



## FEATURES THIS MONTH

1. The Strata Property Act Has A New Home
2. Expenditures From The Contingency Reserve Fund (CRF)
3. Who Cannot Vote at an AGM or SGM?
4. Business As Usual? (During The Olympics)

## 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. Council to Inform Owners of Minutes

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The responsibility for the *Strata Property Act* has been transferred from Finance to the Ministry of Housing and Social Development (HSD). Just prior to the recent provincial election the government proposed a number of changes to the SPA; however, the legislature was prorogued before the bill was passed. At this time it is uncertain as to whether or not the same or similar bill will be brought back for reconsideration at the next sitting of the legislature.

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## 2. Expenditures From The Contingency Reserve Fund (CRF)

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Our agents routinely field questions related to spending money from the Contingency Reserve Fund (CRF). Recently we had a strata council request a memo from VCS to clarify the usage of the CRF for building repairs and that memo has been expanded on below.

There are very, very strict criteria under which CRF monies may be utilized to cover strata corporation expenses whether the related project/repair/improvement/etc is planned for or if it is completely unexpected. Section 96 of the *Strata Property Act* states:

**96** The strata corporation must not spend money from the contingency reserve fund unless the expenditure is

- (a) consistent with the purposes of the fund as set out in section 92 (b), and
- (b) first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or authorized under section 98.

Section 92(b) basically states that the expense must not occur every year as the expense would otherwise need to be included in the annual operating budget:

**92** To meet its expenses the strata corporation must establish, and the owners must contribute, by means of strata fees, to

(a) an operating fund for common expenses that usually occur either once a year or more often than once a year, and

(b) a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.

Section 96 also references section 98(3) of SPA which notes that the expenditure in question may be made out of the CRF without need for the authorizing vote if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

So the CRF may be used to fund any project (painting, reroofing, envelope, lobby refurbishment, etc...) as long as a  $\frac{3}{4}$  vote has been presented to the ownership and passed at a properly convened general meeting. The details must be specific in the wording of the resolution; therefore, amending the funding source from a special levy to a CRF transfer at the meeting would be deemed too drastic a change. As per section 98(3) noted above, the CRF may also be used if (a) the required work is determined by council to be an emergency and (b) waiting 21 days to hold a general meeting is not an option. It is always good advice to communicate as much information keep the ownership

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### 3. Who Cannot Vote At An Annual or Special General Meeting?

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Where does it say that an owner who is in arrears cannot vote at an Annual or Special General Meeting? Actually it does not say it anywhere unless the ownership has agreed to the possible disenfranchising of votes given the existence of certain circumstances. Under Section 53 of the *Strata Property Act*, the owners can create a bylaw denying an owner the right to vote:

#### 53 Number of Votes per Strata Lot

- (1) At an annual or special general meeting each strata lot has one vote unless different voting rights are set out in a Schedule of Voting Rights in the prescribed form in accordance with section 247, 248 or 264.
- (2) Despite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring a unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).
- (3) If, in accordance with a bylaw passed under subsection (2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).

Looking carefully at subsection (2), the magic words are “*entitled to register a lien.*” A lien can be filed for non-payment of strata fees or special levies, reimbursement of the cost of work referred to in Section 85 of the *Strata Property Act*, or for the strata lot's share of a judgment against the strata corporation. There are no guidelines stipulated in the *Strata Property Act* or the regulations about the amount that an owner must be in arrears before a lien can be placed on the strata lot. Section 116(1) simply states:

## 116 Certificate of Lien

- (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:
- (a) strata fees;
  - (b) a special levy;
  - (c) a reimbursement of the cost of work referred to in section 85;
  - (d) the strata lot's share of a judgment against the strata corporation;

Each strata corporation sets different guidelines as to the key dollar figure that would commence the process for placing a lien on an owner's account; although in our experience, the rule of thumb is usually three months in arrears of strata fees or levies.

