

Managing Major Repairs

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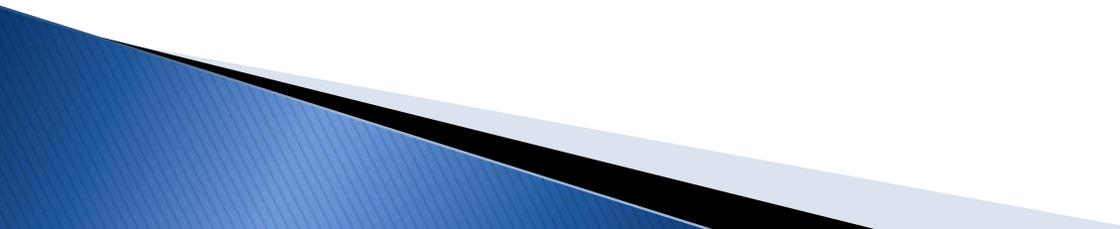
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Preliminary Comments

- ▶ Major construction projects are complex and time consuming
 - ▶ Nobody enjoys living in a construction zone
 - ▶ When things go wrong, they really go wrong
 - ▶ Getting it right from the start is critical
 - ▶ Engaging the appropriate professionals is critical
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Goals and Priorities

- ▶ Proceed thoughtfully and methodically
 - ▶ Utilize an appropriate construction process
 - ▶ Obtain the best value for your money
 - ▶ Have a clearly defined scope of work and responsibility
 - ▶ Get it done on time and on budget
 - ▶ Manage owners relations and expectations
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Agenda

- ▶ Part 1 - The duty to repair and maintain
 - ▶ Part 2 – Investigating major repairs
 - ▶ Part 3 – Roles and responsibilities of the parties
 - ▶ Part 4 – The nuts and bolts of the project
 - ▶ Part 5 – Completion and post-construction considerations
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Part I

The Duty to Repair and Maintain

The Duty to Repair and Maintain

- ▶ Strata is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners (s. 3).
- ▶ Strata must repair and maintain common property and common assets (s. 72(1)).
- ▶ Strata may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot (s. 72(3)).

The Standard Bylaw #8 – Common Property

- ▶ Strata must repair and maintain:
 - Common assets
 - Common property that has not been designated as LCP

The Standard Bylaw #8 - LCP

- ▶ LCP, but the duty to repair and maintain it is restricted to
 - Repair & maintenance that ordinarily occurs less often than once a year
 - The following, no matter how often they ordinarily occurs:
 - The structure and exterior of a building
 - chimneys, stairs, balconies, things attached to the exterior
 - doors, windows, skylights, fences and railings

The Standard Bylaw #8 - SL

- ▶ SL's in a strata plan that is not a bare land strata plan, but the duty to repair and maintain it is restricted to
 - ▶ The structure and exterior of a building
 - ▶ Chimneys, stairs, balconies, things attached to the exterior
 - ▶ Doors, windows and skylights
 - ▶ Fences, railings and similar structures

Stratas behaving Badly!

- ▶ *Corchis v. Essex Condominium Corp. No. 28* (ONCA 787)
 - Strata liable for over \$700K in damages arising from botched roof repair
 - Strata had acted unreasonably by continuing to rely on poorly conceived repair strategy, despite its lack of success, and despite the fact that its own consultants had been warning them that the repair strategy was fraught with risk.

Stratas Behaving Better

- ▶ Duty to repair and maintain requires a strata to act reasonably with regards to the inspection, repair and maintenance
- ▶ *John Campbell Law Corp. v. Strata Plan 1350 (BCSC)* :
- ▶ If a strata corporation has taken all reasonable steps to inspect and maintain its common facilities... they should not be held liable for damages arising as a result of any strict statutory liability nor should they be put in the position of acting as an insurer by default.

Stratas Having a Good Excuse

- ▶ *Wright v. Strata Plan No. 205* (BCCA):
- ▶ Strata must do all that can reasonably be done in the way of carrying out their statutory duty to repair and maintain
- ▶ Should it turn out that those they hire to carry out work fail to do so effectively, the Strata cannot be held responsible for such as long as they acted reasonably in the circumstances.

