

THE CONTINGENCY RESERVE FUND: DOES IT REQUIRE ITS OWN,
SEPARATE "BANK" ACCOUNT?

The debate has started, as the new *Strata Property Act* becomes law. The focus of the disagreement lies at Section 95 Management of Contingency Reserve Fund. Subsection (1) states: "*The strata corporation must account for money in the Contingency Reserve Fund separately from other money of the strata corporation.*" I have underlined the key word, "account". What does that mean?

For those who maintain that separate reserve bank accounts are not necessary, the argument is that as long as the balance sheet of the strata corporation's financial statement shows the CRF balance separately, that is all that is required. A separate stand-alone bank account is unnecessary, because an accounting mechanism has "separately" identified the contingency reserve fund. However, for those who view the word "account" as meaning to show, to identify or distinguish, the statutory requirement is to literally have a separate bank account.

So who is right? What did the legislators intend when they enacted this law? Indeed. they left a puzzle but perhaps they also left some clues to answering the puzzle. I submit that the drafters of the statute wanted strata corporations to have contingency reserve funds in separate accounts. If they did not have this as their goal, the language would have been

different. It would have required that the financial statement of the corporation identify separately the balances of the operating fund and the contingency reserve fund. I suggest also that the motivation for the wording of Section 95 is that the government received many complaints from condo owners over the years who suddenly discovered that their contingency reserve funds were "paper" figures only and that there was no cash (or other asset) to support the paper figure. Their councils had unintentionally spent the money not realizing that all the money in the bank account represented two funds. I have seen this happen: I know it is true.

Under the new *Strata Property Act*, the birth of the Contingency Reserve Fund is the responsibility of the developer. At section 12, called Owner Developer To Establish Contingency Reserve Fund, the statute requires the owner developer to "*establish a Contingency Reserve Fund*" and various minimums and other criteria are set forth. The *Act* states that the owner developer must not use CRF money to pay strata corporation expenses and that the CRF belongs to the strata corporation. It is reasonable to conclude from this section that it would be virtually impossible for the owner developer to commingle operating fund monies with CRF monies, even if the balance sheet kept track of the amounts separately.

It might be argued, however, that the requirement on the owner developer is separate from the requirements of the strata corporation itself but Section

12(5) states plainly that *"The Contingency Reserve Fund belongs to the strata corporation."* Sections 5, 6 and 9 very clearly instruct the owner developer to act in the best interest of the strata corporation as if he/she "were a council". Once the first strata council is elected, the owner developer turns over control of the strata corporation to the new council and that process includes transfer of the operating and Contingency Reserve Fund monies.

Section 95(1) of the statute says *"The strata corporation must account for money in the Contingency Reserve Fund separately from other money of the strata corporation"* and direction is given at subsection (2) as to how that money can be invested. Recognizing that the investments will generate interest, subsection (3) directs the strata corporation to treat such interest as earnings directly to the CRF. This again suggests that the CRF is a separate entity. Note also the regulations to the Act at Section 103 dealing with the preparation of budgets. Regulation 6.6 clearly treats the contingency reserve fund as a distinguishable entity.

Theoretically, a strata corporation could maintain a single bank account to utilize for operating fund expenses as well as CRF expenses; however, even the most sophisticated computer programs would have difficulty identifying the daily balances (up and down) for the two separate components. Indeed many strata corporations have additional funds such as Leaky

Condo Repairs, Litigation, Painting, etc. and were all these to be housed in a single bank account it would be very problematic to extract the precise amount of interest earned just for the CRF. The drafters of the legislation no doubt were cognizant of this nightmare and when the wording was written "*must account for money separately*" I have no doubt that they meant isolated in kind, not just tracked on the balance sheet.

For strata corporations utilizing credit unions, the solution is quite simple. The computer program used by the BC Central Credit Union and its members allows for an account to be singular (i.e. one number) but it provides "splits" within the account to separately identify a subaccount. Interest earned is apportioned respectively. In this fashion a strata corporation can maintain the ease of one account but still meet the requirements of the *Act*. Unfortunately, not all banks and trust companies are able to provide this type of device and it will be necessary for second accounts to be opened by strata corporations to meet the legal requirements of the *Strata Property Act*.

CONCLUSION: The CRF monies must be housed separately.

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