



FEATURES THIS MONTH

1. Proposed Changes to the Strata Property Act
2. Fun & Games
3. Insurance Policy Trend Change to Note
4. Excess Special Levy Money Must Be Refunded

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. Proposed Changes To The Strata Property Act

Perhaps you saw the press release but, if not, see the next page. The provincial government plans to introduce changes to the *Strata Property Act*. The press release only highlights the scheme. For a full copy of the actual bill, go to www.leg.bc.ca/38th5th/1st_read/gov12-1.htm

2. Fun & Games

Well, games for sure but maybe not so much “fun”. We are, of course, talking about the 2010 Winter Olympic Games coming soon. While this is going to be a spectacular event, there are likely to be many difficult administrative issues directly impacting your strata corporation.

In preparation for this, the VCS management team is developing strategies for coping with the extraordinary circumstances that will affect our lives from January 1, 2010 through to the end of March. Over the balance of 2009, VCS will be issuing bulletins to our strata councils to identify stress points and various concerns that must be addressed jointly by VCS and individual strata corporations. Here are some examples:

- Traffic: There will be road closures (mostly we think) in the downtown core although it is realistic to anticipate a “ripple effect” which will impact areas all around the lower mainland, not just downtown. Impact: how do contractors gain timely access to your buildings, especially for emergencies such as floods, broken garage gates, people stuck in elevators?
- Council Meetings: Do you think it is wise to hold council meetings during the main two weeks with all the games to watch? Impact: will quorums be an issue?
- General Meetings: If you normally hold your AGM in January or February, this practice will likely not be feasible in January and February 2010. Impact: holding AGMs in November or December.

- **Security:** Getting security guards these days is difficult enough. We wonder just how problematic it will be to obtain security services from January to February 2010. Impact: your strata corporation has an emergency situation requiring a security guard. No one is available.

These are just a few examples of concerns that we are addressing. We welcome input from you also. Please let us know what issues you would like us to include in the development of our strategy program. As said at the outset of this bulletin, we will be sending you bulletins on these topics through to the end of the year. Let's work together to minimize the problems that will surely arise.

- * Olympics - Friday, February 12th to Sunday, February 28th
Paralympics - Friday, March 12th to Sunday, March 21st

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3. Insurance Policy Trend Change To Note

This bulletin applies only to strata corporations which have Zurich Insurance as one of the underwriters; however, it is an interesting update and one that **all** VCS clients ought to be aware of as it is an indication of trends in coverages that are occurring. (We have written articles on trends before - some of which have come true, i.e. increases in water deductibles, exclusion of losses arising from grow-ops, higher earthquake deductibles.)

Today we are alerting you to "capping" of the Guaranteed Replacement Cost benefit of the all-risk portion of your policy. First some background. Section 149(4) of the *Strata Property Act* states that a strata corporation must have insurance and such insurance "must be on the basis of full replacement value"

Full replacement value is essentially what is called the cost of replacement new ("CRN"). It is not market value i.e. real estate value. For this reason, your strata corporation engages independent property appraisal firms* to provide you with valuation reports every year. Upon receipt of such



reports, the amount of coverage (Total Insured Value) is adjusted to this value. In the event of a total loss claim, your strata corporation will be fully insured for the cost of reconstruction. Indeed, if the cost of the reconstruction exceeds the CRN value, the strata corporation is insured to whatever cost is necessary to rebuild. The sky is the limit or rather it used to be. Now come some changes. The policies which have Zurich as one of the underwriters have some changes in the wordings.

Guaranteed Replacement Cost is now capped at 130% of the All Property limit whereas the previous policy had no cap.

Example #1:

CRN value per appraisal:	\$10,000,000
Insured for:	\$10,000,000
Claim (i.e. fire)	\$11,000,000 (110% of CRN)
“Underinsured”:	\$ 1,000,000
Policy benefit:	\$11,000,000
Loss to strata corporation:	0

There is no loss to the strata corporation since it had obtained a proper valuation/appraisal.

Example #2:

CRN value per appraisal:	\$10,000,000
Insured for:	\$10,000,000
Claim (i.e. fire):	\$15,000,000 (150% of CRN)
“Underinsured”:	\$ 5,000,000
Policy benefit:	\$15,000,000
Loss to strata corporation:	0

Note in example #1 the claim paid by the underwriter is 110% of the value of the policy. In example #2, the claim paid by the underwriter is 150% of the value. Now, here is where things change ...

Example #3:

CRN value per appraisal:	\$10,000,000
Insured for:	\$10,000,000
Claim (i.e. fire):	\$15,000,000 (150% of CRN)
“Underinsured”:	\$ 5,000,000
Policy benefit:	\$13,000,000 (130% of CRN)
Loss to strata corporation:	\$ 2,000,000

Zurich Insurance has “capped” the claim payout (effective January 1, 2009) to 130%. So let’s re-examine the numbers in examples #1 and #2. In example #1, the strata corporation is fully covered because the claim is at 110% but less than 130%. In example #2, the dynamic changes due to capping. The policy would only provide \$13,000,000 coverage which is 130% of the CRN as shown in example #3. The strata corporation would be uninsured for \$2,000,000.

