



FEATURES THIS MONTH

1. Addressing Illegal Activity
2. Power To Use A Remedy
3. Are You Renting Your Strata Lot?
4. Insurance

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. Addressing Illegal Activity

We see in the paper from time to time (and seemingly too often these days) stories of condos found being used for some manner of illegal activity. There are grow ops, drug labs, brothels and other extremely concerning possibilities that can occur when no one is looking closely enough at suspicious comings and goings.

There have been articles written specific to dealing with grow ops, insurance implications and the information related to addressing the aftermath, property damage and who is actually responsible. Here we will focus on the basics of addressing illegal activity as a strata council with respect to *The Strata Property Act* and strata corporation bylaws. It is very important to do what you can within the existing legislation to take some kind of action and demonstrate to those involved, and others contemplating a similar action, that there are serious ramifications to these actions. While the bylaw violation fines are not hefty, it is important to take appropriate steps to address the activity from the very beginning. The additional costs of the owner's or tenant's actions may cost them far more. For example, in addition to the seemingly paltry fines that may be levied by strata council for violating the bylaws noted below (\$200 is unlikely to scare many drug dealers), owners can expect to pay upwards of \$100,000 and more in the case of dismantling a meth lab to pay for emergency services, hazmat costs, repairs to the lot and common areas, City fines, etc... before the unit is even deemed to be habitable.

With respect to the actual bylaws being violated, it is safe to say that every strata corporation in the province has some form of "Use of Property" bylaw such as the following portion which is taken from the Schedule of Standard Bylaws from SPA:

Use of property

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.

Many strata corporations, in both a proactive and reactive manner, have expanded on the section of their bylaws addressing Use of Property to more fully address illegal activity. Some examples of possible additions include:

Illegal Use of Strata Lot Prohibited

(i) The owner of a strata lot shall not permit it to be used for any purpose that is prohibited by any law, regulation or bylaw, whether federal, provincial or municipal; or in any way that contravenes these bylaws or the rules of the strata corporation, or which, in the opinion of the strata council acting reasonably, is injurious to the good reputation of the strata corporation. Without in any way limiting the generality of the foregoing, this includes producing or trafficking, or both, any controlled substances within the meaning of the Controlled Drugs and Substances Act.

(ii) Where a strata lot is rented in accordance with the strata corporation's residential rentals bylaws, it is the responsibility of the strata lot owner to be in contact with the tenant and ensure that the strata lot is inspected on a regular basis, and in any event no less than once every six (6) months, to ensure that there is no illegal activity taking place within the strata lot as described in the proceeding, and upon request of the strata council to provide written confirmation to the strata council that the inspection took place.

While these incidents of illegal activity are often taken out of the hands of the strata council and the management company by the authorities, it is wise to have both the bylaws in place AND enforce them appropriately when knowledge of a violation first comes to light. Strata corporations can gain a reputation for either being a haven for illegal activity or for strict and effective policies against it and it is not a big guess as to which you would rather live in. Again, it is best to get the authorities involved and they are happy to discuss how the situation should be handled. It is also wise for the strata council to involve a lawyer when addressing these concerns with the owner/tenants/etc... to achieve a level of distance from these unwanted individuals and ensure everything possible is being done in a proper and legal fashion with the end game of ridding the building of the unwanted activity.

As a general rule, it is our observation that most of the illegal activities such as drug dealing, marijuana grow-ops, meth labs and prostitution occurs in tenant-occupied strata lots, rather than owner-operated units. Accordingly, we have prepared a bulletin which we are planning to enclose with minutes which are sent to non-resident owners. A copy of the proposed bulletin is included here for your advance reading. We are hopeful that non-resident owners will get the message - i.e. it is important to properly screen tenants and to monitor their occupancy from time to time.

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2. Power To Use A Remedy

Here is Section 133 of the *Strata Property Act*.

Strata corporation may remedy a contravention

- 133** (1) *The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including*
- (a) doing work on or to a strata lot, the common property or common assets, and,*
 - (b) removing objects from the common property or common assets.*
- (2) *The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.*

We remind you of this section of the statute as a consequence of an extremely interesting court case heard in the Supreme Court of British Columbia involving a strata council's long battle with an owner over modifications to the common property. In a decision dated January 24, 2008 the Court found in favour of the strata corporation and it is a judgment that you should take close note of and put in your toolbox for the time you need it. The Reasons for Judgment run 54 pages and you can request a copy from VCS through your agent. We will, however, give you the gist of it here in our article and, as suggested above, you will likely take heart in the outcome. (Last month we made reference to a bad decision of the court; this month it is the opposite.)

