



## FEATURES THIS MONTH

1. TMI? When Is Enough, Enough?
2. Audit Management Letters
3. Changes To The Strata Property Act

## 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>

## Bulletin #119

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In the November 2009 financial statement cover page articles, we alerted you to new amendments to the legislation that governs your strata corporation. This month we bring you further information.

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## 1. TMI? When is Enough, Enough?

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In the fall (2009) VCS was alerted by BFL Canada Insurance that the brokerage had made arrangements with several underwriters to provide for “Terrorism Coverage” for properties in the Vancouver area. (BFL generally carries the lion’s share of strata corporation insurance in the Lower Mainland.) (Terrorism claims are not covered by most insurance policies.)

Details of the coverage and the (very expensive) premium for each strata corporation were provided to VCS and we, in turn, sent this information to our clients, where applicable. We experienced some interesting reaction. Most clients simply discussed the matter as an agenda item at their council meetings and directed VCS to decline the additional coverage. No client decided to purchase the coverage. However, some clients were really ticked off that VCS would even send this information to them and one client demanded that they be reimbursed \$4.25 plus GST for the cost of photocopies and postage (which we did, no problem).

So the question is TMI? (*too much information*). Should VCS have distributed that information to its clients? We believe, notwithstanding the strong negative reaction from some of our clients, that the answer is “yes”. It is not up to VCS to decide what is good to send; what is not good to send. (See next article regarding audits.)

When we first received the terrorism coverage information from the broker, we too “rolled our eyes”. When we saw the respective premiums, we scoffed at the possibility, the reality, that our clients would want such coverage. The problem, however, is that the decision has to be made by our clients. One of our clients pointed out, quite rightly, that we live in a world of constant fear-mongering generated by politicians, the media and businesses that benefit. We recall such earlier “world-will-end” predictions: Y2K, SARS, and H1NI for example. Our daily lives are bombarded with dire health and social warnings on our email and the six o’clock news. At Christmas, we entered a whole new regime of flying protocols. After a while, it really gets to be a bit much we agree.

However, given the magnitude of the Olympics, a terrorist attack is not beyond the realm of possibility. Unlikely, but certainly possible. So what would happen to VCS if we did not distribute the BFL bulletin to our clients and a terrorist attack were to happen and a client suffered damages

not covered by their insurance policy? Well, of course, we all know the answer right? And in hindsight, a client would likely say that a few thousand dollars of premium versus the uninsured loss of millions of dollars would have been worth every cent.

So, TMI?

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## 2. Audit Management Letters

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Of the 170 strata corporations managed by VCS, over 100 have annual audits done. Reid Hurst Nagy, CGAs is one of the leading firms providing strata corporation audits; however there are quite a few other CA or CGA firms also providing strata corporation audits. Recently, RHN brought to our attention a new protocol they wish to implement.

When an auditor completes a comprehensive review and audit of a strata corporation's financial records, two products result from that process. The first is the actual audit which properly and independently states the position of the strata corporation's financial health. The second is the "management letter" which offers comments on issues identified by the auditor that may require attention by the management company and/or the strata council. These "issues" do not materially affect the overall content of the audit and, as a corollary, do not affect the status of the "financial health" of the strata corporation as reported. The auditor makes recommendations that may require action as warranted if negative observations are found.

The management letter is perhaps best described by using examples of the negative observations found by the auditor. So, for example:

1. The management company may have paid an invoice belonging to another client and needs to recover that amount (or reimburse the strata corporation).
2. The strata council may have overspent the budget, causing a deficit, and no plans are underway to recover that deficit (as is required by law).

3. Credits on owners' accounts need "cleaning up". Perhaps these credits may even belong to previous owners.
4. Repayment of inter fund loans need to be transacted.
5. Refundable deposits need to be listed.

These are only a few examples but serve to illustrate the point. None of these issues really change the basic audit but they do need attention.

Management companies (and we are referring here to the entire industry, not just VCS) often find such audit management letters to be embarrassing. That is understandable: are we happy to see a letter that says VCS screwed up and something needs to be fixed as a result? Of course not. Consequently, there is that human element of wanting to "cover up". The best way to cover up is to not send the auditor's management letter to the strata council. Just fix the problem (or not) and keep moving without having to face the client.

Reid Hurst Nagy has concluded that that process is flawed. Sending the audit management letter only to the management company and not to the strata council is a failure to report to the client. (The client is the strata corporation, not the management company.) RHN's solution to this concern is to obtain the name and address (could be email) of the President of the strata council and send their letter to that person also.

VCS completely endorses the RHN initiative. We believe that informing the strata council of the errors observed (be they council or management) is appropriate and necessary. We go one step more and that is to have the Treasurer also receive the information directly from the auditor. As a matter of record, it has been VCS practice that such management letters are in fact distributed to the client; however, the new RHN protocol gives certainty to the process.

