



## FEATURES THIS MONTH

1. Harmonized Sales Tax (HST)
2. Olympic Rental Issues
3. Read Those Financial Statements
4. Council Members Needed
5. Access To Records

## 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. Harmonized Sales Tax (HST)

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When your strata corporation pays its monthly fee to VCS, it is charged additionally the GST, presently 5%. There is no PST.

As you may have observed in recent news items, the Province of British Columbia will be charging HST effective July 1, 2010. This means that your management fee, and all other budget expenses, will be taxed at 12%. When preparing your 2010 and future budgets, it will be necessary to use 12% per annum as the figure to upcharge any expenses. (2010 will be a “half-year” at 12%)

VCS is investigating the new tax provisions to establish certainty in the above advice.

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## 2. Olympic Rental Issues

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Perhaps you already know this but it bears repeating: the upcoming Olympic event will create a huge demand for short-term rental accommodation. Owners of houses and/or condos are being offered obscene amounts of money for their properties.

Many strata corporations have rental limitation bylaws (or outright prohibitions) but you can be assured that such bylaws will not prevent owners from renting their strata lots. The maximum fine for rental bylaw violations, in most cases, is \$500 per week, or approximately \$2,000 to \$2,500 per month. Given that rental income during the Olympic event is being offered at up to \$10,000 per month, owners who get caught in the rental bylaw violation net will still “come out ahead” even if they are fined. VCS has learned that some rental income offers are in the \$20,000 per month range although we have not seen corroboration of such amounts. In any event, be it \$10K or \$20K, it is clear that some owners will be tempted to violate rental bylaws given the very lucrative financial rewards.

There is likely not much that a strata council can do to prevent such bylaw violations. There is no mechanism to physically stop a rental from occurring and there is no hope of running down to the courthouse to get an injunction. Essentially, all that can be done is to impose the fines, subject first to the offending owner being given the right to a hearing in the matter.



If your strata corporation has a rental limitation or prohibition bylaw, you may want to start thinking now about how to handle the violations which will surely occur.

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### 3. Read Those Financial Statements

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Recently one of our strata councils became very upset because they suddenly realized that they had been operating in a “deficit” for the past year. Council wanted to know why VCS had not brought this matter to their attention.

In fact, VCS had raised the issue periodically with council; however, our words fell on “deaf ears” and it was only when the strata finally ran out of cash and bills could no longer be paid, that the council understood the dilemma.

Council acknowledged that they had received the monthly financial statements, but some of the members confessed to not reading them and others said they could not understand them. VCS cannot do anything about council members not reading the financial statements; however, when it comes to assisting with the understanding of the statements, we are here to help for sure. Council members can direct their questions to their assigned agents or to VCS management. In fact, one of the benefits of the VCS Management Program is the involvement of the agent in all aspects of your account’s financial management. It is our utmost desire at VCS to ensure you understand the financial position of your strata corporation and there is no charge, no hassle, and no problem with asking us to assist.

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## 4. Council Members Needed

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*“Wanted: owners to volunteer their time to serve as council members and to help with the running of the strata corporation. You will meet approximately once a month for approximately 2 hours and you get to play a key role in the decisions affecting your home and/or investment... interested?”*

At each Annual General Meeting, most strata council members' terms come to an end and a new strata council is elected for the next year. In general, most strata corporations follow the Schedule of Standard Bylaws from the *Strata Property Act*, but many will differ in one way or another. For example, some strata corporations have amended their bylaws to include specific terms or the total number of council members.

If you follow the Standard Bylaw 9 the strata council must have a minimum of 3 council members and no more than 7 council members:

### *Council size*

*9 (1) Subject to subsection (2), the council must have at least 3 and not more than 7 members.*

*(2) If the strata plan has fewer than 4 strata lots or the strata corporation has fewer than 4 owners, all the owners are on the council.*

The term of a council member is for a one year period. There is no limit as to the number of years an owner can serve as a council member unless of course the strata corporation has changed the Standard Bylaws via a  $\frac{3}{4}$  vote resolution at an Annual or Special General Meeting.