The case involves a strata corporation that is comprised of residential strata lots and commercial strata lots. The issue had to do with actions undertaken by the commercial owner. Do not let this aspect distract you from the article if you do not have any commercial units as this is not relevant

to the outcome. The battle between the parties had to do with modifications to common property and that could happen in any strata corporation whether it is fully residential or mixed residential/commercial.

Owners in strata corporations are constantly making alterations to their strata lots - some of these are merely cosmetic but many involve changes to the common property. Such changes might be to interior walls or floors shared with other strata lots or common property. They might also impact exterior common property. As an example, in townhouse developments we often see owners wanting to add new windows or skylights. This type of change involves alterations not only to the strata lot interior but also to the common property, ie. the exterior envelope.

The case we bring to your attention here started in early 2004. A commercial unit owner who had purchased the strata lot to operate a dry cleaning/laundry operation requested (among other related things) consent from the strata council to cut some holes in the exterior envelope for the purpose of “venting”. The contemplated dry cleaning operation fell within the bylaws of the municipality (in this case Vancouver) so, to that extent, there was no issue as far as the strata council was concerned. What the strata council did worry about, however, was just how extensive would be the modifications to the (exterior) common property and what effect would venting from a dry cleaning/laundry operation have on the residents adjacent to the vents. Also of concern to the strata council was the issue of volume, meaning “would the operation just serve local customers or would it be used as a central plant serving not only local customers but also other satellite drop points in the city?”

The commercial owner requested council’s consent for the modifications. It would appear from the court documents that the owner probably contemplated more modifications than he told the strata council; however, the strata council initially reviewed the request and granted “consent in principle” but requested a full explanation, ie., drawings, architectural specs, building permits, etc. before granting final consent. Correspondence sent by the property management company (not VCS at the time) made it clear just how far the strata council had “agreed” to the modifications.

As time went by, and to make a long story short, the commercial owner did not provide the documentation to the strata council but instead simply proceeded with the modifications and, as noted above, more than had been suggested.

The strata council watched in dismay as the changes progressed and, despite their best efforts to work with and negotiate with the commercial owner, they were unsuccessful.

The commercial owner, remarkably, did not open his facility for business but rather brought an action in the B.C. Supreme Court against the strata corporation for “wrongfully withdrawing approval”, for lost revenues, and for removal of the fines (some \$18,000) levied by the strata council against him for breach of the bylaws. The strata corporation counter-sued and after several years of the legal wrangling, the matter went to trial and resulted in the Reasons for Judgment. In short, the Plaintiff (the commercial owner) lost and the Defendant (strata corporation) won. The Court stated that “*the alterations to the exterior wall were unauthorized and in breach of the by-laws of The Owners, Strata Property VR-_____ and the standard by-laws of the Strata Property Act.*” The Court did not permit the fines totalling almost \$18,000 to stand and reduced the amount by two-thirds. The Court ordered the Plaintiff to provide the necessary documentation and a host of other materials to the strata council. The improperly cut holes in the exterior walls are to be repaired at the commercial owner’s expense. Lastly, a substantial portion (not all) of the legal costs incurred by the strata corporation are to be paid by the Plaintiff (the commercial owner) to the strata corporation. Wonderful news eh?

This case illustrates and identifies some important lessons for all strata councils and management companies as follows:

1. When owners request consent to undertake modifications, it is vital that council demand specific and detailed documents from that owner before granting consent, even if such consent is “in principle only”. It is our observation that most owner requests are done at the last minute and that the owners want consent immediately because they want to get started tomorrow. They frequently view the process as merely obtaining the “rubber stamp approval” and when they do not get that, they get upset at the strata council and the agent. Let’s be clear: council is under NO obligation to rush the approval process. Just because the owner wants to get started tomorrow is no reason to grant approval

without asking, and receiving answers, to your questions and without seeing the actual plans and details. Do not be pressured.