Now, on the surface it appears that this change in the policy is something to worry about. Perhaps. But on the other hand, 130% is quite a “generous” allowance and, in reality, a claim may not exceed this newly imposed level.

Nevertheless, you should be aware of this new limit and trend. VCS clients are advised to retain and rely on opinion and advice from professional insurance risk-assessment consultants in respect of all insurance requirements of the strata corporation.

**Professional appraisers have a duty to provide accurate CRN figures to ensure that there are no valuation problems. They, of course, carry (or should) professional liability insurance.*

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4. Excess Special Levy Money Must Be Refunded

This requirement of the *Strata Property Act* is important but first some background to give you an understanding of the discussion that follows.

A strata corporation decides to paint the strata corporation. (If you live in a concrete highrise, the painting is interior halls, lobby, etc. If you live in a townhouse, the painting in this example is for the exterior. In either scenario, the principle remains the same.) The strata council convenes a Special General Meeting at which a special levy of \$100,000 is passed (approved) by a $\frac{3}{4}$ vote resolution of the owners.

The project proceeds and is completed under budget. In this example, we will say that the total cost when all the dust settles is \$70,000. That means that \$30,000 was levied unnecessarily. The *Strata Property Act* says that the excess money has to be returned to the owners. Section 108 (5) states:

Special levy

108 (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.

The only exemption to this requirement is that the excess does not have to be returned if no owner would receive a refund of \$100 or more. In other words, the owner with the largest u/e strata lot must be entitled to \$100 or more and, if this does not occur mathematically, the strata corporation does not have to refund the levy. The excess may be deposited into the Contingency Reserve Fund. So, in our example, let's say the money left over was \$1,000 (instead of \$30,000). This small amount when divided by the total u/e would generate a maximum refund of \$55; therefore, the excess can be redirected to the Contingency Reserve Fund.

Note that this is the only exemption from the statutory requirement. Often, however, strata councils see that excess money sitting on their balance sheets and think how nice it would be to use that excess for another project. What a great idea... no need to convince the owners to pony up more new money, let's just get their approval to do the next project. In order to achieve this goal, a crafty process and resolution is drafted to supposedly comply with the *Strata Property Act*



i.e. to refund the excess yet move forward with a new project without having to pass a new resolution. The following is an example of a typical $\frac{3}{4}$ vote resolution presented to owners:

3/4 VOTE RESOLUTION ***Transfer of Funds***

WHEREAS the PAINTING PROJECT approved at the Annual General Meeting held on December 25, 2008 was completed for less than the amount raised by special levy for that purpose, resulting in a surplus of \$30,000(the "PROJECT SURPLUS"), and

WHEREAS The Owners, Strata Plan XXXX, are aware of the requirements of the sections 108(5) and (6) of the Strata Property Act which stipulate in respect of funds raised by special levy, that 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 provided however that if no owner is entitled to receive more than \$100 in total, the strata corporation may deposit the excess in the Contingency Reserve Fund, and

WHEREAS the PROJECT SURPLUS is sufficient to entitle one or more owners to receive a refund of more than \$100 per person, but the owners wish to use the PROJECT SURPLUS to improve the landscaping.

BE IT RESOLVED by The Owners, Strata Plan XXXX, that the PROJECT SURPLUS be refunded to the Owners on the basis of their respective unit entitlement and that immediately thereafter (and without the need for any money to actually be physically transferred) the PROJECT SURPLUS be re-contributed in the same respective amounts as a special levy to be used for the purpose of Landscape improvements.

Clever stuff but does it violate the Act? At Vancouver Condominium, we think that it does constitute an evasion of the requirement of Section 108 of the statute. (This is not a legal opinion.).

Here is why.

An owner who paid his/her levy for the original project (i.e. the painting project) did so on the basis of the $\frac{3}{4}$ vote resolution that had been passed authorizing the project - i.e. that very specific project. The owner is protected by the provision that excess money would be refunded to him/her. Plain and simple, no strings (exemptions) attached other than the "under \$100" provision. The strata corporation then comes along and says "Okay, you are entitled to a refund but instead of giving it to you, we will just credit your account because there is another special levy project which, by coincidence, is exactly what your refund would be. Before we (the strata

corporation) give you your refund, the owners have to approve the resolution for the new project.” (In the example above, this “new project” is Landscape Improvements.)

In other words, what has happened here is that the strata corporation has attached another condition to the refund which the owner is entitled to receive pursuant to Section 108 of the Act. The owner may have been in favour of the (original) painting project but not in favour of the (new) landscaping project but let’s say the vast majority (over $\frac{3}{4}$) of the owners are in favour of the landscaping project, the (new) resolution will pass and the owner will not get his/her refund. This process, in our opinion, violates the Act and for this reason, VCS is advising its clients to not utilize the type of $\frac{3}{4}$ vote resolution shown above.

What to do then?

Answer: Issue the refund as is required by the Act and present a completely separate $\frac{3}{4}$ vote resolution for the new project. Avoid the clever wording that says here is your refund, but here is a new project. This process may generate concerns about obtaining the owners’ consent to part with new money as opposed to using existing funds, but that is the price to pay in order to comply with the Act.

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