



FEATURES THIS MONTH

1. **Confronting The Johns**
2. **Council Members Have An Extra Duty**
3. **Your Strata Corporation Has Two Insurance Policies**

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. Confronting The Johns

VCS agents routinely get calls from owners or council members reporting suspicious activity in their buildings, including drug operations and prostitution. In one building managed by VCS the residents in one unit were serving up soft-core porn of themselves on a website.

Our focus in this article is about a recent event in one of our large highrise properties where council members had become aware of very high traffic volume to one particular unit. In fact, the automated security access fob reader recorded in excess of 200 computer entries in a three-day period. Council also observed some “tarts” regularly meeting men at the front door of the building and escorting them up to the suspected unit. Council contacted the police department’s vice-squad; however, due to case load the vice-squad cops were not able to assist.

Council implemented “Plan B”; that is, they waited in the lobby and asked every person (that they did not know to live in the building) to state where they were going. As it turns out, their hunch was correct and a very high number of visiting males discreetly fled the scene rather than wait for the next elevator.

Whether or not council’s action are legal we do not know. Could their actions lead to physical confrontation and resultant harm? Yes, it is a likely risk. Can the council be commended for resolving a problem? Probably “yes” would be the answer by most strata councils who are weary of invasion of their homes by drug dealers, hookers and johns.

Note bylaw 3(1) of the Schedule of Standard Bylaws of the *Strata Property Act*, which states:

- 3.(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that*
- (a) causes a nuisance or hazard to another person,*
 - (b) causes unreasonable noise,*
 - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,*
 - (d) is illegal, or*

(e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

It would seem that the council at this building is enforcing its bylaws.

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2. Council Members Have An Extra Duty

VCS management recently received a telephone call from a very upset owner who demanded to know why the property agent for her strata corporation had told a real estate agent that a major repair project is on the radar for his strata corporation. The issue had been minuted to some extent and the real estate agent, who is to be commended for doing the right thing, contacted the VCS property agent to obtain further details.

The VCS property manager (strata agent) did the right thing also and disclosed the details and potential costs of the impending project. The owner who was selling his strata lot was not happy that this information had been disclosed by the VCS agent to the real estate agent.

VCS management discussed the call with the property manager and learned that the owner was, in fact, a former council member. Over the past several months the council had been discussing this project but the final costs had not been nailed down, which explained why the minutes were not precise. The former council member was, of course, aware of the impending estimated cost which council had decided would likely have to be funded by a special levy.

Council members (current and former) must exercise extra care and responsibility to act properly when they become aware of special project expenses that are in the final stages of research and are imminent. There is no law to prohibit a council member from selling his or her strata lot, but it is extremely dangerous to not disclose “inside” information to potential purchasers. Courts in

British Columbia have spoken to this issue and made it clear that disclosure is not an option: if a council member is aware of something significant, such information cannot be masked. VCS agents, of course, are bound by these guidelines and must disclose information to real estate agents when asked.

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3. Your Strata Corporation Has Two Insurance Policies

Are you aware that your strata corporation has two insurance policies? As you know, Section 149 of the *Strata Property Act* states that “*the strata corporation must obtain and maintain property insurance on common property, common assets and buildings shown on the strata plan*”. (In previous VCS articles we have noted that “strata lots” are not expressly included in this requirement; however, it is in our opinion implied.)

Subsection (4) of Section 149 states that “*the property insurance must be on the basis of full replacement value . . .*”. What this means is that the insurance for the property has to be equal to (or greater than) the appraised value. So, for example, if the property is appraised at \$10,000,000 the strata corporation must insure for \$10,000,000. Conversely, if the strata corporation is insured for only \$9,995,000 it would be in violation of the Act.

Similarly, if the strata corporation could not purchase full insurance (for one reason or another such as market conditions, poor claims experience, etc.) and the most that could be purchased would be \$8,000,000, the strata corporation is still responsible for the difference of \$2,000,000. In this circumstance this difference is “**self-insurance**”. Many organizations (including municipalities) rely on “self-insurance” to cover future liabilities. It is a perfectly acceptable form of insurance based on presumption of risk. We also see this concept of self-insurance in situations where owners and tenants do not purchase “homeowner-tenant packages”. These

people are essentially opting for self-insurance based on their perceived risk of loss. In effect, they are insuring themselves.

The example above of a strata corporation intentionally choosing to insure for \$5,000 less than the appraised value, therefore, has two policies in force. That corporation has insurance from a contracted underwriter for 99.95% of its needs and it is self-insured for the remaining .05%.

Now, turn all this upside down and let's say that, instead of stopping short of the maximum amount by \$5,000 in our example above, the \$5,000 is carved out at the bottom of the value. This is called a "deductible". Note that nowhere in the *Strata Property Act* requiring a strata corporation to insure is there any reference to deductible. It simply says that the strata corporation must insure for full value.

Remember also that a deductible is only a mechanism used by the underwriter to minimize its expenses. It does not mean that there is no insurance in that range, in this example \$5,000. In other words the insurance requirement starts at the first dollar and climbs to the top of the appraised value. The strata corporation is, therefore, fully insured.

Your strata corporation has two insurance policies:

1. The main one is the one you purchase via a broker from an underwriter; and,
2. The second one is the self-insurance component.

When a claim arises and a strata council wants to charge back an owner, remember what *Section 158(1)* of the Act says:

".... The payment of an insurance deductible **is a common expense**". (*emphasis added*)

Thus, when an owner does something in his or her strata lot and damages occur to the building which meet the criteria of Section 149, the insurance policies of the strata corporation are there for the benefit of the strata corporation and its individual strata lot owners. Always remember that an owner's monthly strata fees includes a payment toward the insurance premium which means that the owner has the legal right to rely on the benefits of the insurance policies. The



corporation must take responsibility for settling the claim although it does have the right to attempt recovery of the deductible if it feels the owner was “responsible” for the event.

If your council is faced with such an insurance claim and you are inclined to jump on the Mari bandwagon, remember *Section 158(1)* and remember that the court did not authorize automatic chargebacks. It only said that the owner had to be determined as “responsible”. You still have to sue.

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