2. When preliminary approval is contemplated “in principle” make sure that the minutes and any correspondence to the owner makes this abundantly clear. In the case we write about, the correspondence issued by the property manager and the minutes played a huge role in giving the Court evidence of exactly what transpired.
3. Avoid verbal communications with owners which often give rise to misunderstandings and misinterpretations. We frequently observe council members visiting strata lots to visualize what the owner wants to do, and that is fine but be careful what you say. A simple innocent statement or act can be twisted against you. In the case of the dry cleaning case, the council president presented the owner’s wife with a flower arrangement and a card offering congratulations on their new business venture. Such a kind and generous act came back at trial: it was stated by the Plaintiff that this was tantamount to granting consent to the modifications. You see how easily these things can backfire? Also, if council does visit an owner’s unit to view proposals, be sure that at least two council members attend. That way it will avoid the one to one he said/he said syndrome.
4. Always ensure that communications with the municipality make it abundantly clear that approvals are preliminary and in principle only. This will give your position much credibility in the event of a dispute. Use the offices of your municipality. Municipal officials are very concerned about owner modifications and will be excellent sheriffs on your behalf.
5. Be consistent with approvals. Do not find yourself in a position of having to defend yourself for allowing one owner (someone you like or another council member) to bypass the process but not allowing another owner the same benefit. Things like this will come back to haunt you. (This was not the case in our dry cleaner story.)
6. Use the law. Section 133 is a good piece of legislation. It is for your benefit and, as we can see from this case, it sure came in handy. Strata councils themselves frequently violate the Act (sorry to step on your toes) and that makes it difficult when you are trying

to use the law as a remedy against an owner. Come to the table with “clean hands”. (In the case here, the strata council acted properly at all times and indeed had “clean hands”.)

7. Watch those fine procedures. You can see what happened in this case. We are not suggesting that this strata council acted improperly but the Court’s direction prompts two points:
 - (a) Levy fines only after due process has been followed. You cannot “just fine”. You must first give an owner an opportunity for a hearing. Only thereafter can the fine be levied. We have written on this topic before but the message is not sinking in. Every month we are instructed by clients to levy fines in contravention of the Act. You do not want this type of action to get in the way of a successful court application.
 - (b) Do not use fines as a remedy. Councils routinely believe that the mere levying of fines will bring about compliance from owners. It does not. Yes, by all means levy fines (properly) as a means of demonstrating to the Court that you are serious in your enforcement initiative but do not believe for one moment that the act of levying fines is how you get compliance from owners who are violating bylaws. We are not suggesting that you rush off to court every time some owner steps out of line but be cognizant of section 133. It is an excellent provision and, in view of the dry cleaner case it is, well, good news.

We guess it is safe to say that, in this case, the Plaintiff was indeed taken to the cleaners.

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3. Are You Renting Your Strata Lot?

If so, here is a bulletin you should read. The following is a true story - you will find it interesting and valuable as a non-resident owner.

Recently one Saturday morning, our office received a telephone call on our emergency line that there was a water leak in a building we manage so we dispatched a restoration contractor to mop up the water. The contractor had to access several strata lots to get the job done, and, at one unit, no one answered the door and a locksmith was called to “pick the lock”. Once open, the restoration contractor stepped inside and, to his horror - a fully equipped meth lab.

The police and fire departments were called and the building had to be evacuated. The fire department’s HAZMAT team gingerly dismantled the meth lab. The City then advised that the strata lot could no longer be occupied and, further, the entire strata lot has to now be “deconstructed” and rebuilt. The owner of the strata lot will be facing a cost estimated at about \$100,000 to reimburse the City and to reconstruct. On top of this will be fines from the strata corporation and other legal consequences.

The non-resident owner was in shock to learn all this. It turns out that little was known about the tenant other than he had paid cash for his monthly rent payments and security deposit.

No doubt the vast number of renters in strata corporations are properly screened by non-resident owners such as yourself, or their agents, and in reality there are likely only a few bad apples. Nevertheless, let this true episode serve as a huge heads-up to you (and your rental agent if applicable) that renting your apartment involves a lot more than merely collecting the monthly rent.