Part 2

Investigating Major Repairs

Depreciation Reports

- ▶ Strata's with 5+ SL's must obtain depreciation reports
- ▶ Depreciation reports tells a Strata:
 - What CP's and CA's it has
 - Maintenance, repair and replacement costs over 30 years
- ▶ Strata's must:
 - Obtain depreciation report no later than 6 months after second AGM
 - Renew depreciation report every three years unless waived by $\frac{3}{4}$ vote

Condition Assessment Reports

- ▶ Depreciation Reports are very top level
- ▶ An educated guess regarding cost of repairs
- ▶ If an item is due for repair, engage a specialist to:
 - Develop a detailed plan
 - Prepare construction documents
 - Create a budget
- ▶ Keep owners informed throughout the process

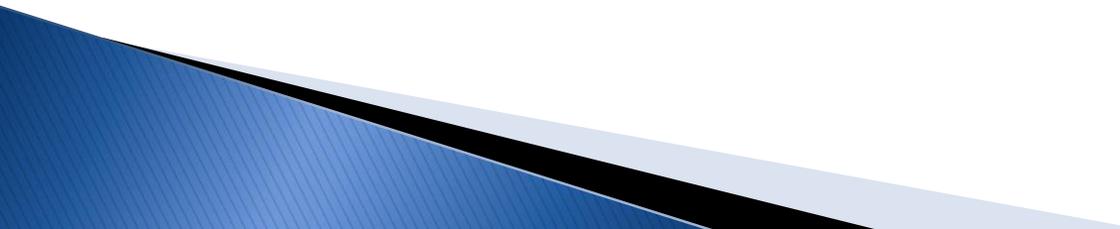
Construction Documents

- ▶ Simple, inexpensive projects “may” not require construction documents...but they are always a good idea
- ▶ Complex, expensive or risky projects should always have construction documents:
 - Drawings
 - Specifications
- ▶ Prepared by properly qualified architect or engineer

Part 3

Roles and responsibilities of Parties

Roles and responsibilities of Parties

- ▶ Many roles and relationships in a construction process
 - ▶ Ensuring strata has engaged right people is critical
 - ▶ Ensuring people understand their roles is critical
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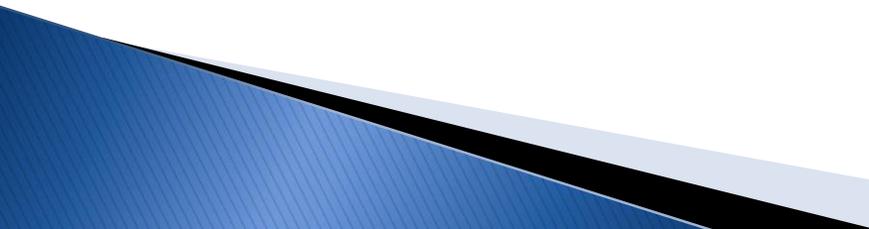
Strata Council

- ▶ Represent the owners interests
 - ▶ Implement resolutions approving the special levy or CRF expenditures
 - ▶ Negotiate and make decisions during construction process
 - ▶ Liaise with owners
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Strata Owners

- ▶ Approve repair funding and scope of work
 - ▶ Provide access to construction team
 - ▶ Advise council if they discover problems
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Property Managers (1)

- ▶ Agent of the strata corporation
 - ▶ Authorized to work with the consultants and contractors
 - ▶ Delegation of authority required for agent to fulfill role
 - ▶ Read agency agreement to determine what authority granted
 - ▶ Determine whether strata manager can/will charge extra
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Property Managers (2)

- ▶ SC may give PM additional authority
- ▶ Document all instructions and delegated authority:
 - Protects strata and PM
 - Helps to avoid confusion
- ▶ Council minutes are the best place to document
 - Won't get lost
 - Ensures owners understand roles of parties

Construction Professionals

- ▶ Professionals include engineers and Architects
 - ▶ Prepare construction documents
 - ▶ Supervise construction process
 - ▶ Point person for strata and contractor communications
 - ▶ Act as the consultant of record
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Contractors (1)

- ▶ Contractors provide the labour & materials
- ▶ Typically 3 types of construction arrangements:
 - A contractor who hires sub contractors to do part of work
 - A contractor who performs all work itself
 - A construction manager who assists strata to hire trades

Contractors (2)

- ▶ Any of these arrangements can work
- ▶ Success depends on:
 - Clearly defined scope of work
 - Clearly defined contractual terms
 - Clearly defined roles and responsibilities
 - Independent oversight by a construction professional

Lawyers

- ▶ Lawyers play a role prior to, during or after construction
 - ▶ Review of tender package, contracts and warranties
 - ▶ Analysis of legal rights and obligations during construction
 - ▶ Lien removal or litigation if project goes badly
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Paying For Major Construction Projects (1)

- ▶ Major construction projects are not normal expenditures
- ▶ They are not paid for out of operating fund
- ▶ The operating fund is for:
 - Expenses that occur once or more per year
 - Expenses necessary to obtain a depreciation report (s. 92)
- ▶ The CRF is for common expenses that usually occur less often than once a year or that do not usually occur (s. 92)