As mentioned earlier, the key in Section 53 (2) are the words "*entitled to register a lien*". It is not good enough to just have a bylaw that states "*An owner may not vote at an Annual or Special General Meeting if that owner is in arrears of strata fees or special levies.*"

The strata corporation must take it one step further and commence the process to file a lien on the owners account by meeting the requirements of Section 112(2), which reads:

- (2) Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.

VCS interprets this to mean that, in the case of strata corporations that have a bylaw such as is contemplated by SPA Section 53(2), owners who are in arrears at an AGM or SGM cannot be denied the right to vote, if they have not been served with a lien warning letter.

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## 4. Business As Usual? (During The Olympics)

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Imagine this: After walking home from a public celebration of Canada's gold medal in men's ice hockey, you take the elevator up to your 18th floor condo in Yaletown. Somewhere around the 12th floor, the elevator suddenly stops and the lights go out. You use the emergency phone to call for help and you are told to be patient, help is on the way and a technician should be there in three to five hours depending on whether they can get through the checkpoints and find parking within walking distance of your building.

Or maybe, a sprinkler head goes off spontaneously on the 22nd floor and begins flooding unit 2201 and a number of units on the five floors below that. When a call is put in to your regular restoration company, they advise that they will not be able to attend because they are not authorized to enter the "Red Zone".

Is this a likely scenario? Do you want to wait until February 2010 to find out?

As noted by VANOC, the 2010 Olympic Winter Games will mean a significant increase in activity on city streets, and reduced road capacity in areas around and between the Olympic venues, especially in downtown Vancouver. VANOC has stated they expect that during the Olympic period, operations will reduce the capacity of the local road network into downtown by 50 per cent from the east, and overall into downtown by 20 per cent.

VANOC is targeting a minimum 30 per cent reduction in vehicle traffic in key areas including crossings into downtown Vancouver and over the Burrard Inlet (Lions Gate and Iron Workers' Memorial Bridges). They will be closing specific roads to the public to "ensure the safety of athletes, officials, spectators, workforce and the general public".

These roads include:

- o Expo and Pacific Boulevards
- o Georgia and Dunsmuir Viaducts



- o Quebec Street (between Terminal Street and Second Avenue)
- o Canada Place and Waterfront Road
- o Midlothian Avenue (between Dinmont Avenue and Ontario Street)
- o Renfrew Street (between Hastings Street East and McGill Street)

In addition, the organizers are planning to reallocate road space to create pedestrian corridors from noon to midnight. While these corridors are intended to make it “fun, safe and easy to walk around Downtown Vancouver and celebrate the Games on public streets”, it will not make it easy to drive on them. Their intention is to create 32 blocks of pedestrian corridors, including:

- o Granville Street from Helmcken to West Hastings Street
- o Robson Street from Beatty to Jervis Streets
- o Hamilton Street from Drake to Georgia Streets
- o Beatty Street from Smithe to Dunsmuir Streets

What does all of this mean? It will be harder to get around in general and likely impossible in some places.

Anticipating these difficulties, VCS has been in contact with VANOC and key emergency contractors to determine how we can avoid the nasty scenarios described earlier. We have identified some key contractors who have already obtained “First Responder” status with VANOC which will allow them priority access to restricted areas in the event of an emergency.

VCS is compiling information on those contractors who will be able to get through in an emergency during the Olympics. Regardless, response times will be slower and you may end up with an unfamiliar contractor attending in the event of an emergency.

We recommend that you review how your strata specifically may be impacted and consider ensuring that all council members have keys to critical areas, that some type of off street parking is available for contractors in the event of an emergency and that you ensure critical information about water shutoffs and other such emergency info is available in the event that a contractor who is unfamiliar with your building is obligated to attend.



If there is one thing we can be sure of it is that the transportation plans will change between now and February 2010. All we can do is prepare based on the information available and understand that it VANOC is right when they say it will be business as unusual.

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