Accordingly, effective immediately, VCS will provide RHN (and any other auditor) the names and e-addresses of the council President and Treasurer. Even if an auditor does not request these addresses, VCS will continue to copy and distribute auditor management letters to clients (even when it hurts to do so).

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### 3. Changes To The Strata Property Act (effective January 1<sup>st</sup>, 2010)

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1. **Section 59 Certificates:** A Section 59 Certificate is a prescribed form of the *Strata Property Act* which is designed to inform prospective purchasers about certain aspects of the strata corporation in which they are contemplating making a purchase. For example, the amount of the Contingency Reserve Fund has to be shown. If the strata corporation is anticipating an operating fund deficit, that estimated amount has to be shown on the Section 59 Certificate. In short it is consumer protection legislation. As a council member you rarely get involved with these certificates but VCS, as your agent, routinely completes them and provides them to real estate agents acting for prospective purchasers.

The first change to this document as of January 1, 2010 has to do with parking stalls and storage lockers. The allocated stall or locker number of a strata lot must now be shown on the document.

#### **VCS Opinion:**

This requirement will be a nightmare. Many strata corporations do not have accurate lists of parking stall or locker allocation usage. Owners frequently exchange stalls or lockers without advising the strata council or the management company. Many older strata corporations have parking stalls that are registered as common property, not Limited

Common Property (LCP) as is the case in newer strata corporations. The common property stalls are routinely reallocated and there can be a time delay before that information hits the management company's desk. Even where parking stalls are registered as LCP, there are cases where what shows on the site plan is not accurate. As for locker allocations, well this is even worse to identify.

The second change, as of January 1, 2010, has to do with "depreciation reports". Such reports must now be included with the certificate. If a strata corporation has had one done (very rare) under Section 94 of the Act, the report must now be made available to a bona fide requestor.

The original wording (from July 2000) of Section 94 (Depreciation Report) reads as follows:

- 94** (1) *The strata corporation may prepare a depreciation report estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items to assist it in determining the appropriate amount for the annual contribution to the contingency reserve fund.*
- (2) *A depreciation report may contain information based on the guidelines for depreciation reports as set out in the regulations and may be in the prescribed form.*

This wording no longer exists. See the next item: 2. **Depreciation Report.**

### **VCS Opinion:**

The operative word here is "may". This means that it has been an option of the strata corporation. Very few strata corporations actually undertook such reports, generally for two reasons:

- (a) The cost of such reports is very expensive; and,
- (b) The numbers, i.e. meaning the estimated amounts required to build the CRF to meet the life cycle expectancies derived in the report, are staggering and scare off owners. We're not exaggerating. On the ones we have seen to date over the past decade, the amounts are in the hundreds of thousands to millions of dollars depending on the size of the strata corporation.

(In some provinces, such as Ontario, such depreciation reports are not optional: they are mandatory. The B.C. government has presumably been reluctant to impose such mandatory legislation on condo owners on the heels of the devastating leaky condo crisis.)

The amendments effective January 2010, however, chart a middle course. It now becomes mandatory for (most) strata corporations to undertake depreciation reports, unless, the strata corporation is exempted by regulation or, if not exempted, a  $\frac{3}{4}$  vote resolution is passed to waive the requirement.

2. **Depreciation Report:** Here is the new wording:

- 94 (1) *In this section, “qualified person” has the meaning set out in the regulations.*
- (2) *Subject to subsection (3), a strata corporation must obtain from a qualified person, on or before the following dates, a depreciation report estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items:*
- (a) *for the first time, the date that is 2 years after the coming into force of this section;*
  - (b) *if the strata corporation has, before or after the coming into force of this section, obtained a depreciation report that complies with the requirements of this section, the date that is the prescribed period after the date on which that report was obtained;*
  - (c) *if the strata corporation has, under subsection (3)(a), waived the requirement under this subsection to obtain a depreciation report, the date that is the prescribed period after the date on which the resolution waiving the requirement was passed.*
- (3) *A strata corporation need not comply with the requirement under subsection (2) to obtain a depreciation report on or before a certain date if*
- (a) *the strata corporation, by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting within the prescribed period, waives that requirement, or*
  - (b) *the strata corporation is a member of a prescribed class of strata corporations.*
- (4) *A depreciation report referred to in subsection (2) must contain the information set out in the regulations.*

Note the reference to the “regulations”. These have not yet been written by the government. In any event, your strata council should review this section very carefully and understand that you must comply and have such a depreciation report done by December 31, 2011. The exemptions to this law are for:

- (a) very small strata corporations (not yet defined)

- (b) those strata corporations that have already done such a report
- (c) those strata corporations that pass a  $\frac{3}{4}$  vote to waive the requirement.