Paying For Major Construction Projects (2)

- ▶ Paying for big construction projects used to require 3/4 vote
 - To pass a special levy or withdraw money from CRF
- ▶ Act has now been amended to make things easier.
- ▶ Strata may withdraw money from CRF via simple majority if:
 - Money is used for a depreciation report
 - Money is related to the repair, maintenance or replacement recommended in the most current depreciation report

Paying For Major Construction Projects (3)

- ▶ Approving funding can sometimes be a problem
- ▶ “Tadeson orders” (applications by owners against Strata)
 - Can bring in Civil Resolution Tribunal
- ▶ Section 173 : If special levy for the maintenance or repair of CP or CA gets more than 50%, but less than 75%, Strata may apply to Court for order approving the levy
 - Work must be necessary to ensure safety or prevent significant loss or damage
 - Application must be made within 90 days of vote

Part 4

Nuts and Bolts of the Project

Cost Management

- ▶ Construction pricing has multiple variables:
 - Contractor availability
 - Risks of the construction (rot repairs)
 - Geography (location of the building)
 - Season: Weather conditions and construction feasibility
 - Timing: How much notice you give contractors
 - Competition amongst contractors
 - Supply and demand of product and materials

Decide how you intend to proceed

- ▶ Request for quotes v. formal tender
- ▶ Request for quotes:
 - Simpler
 - May not get lowest price
- ▶ Formal tender:
 - May get lowest price
 - More complicated
 - Greater risk of being sued

Tendering Pitfalls

- ▶ Disgruntled bidders can bring a claim
 - Failure to advise of a material clause
 - Failure to follow tender documents
- ▶ Several strata's have been sued:
 - Hire a lawyer
 - Ensure adequate protections in call for tender
 - Privilege clause, discretion clause, financing clause, damages clause

Get your contract in Writing

- ▶ Whichever route you go:
 - Get your contract in writing
 - A signed quote is not a contract
- ▶ Contracts need to address numerous issues:
 - What work is being done
 - How much will the parties be paid
 - How do you deal with unexpected conditions
 - What happens if something goes wrong
 - Will you have the benefit of a warranty

Other Issues to Consider

- ▶ Does your contractor and consultant have insurance?
- ▶ Has your contractor provided a warranty?
- ▶ Is your contractor covered by WorkSafeBC?
- ▶ Do you have appropriate building permits?
 - Municipal permits
 - BC Safety Authority
- ▶ Do you need to worry about asbestos or other contaminants?

Issues arising during construction

- ▶ Approval of payments
 - ▶ Approval of extras
 - ▶ Access to strata lots
 - ▶ In-Project dispute resolution
 - ▶ Insurance Claims
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Holdbacks During Construction

- ▶ *Builders Lien Act* applies to construction projects
- ▶ Owner Holdbacks
 - Required where aggregate value of work exceeds \$100,000
 - 10% of the amount of any payment made
 - Purpose: To limit the liability for liens to the amount of the holdback or the amount owing on account of a contract or subcontract
 - An owner's failure to pay funds into a holdback account may constitute default under the contract

Part 5

Completion and Post Construction Considerations

Certificates of Completion

- ▶ Formal notice, issued by the payment certifier, which certifies that a particular has been substantially completed
- ▶ Issuance of the Certificate triggers the times for filing of builders liens and the release of holdbacks
- ▶ Other events can trigger running of time for liens and holdbacks:
 - The head contract is completed, abandoned or terminated
 - The improvement is completed or abandoned

Holdbacks and Liens

- ▶ Holdbacks must be released within 55 days of completion:
 - Issuance of certificate of completion
 - Completion, abandonment or termination of contract
- ▶ Builders Liens:
 - May be filed up to 45 days after completion for property
 - Any time up to release of holdback
- ▶ The builders Lien Act contains procedures for removing liens

Warranties and Limitation Periods

- ▶ Diarize and monitor warranty deadlines
- ▶ Conduct inspections in advance of warranty expiration
- ▶ Retain independent professional to conduct inspections
- ▶ Ensure Strata complies with warranty reporting requirements

- ▶ Current *Limitation Act* prescribes a 2 year limitation period
- ▶ Contract may shorten this limitation period
- ▶ Seek early legal if Strata has a problem

Practice points

- ▶ Ensure you have a written contract
 - ▶ Maintain a complete construction file
 - ▶ Diarize all relevant deadlines
 - ▶ Seek early legal advice if a dispute arises
 - ▶ File lawsuits to preserve your legal rights
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Thank you

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