### *Council members' terms*

*10 (1) The term of office of a council member ends at the end of the annual general meeting at which the new council is elected.*

*(2) A person whose term as council member is ending is eligible for reelection.*

So what do you do if you are half way through the fiscal year and a council member resigns? Standard Bylaw 12 says that a council “may” appoint a replacement council member under the following guidelines:

*Replacing council member*

- 12 (1) *If a council member resigns or is unwilling or unable to act for a period of 2 or more months, the remaining members of the council may appoint a replacement council member for the remainder of the term.*
- (2) *A replacement council member may be appointed from any person eligible to sit on the council.*
- (3) *The council may appoint a council member under this section even if the absence of the member being replaced leaves the council without a quorum.*
- (4) *If all the members of the council resign or are unwilling or unable to act for a period of 2 or more months, persons holding at least 25% of the strata corporation's votes may hold a special general meeting to elect a new council by complying with the provisions of the Act, the regulations and the bylaws respecting the calling and holding of meetings.*

The word “may’ is the key factor in the above bylaw. If a council feels that they do not need a replacement or perhaps the resignation of the council member is very close to the next AGM, the strata council does not have to replace the council member, provided that they still maintain the minimum requirement of 3 council members.

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## 5. Access To Records

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A common dilemma strata corporation's encounter is when (or when not) to provide access to records maintained by the strata corporation. Though we could not cover the many circumstances that would lead to an owner requesting copies of records, we'd like to address one particularly common situation and lend a note of caution.

The strata corporation is required to maintain certain records and this requirement is detailed in Section 35 of the *Strata Property Act*:

*35 (1) The strata corporation must prepare all of the following records:*

- (a) minutes of annual and special general meetings and council meetings, including the results of any votes;*
- (b) a list of council members;*
- (c) a list of*
  - (i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements,*
  - (ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,*
  - (iii) names of tenants, and*
  - (iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148;*

The SPA names various other records that the strata corporation must prepare and maintain, along with various other records the strata corporation must keep copies of (such as legal judgements, bank statements, etc.). Please note that although this requirement is technically the

responsibility of the strata corporation, it is really left to the management company and this is generally provided for by your management services agreement.

Now that the requirements for records that are to be kept by the strata corporation have been established, there are also requirements of disclosure to be considered. That requirement is laid out in Section 36 of the SPA:

*36 (1) On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,*

*(a) an owner,*

*(b) a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or*

*(c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).*

Section 36 (3) states that the strata corporation must comply with requests for access within 2 weeks unless the request is made for access to Bylaws or Rules, which must be provided within 1 week. We will focus on the requirement of a strata corporation to maintain a mailing list of all owners (which would include their names) and provide it to owners within 2 weeks of the request being made.

VCS has encountered several situations over the past few years where owners have requested access to an owners address list for perfectly legitimate reasons. The owner may wish to circulate a petition, advise neighbours of concerns with the strata council or management company, or call owners' attention to a matter that is otherwise being overlooked by the strata council. It is apparent that these types of requests should be met by the strata council, as it is probably what the framers of the SPA had in mind when requiring that such information be disclosed. Attempts to prohibit owners from accessing information they are otherwise entitled to, simply because a strata council disagrees with the motivations of the owners, are likely to be unsuccessful in the long run and counter-productive.



That being said, we have seen a growing trend of owners realizing their entitlement to an “owners list” and requesting access to it for otherwise unscrupulous reasons. Unfortunately, one of the simplest examples is of owners who hope to market a product or service to their neighbours and see the owners list as a simple direct marketing tool for them, which is essentially free. These types of requests, though obviously frowned upon, are not easily dismissed. Though it is clear that there are privacy implications which must be considered, we are not aware of a court ruling that would settle the question of whether or not owners are entitled to a list of fellow owners under all circumstances.

In most cases where VCS is requested to provide an owners list, the strata agent then puts that request to council. Unless there are standing instructions to the contrary, we will err on the side of caution and allow council to examine the request on its own merits. We suggest that councils attempt to determine the reason for the request (i.e. to circulate a legitimate petition or to circulate a real estate flyer for personal benefit) and then use their judgement as to whether or not the request is reasonable or could be in contravention of applicable privacy legislation. If in doubt, consult with a lawyer to determine where you stand.

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