**VCS Opinion:** We are somewhat ambivalent on this one. It is difficult to argue against a long-range financial plan for a strata corporation because we know that major components will need to be replaced in the coming years and that, in all likelihood, there will not be enough money in the Contingency Reserve Fund to accommodate such expenses. We have witnessed the financial pain endured by many condo owners when having to fund major projects by special levies. On the other hand, we also recognize that many owners today will not be the same owners in years or decades to come and they raise a valid argument: “Why should we pay for someone else’s benefit?” Perhaps the best middle of the road compromise is to simply have a healthy Contingency Reserve Fund and, instead of the 10% allocation formula, perhaps 15% would be better. In any event, given that the new legislation allows a strata corporation to avoid a Depreciation Report by passing a  $\frac{3}{4}$  vote resolution, we predict that the vast majority of strata corporations (and we mean 90% or more) will opt out by passing such resolutions.

3. **Budget Requirements:** The existing wording reads as follows:

- 103** (1) *The strata corporation must prepare a budget for the coming fiscal year for approval by a resolution to be passed by a majority vote at each annual general meeting.*
- (2) *The proposed budget must be distributed with the notice of the annual general meeting under section 45 and must be accompanied by a financial statement.*
- (3) *The budget and financial statement*
- (a) *must contain the information required by the regulations, and*
  - (b) *may be in the form set out in the regulations.*
- (4) *The proposed budget may be amended by a majority vote at the annual general meeting before the budget itself is put to a vote.*

**Here are the changes:**

- (a) *in subsection (3) by adding “proposed” before “budget”, and*
- (b) *by adding the following subsections:*
  - (5) *The financial statement to be distributed with the proposed budget must be audited by a qualified person in accordance with any standards prescribed for the purposes of this subsection unless*
    - (a) *the strata corporation, by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting within the prescribed period, waives the requirement for the financial statement to be audited, or*
    - (b) *the strata corporation is a member of a prescribed class of strata corporations.*
- (6) *In subsection (5), “qualified person” has the meaning set out in the regulations.*

The operative term here is “audited”. **Financial statements must be audited from now on.** The exemptions are for very small strata corporations (not yet defined) or those that pass  $\frac{3}{4}$  vote resolutions to waive the requirement. Again, as a strata council you need to review and understand this very carefully and act accordingly.

**VCS Opinion:** About 60 percent of our clients already undertake third party independent audits on an annual basis. You likely know from reading our bulletins over the years that VCS has always endorsed the concept of audits, but, up till now this has been a choice, an option, made by strata councils and their owners. Now it is the law unless you take steps to waive the law.

4. **Special Levy:** The existing wording of the Act reads as follows:

- 108** (1) *The strata corporation may raise money from the owners by means of a special levy.*
- (2) *The strata corporation must calculate each strata lot's share of a special levy*
- (a) *in accordance with section 99, 100 or 195, in which case the levy must be approved by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting, or*

- (b) *in another way that establishes a fair division of expenses for that particular levy, in which case the levy must be approved by a resolution passed by a unanimous vote at an annual or special general meeting.*
- (3) *The resolution to approve a special levy must set out all of the following:*
  - (a) *the purpose of the levy;*
  - (b) *the total amount of the levy;*
  - (c) *the method used to determine each strata lot's share of the levy;*
  - (d) *the amount of each strata lot's share of the levy;*
  - (e) *the date by which the levy is to be paid or, if the levy is payable in installments, the dates by which the installments are to be paid.*
- (4) *The strata corporation must*
  - (a) *use the money collected for the purpose set out in the resolution, and*
  - (b) *inform owners about the expenditure of the money collected.*
- (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.*
- (6) *Despite subsection (5), if no owner is entitled to receive more than \$100 in total under subsection (5), the strata corporation may deposit the excess in the contingency reserve fund.*

The new changes are as follows:

- (a) ***by repealing subsection (4) and substituting the following:***
- (4) *the strata corporation must*
  - (a) *account for the money collected separately from other money of the strata corporation,*

- (b) *invest all of the money collected in one or both of the following:*
  - (i) *investments permitted by the regulations;*
  - (ii) *insured accounts with savings institutions in British Columbia,*
- (c) *use the money collected for the purpose set out in the resolution, and*
- (d) *inform owners about the expenditure of the money collected.,*

**(b) *by adding the following subsections:***

- (4.1) *A strata corporation may, by bylaw or by a resolution approving a special levy, establish a rate of interest, not to exceed the rate set out in the regulations, to be paid if an owner is late in paying his or her strata lot's share of the special levy.*
- (4.2) *The interest payable on a late payment of a special levy in accordance with a bylaw or resolution referred to in subsection (4.1) is not a fine, and forms part of the special levy for the purposes of section 116.,*

**(c) *by repealing subsection (5) and substituting the following:***

- (5) *If the money collected exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation must pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot., and*

**(d) *by adding the following subsection:***

- (7) *In subsections (4) and (5), "**money collected**" means the money collected on a special levy and includes any interest or income earned on that money.*

**VCS Opinion:** Not much to say here. VCS has since 2000 done everything that the amendments now require.

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