You ought to be aware also that most strata corporation insurance policies are now imposing huge deductibles (\$50,000 in some cases) for damages arising from illegal operations. In some policies, the coverage is denied altogether. You can be sure that your strata council is not going to step up to the plate and have the strata corporation pick up the tab if your strata lot is one of these bad apples. Also, be aware of a very significant court case recently heard in the Supreme Court of British Columbia involving insurance claims. The essence of this case is that if an occupant of a

strata lot is responsible for the cause of an incident and the insurance of the strata corporation has a deductible, the owner is responsible for paying the deductible. That would be you if your tenant is the culprit for some incident.

Accordingly, we urge you to properly screen your tenants, obtain background and reference checks, and, make frequent inspections of your rental premises. Collecting the rent is the least of your worries given the above facts.

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4. Insurance

Since most (not all) of our clients have insurance policies that run on the calendar year, we thought it might be useful in our January newsletter to say a few words about insurance. These words, however, apply to all clients, irrespective of renewal dates.

First, the annual premium is payable to the broker up front. It is true that payments can be made on a monthly basis for cash-starved clients but this is done via a third-party finance company arranged through the broker and it is not cheap. The interest rate is usually “way up there” in the order of 15%. Try to avoid financing if you can.

Second, VCS pays the entire premium in January, but on your financial statement (page 1, the Budget Comparative page) you will see only one-twelfth of the amount as an expense. Every month we show one-twelfth of the premium and this process avoids “distorting” the monthly budget comparative. The actual total paid is recorded on the Balance sheet - it is a prepaid expense and, of course, diminishes one month at a time until it reaches zero. Make sense?

The insurance amount is based on the most recent appraisal. It is possible that the amount of your premium for 2008 is higher than it was for 2007. This is not a result of higher rates - it is in most cases a result of higher value. In other words you are buying more insurance. The *Strata Property Act* requires, see Section 149(4) (a), that “*the property insurance must be on the basis of full replacement value*”. It is for this reason that you do annual appraisals, particularly

important at times like this when construction costs are escalating at incredible rates. In 2007 we saw strata corporations increase in replacement value by ten to fifteen percent.

The same section of the statute says that the insurance must be for “*major perils as set out in the regulations* (sic)”. The Regulation (singular) defines major perils as,

- (2) *For the purposes of section 149 (4) (b) of the Act, “major perils” means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious acts.*

Interestingly, is the absence of earthquake coverage as a peril. You would think that living in B.C. it would be included but, for whatever reason, the legislators did not include it specifically. In any event, there is nothing preventing the strata corporation from purchasing coverage for risks that are not identified in the Regulation. All VCS client policies include earthquake coverage. EQ coverage carries a deductible - in most cases it is 10% but in some areas (i.e. Richmond) it is 15%. You can see the deductible for your strata in the face page of the policy we recently sent to you. Keep in mind that the deductible for earthquake is structured differently than other deductibles in your policy. It is based on a percentage of the value of the building. Repeat: Value of the building. Not the amount of the damage. Very few strata corporations have sufficient money in their CRFs to cover EQ deductible. We are not suggesting that you build up your CRF to the 10 or 15 percent EQ deductible level but we do alert you to the sizeable amount of money that would be required to repair your strata corporation if we get hit by an EQ. Remember also that it does not have to be a “big one”. Even a minor or moderate earthquake can be costly. That is because the deductible is pegged to the value of the strata corporation, not the amount of damage. So for example, a building valued at \$10 million with a 10% deductible would have to absorb the expenses of any size earthquake up to \$1,000,000. An \$80 million property would have an \$8,000,000 deductible. In Richmond, a strata corporation valued at \$20 million would have a deductible of \$3,000,000.

Clients sometimes ask us to obtain “buy-down” EQ coverage. In other words, pay a higher premium and reduce the deductible from 10% to 5%. Sorry, but it is not available. When VCS first started in business some 25 years ago, EQ deductible was 5%. With increased awareness of the potential for earthquakes, underwriters have had increased levels of angst and, accordingly, raised the bar. Also, the fear is that there are insufficient reserves to pay out all the claims in the

event of a major earthquake. Just take a look around the lower mainland and note how many new buildings (not just strata corporations) have gone up in the past decade and then consider the risk potential. Don't be surprised to see EQ deductibles go up from their current levels in the next few years.

There is something else interesting to note about insurance for strata corporations. The *Strata Property Act* requires a strata corporation to have insurance. Section 149(1) says:

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.*

Where does it say that your strata lot has to be insured also? Did the legislators forget to insure strata lots? Maybe they did. The answer next month.

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