing like a bylaw to give weight to a decision to back charge a deductible. Mind you, before you spend big bucks on having a law firm write a bylaw, just ask us for one. VCS had created a bylaw (last century) to do this before the *Strata Property Act* came along on July 1, 2000 pronouncing that insurance deductibles are to be treated as common expenses. Prior to this, the law was silent on who should pay the deductible so having a bylaw to address and clarify the issue was worthwhile. As said, VCS wrote such a bylaw (which was copied by many other management firms) and it worked well. If you need one, we can dust it off and give it to you at no charge.

Now just to illustrate how a court decision can be used, abused, interpreted or misinterpreted, we can report to you that several strata corporations (not just VCS clients) have decided to not only charge back the insurance deductible because the owners were “responsible” but also to actually not make insurance claims even if the damages exceeds the deductible. In one new case, another water escape, the damages totalled about \$8,000. The deductible was \$5,000. The council decided that the owner was “responsible” and concluded that the owner did not even have the right to the benefits of the insurance policy, never mind being held accountable for the deductible. You see how things go south fast. Where is this going to end?

Good question. The problem is that the Mari decision essentially stands as a precedent although the legal community may take the position that it was not a “floodgate” decision (no pun intended). The reality, however, is that strata councils will now rely extensively on the Mari decision, notwithstanding Section 158 of the *Strata Property Act* which says that an insurance deductible is a common expense and if the strata council thinks that the owner who caused the claim was responsible, the strata corporation can sue the owner in a court of competent jurisdiction to recover the deductible. Why bother with an unlikeable law when the Court has opened the back door?

Clearly from reading the above, you can see that VCS thinks this turn of events (or should we say this turn of the law) is bad news. You may disagree and say that it is good news. Indeed. But ask yourself these questions. What if your washing machine overflowed because of a faulty flow



switch? Would you be prepared to write a cheque for \$5,000, or \$10,000 or \$50,000? Isn't this why your monthly strata fee includes a budget item called "Insurance"?

This article does not purport to offer a legal opinion. Readers are advised to obtain legal counsel. This article is published by Vancouver Condominium Services Ltd. and is copyrighted. Reprinting without written consent from VCS would violate the copyright.