



FEATURES THIS MONTH

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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. Security Services - January To March

A number of our clients have asked VCS to line up security services for their strata corporations in the coming months when the Olympic Games visit B.C. Incumbent in this request is the instruction to obtain quotes for such services. This task is not as easy as it sounds and, in fact, there are inherent concerns beyond simply obtaining special security coverage.

Most of the larger security firms are already stretched to the limit and/or are already committed to projects; therefore they are unable to offer additional services. If they do, it is conditional on the premise that “we cannot guarantee that we will have staff available at that time or on short notice”. Further, obtaining prices (quotes) seems to be out of the question. What we are facing is pure supply and demand economics, meaning that pricing will be determined only at the last minute. Recently VCS had an incident that required a security guard on a rush basis. After phoning around to a number of firms we finally secured one that could only provide a supervisor at a rate of \$50 per hour. We agreed and an hour later the firm cancelled the order as it could not deploy the supervisor.

All this means that, as we are near Olympic season, it is highly unlikely that strata corporations will be able to secure security coverage in advance, never mind at the last minute and certainly not at a very reasonable rate.

In the coming months, and especially during the Olympics, VCS will do its best to obtain security services for our clients who have either proactively determined a need or are faced with an emergency. Just beware, however, that the unfolding scenario is not optimistic. And, if it is 3:00 a.m. on February 10, 2010 and you need someone to guard the front door because the lock is broken, chances of obtaining a guard are somewhere between zero and nil.

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2. Are You In Conflict?

The Strata Property Act has fairly clear requirements that a council member who has a conflict of interest in a transaction of the strata corporation must disclose that conflict and abstain from decision making related to it. Section 32 lays out the formal requirements as such:

Disclosure of Conflict of Interest

- 32 *A council member who has a direct or indirect interest in a contract or transaction with the strata corporation must*
- (a) disclose fully and promptly to the council the nature and extent of the interest,
 - (b) abstain from voting on the contract or transaction, and
 - (c) leave the council meeting
 - (i) while the contract or transaction is discussed, unless asked by council to be present to provide information, and
 - (ii) while the council votes on the contract or transaction.

On the face of it, this seems like a straight forward matter... disclose the conflict, and walk away.

But what exactly constitutes a conflict of interest? An easy example would be hiring your own company to perform repairs at your building. You would be gaining monetary benefits from a contract that the strata corporation is entering into. You also cannot necessarily render a decision which is in the best interests of the ownership if to do so would not be in your own personal best interest. This is not to say that owners of repair companies cannot be council members; indeed their expertise is often invaluable. The point here is that, if their company is a candidate for a contract, he or she should not partake in the decision making process.

Another example of a conflict seemingly obvious, is when a council member is accused of a bylaw violation. Let's say John, a council president, has had noise complaints leveled against him by his neighbours stemming from a loud party he held. In this instance, John should be afforded the same opportunity to respond to the complaint as any other owner (obtaining details of the complaint, an opportunity to respond and a hearing if he so desires), but he should definitely recuse himself from discussing the matter as a council member. This means physically leaving the

room when council discusses the complaint and his response and not participating in any way in the decision making process. Handling it this way will help owners remain confident that their complaints are not falling on deaf ears and that a membership on the strata council is not tantamount to immunity from the bylaws.

Having dealt with the obvious examples, what about the less obvious ones? Let's reverse the situation above and ask whether John should be entitled to act as a council member when he is the one making a complaint against a neighbour. Drilling down into Section 32, we should focus on the words "has a direct or indirect interest in a contract or transaction". Is a decision on a bylaw violation a transaction of the strata corporation? We do not know for certain, but it seems likely that it would be better to err on the side of caution and assume that it is. Since John has a direct interest in the outcome of council's decision on the bylaw violation (presumably his neighbour would be fined, hopefully be a little more quiet, and he would get more sleep) it would be best for John to recuse himself from the discussion and decision making.

Now, how about another common situation when a member (or members) of council perceive a violation of the bylaws to have occurred, but have not made complaints themselves and/or have not received complaints at all. A typical example would be placement of items on the common property. VCS often receives direction from council members to issue letters to owners who have stored goods in their parking stalls (in contravention of the bylaws) or erected inappropriate materials on common property (ie., a satellite dish on a balcony). Should that council member simply submit their complaint to the rest of council in a formal manner, and then allow the rest of council to render a decision without further input? That is probably not necessary, as we again go back to the heart of Section 32: "has a direct or indirect interest in a contract or transaction". It would not seem on the face of it that simply having knowledge of a bylaw infraction constitutes an interest in the outcome of council's dealing with that infraction. In other words, though council members should always take care to avoid acting in their capacity as council members when dealing with complaints they are personally involved with, you are safe to deal with bylaw violations that you do not have a direct personal interest in.

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3. So You Want To Change Your Fiscal Year End?

More and more frequently we are seeing strata corporations with fiscal years that do not correspond with the calendar year. Not that there is anything wrong with that...

As you may know, the fiscal year of a strata corporation is not set arbitrarily. The developer must hold the first Annual General Meeting (AGM) during the six week period that begins on the earlier of:

- (a) the date on which 50% plus one of the strata lots have been conveyed to purchasers, and
- (b) the date that is nine (9) months after the date of the first conveyance of a strata lot to a purchaser.

At the first AGM, the owners must approve a budget for a 12 month period beginning the first day of the month following the first AGM. Therefore, the fiscal year begins on the first day of the month following the first AGM and ends the last day of the 12th month.

As the developer and owners have no true control over when the conditions for the first AGM will be met, the fiscal year could begin in any month. This sometimes causes confusion for owners who are accustomed to calendar years and for budgeting purposes when annual contracts often run January 1st to December 31st.

While it is expected that the *Strata Property Act* addresses how to change your fiscal year end, it often catches people by surprise when we advise them that even if a strata corporation has complied with Section 102 of the *Strata Property Act*, they still have one more important step to take.

Change of fiscal year end

102 (1) *The strata corporation may, by a resolution passed by a 3/4 vote at an annual or special general meeting held after the first annual general meeting, change the dates of its fiscal year, and as a result may have a budget for*

- (a) a period of more than 12 months, but less than 18 months, or*
- (b) a period of less than 12 months, but more than 6 months.*

(2) If a change to the dates of a strata corporation's fiscal year results in a period not covered by a budget, section 104 (2) and (3) applies.

For the sake of completeness below you will find section 104 (2) (3):

Failure to approve budget

104 *(2) If a fiscal year to which a budget relates ends before a new budget is approved, the owners must, until the new budget is approved, continue to pay to the strata corporation the same monthly strata fees that they were required to pay under the previous budget.*

(3) Until a new budget is approved, the strata corporation may spend money out of the operating fund only in accordance with section 98 or

(a) on the type of expenses that are set out in the previous budget and that usually occur once a year or more often than once a year, and

(b) up to the maximum amount set out in the previous budget for each category of expense.

What is not mentioned anywhere in the *Strata Property Act* is the additional hoop to jump through which is the Canada Revenue Agency (CRA). Before a change to the fiscal year end may be official, the strata corporation must submit a letter signed by a director to the local tax services office asking for approval for this change. The letter must include:

- A request to change the year-end;
- A sound business reason for doing so;
- The effective date of the change and the old and new year-ends

The CRA considers the request and issues a permission letter, or refuses based on lack of a sound business reason.

While we are not aware of CRA refusing the request of a strata corporation in this instance, it is important that all of the steps are properly followed or the hoped for change in year end is not valid.

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4. The Home Renovation Tax Credit

In February, 2009, the Canadian government included the Home Renovation Tax Credit (HRTC) as part of its Economic Action Plan which allows Canadian homeowners to get up to \$1,350 in tax credits for home renovations made on their house, condo or cottage between January 27, 2009 and February 1, 2010.

The HRTC allows families to claim 15 per cent of home improvement expenses, between \$1,000 and \$10,000, on their 2009 income tax return. This gives families up to \$1,350 in non-refundable tax credits, which reduce the total amount of income tax they must pay. The home renovation tax credit applies for 2009 income tax returns only and is not contemplated for subsequent years. A line on the 2009 income tax return form will allow Canadian homeowners to enter the home improvement expenses they are claiming towards the credit.

This credit is related to non-rented dwellings, so non-resident owners will not be able to apply for their strata lot or strata corporation related improvements. Furthermore, resident owners may well reach the \$10,000 limit due to their own personal renovations and improvements and will not need to consider their share of renovation projects undertaken by the strata corporation. For the rest of the ownership, VCS is putting together a plan so that owners can be provided with the related financial information so that they may take advantage of the HRTC. There is no apparent restriction on where the funds for the renovation may come from, so this may require some consolidation of costs from special projects and general operating expenses in order to calculate the amount of eligible expenses per unit based on unit entitlement. We have been told that if we were to provide a summary statement to each owner outlining the details of the project (cost, completion, etc...) and what each owners' proportionate share was, the majority of owners would have adequate information to file their claims. That is our goal and we will keep you apprised of our plan as we approach tax time.



See <http://www.cra-arc.gc.ca/hrtc/> for further information and answers to frequently asked questions.

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