

VISOA Bulletin - NOVEMBER 2020

Editor's Angle



David Grubb, Editor

If we had known last January what we know today about the pandemic and the adjustments we all have had to make one way or another, would we have done anything different? Probably... but hindsight, as they say, is 20/20, and most realize this time that there was very little to prepare us for dealing with the devastation in lives and the disruptions throughout all societies that the world has suffered and continues to face and how to reduce COVID-9 down to a minimum, and

maybe eliminate in time.

There are, nevertheless, pressures to make allowances. So the government has implemented some measures to ease some of the stratas' burdens temporarily, such as extending the time to hold an AGM during any provincial or federal state of emergency. Check the Strata Housing website for details and updates: www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing. We know that many are contributing to try to get things as "right" as possible the first time (despite the inevitable disagreements, whether on principle or not): The government's Strata Housing Office,

lawyers, VISOA, CHOA, and others are working diligently on this.

One of the main concerns that has become prominent, however, is holding AGMs and SGMs electronically. The government has, at least temporarily, permitted all stratas to do so, even if they don't currently have a bylaw permitting it. However, holding such meetings poses a variety of questions about handling votes, secret ballots, personal attendance, proxies (including "Restricted Proxies"), etc., so we are including articles about some of these problems.

One of the main concerns, aside from COVID-19, is the very rapid

In this issue...

Continued on page 2

• Editor's Angle David Grubb	1
• Strata Alert: Take a Deep Breath. "Restricted Proxies" are still OK Paul G. Mendes	3
• Communicating with Difficult People...AKA 'Strata Council Bullies'	5
• Condominium Law - Election of Council Fisher & Company	7
• Business Members	8
• Nanaimo Senior Wins Fight Against Strata for Physical Disability Discrimination Spencer Sterritt	11
• Rising Insurance Rates	13
• Raiding the Honey Pot.....	14
• Who is Responsible? A Condo Toilet Overflows	15
• You Asked Graeme Campbell	16
• How Tall is Your Fence? Sandy Wagner	17
• President's Report Wendy Wall	18

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rise in insurance premiums and deductibles. This has affected condominiums throughout North America, but specifically in B.C. we have seen a general increase of 40% - 50% in many stratas, and there are some in Greater Vancouver which have shot up to even 400%!

The government has amended the *Strata Property Act* (S.98) to clarify that strata corporations may pay for rising insurance costs from their contingency reserve fund, without approval from the owners, if the payment is required before there is time to convene a general meeting or if there are reasonable

grounds to believe that an immediate expenditure is necessary to obtain the required insurance, but even such a relief measure has its problems. Strata owners still have to pay.

2020 has been a rough year, and we sincerely hope 2021 will see us slowly getting back to normal (I don't like the term "new normal"!), and be able to enjoy encounters in the hall, hugs and handshakes, and proper General Meetings!

And next year, even with a different editor, we hope that the Bulletin articles do not have to deal with getting through "doom and gloom" situations. Rather we trust

you will see upbeat articles on how to make your strata a better place to live. You are invited to send in your stories and articles to the editor@visoa.bc.ca

Regardless of all the sacrifices you have faced, we wish everyone

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and a Prosperous and
Healthy New Year!*



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Strata Alert: Take a Deep Breath. “Restricted Proxies” are still OK

By Paul G. Mendes, Partner,
Lesperance Mendes



[We were going to reprint an excellent Condo Smarts article on this by Tony Gioventu, but Paul’s more recent statement is very instructive. Ed.]

Do you pine for the good old days, before March of 2020, when strata’s held general meetings and nobody cared? You remember the drill. Wait half an hour, and then whoever is in attendance forms a quorum, even if it’s only one person? Well, those days are over.

It turns out that the only thing we needed to improve attendance at general meetings was a global pandemic and densely worded proxy form. Forget enticing owners to attend with snacks, booze, and guest speakers. Just turn the

meeting into an exclusive super-spreader event and voila! Suddenly everyone wants to show up.

I kid, of course, and as any strata manager or council member will tell you, general meetings are no laughing matter.

The Shen decision (*Shen v. PS3177, 2020 BCCRT 1157*) is the first of what will likely be a series of Civil Resolution Tribunal decisions about the so-called “restricted proxy meetings.” I am not sure why these proxies are referred to as “restricted proxies.” I call them that because everyone else does, but they are just plain old proxies solicited by the strata council. They also require the owner to fill out more detailed voting instructions to the proxy holder, than a typical proxy form, but this is allowed under s. 56 of the *Strata Property Act*.

The Shen decision confirms that a restricted proxy meeting is no different from any other meeting: it must be run under the *Strata Property Act* and the strata’s bylaws. Sure, the strata can use detailed proxy forms, such as the so-called restricted proxy, but it cannot skirt the rules around giving notice, holding meetings

and voting.

Here are the basic facts in Shen: the strata corporation convened a special general meeting to terminate a strata management contract. The strata held the meeting with a 50 person limit on in-person attendance and no option for electronic attendance (such as by phone or videoconference).

Before the pandemic, a strata could only hold an electronic meeting if the bylaws allowed it. The standard bylaws only allow for electronic attendance at council meetings, but not general meetings. As a result, very few stratas in BC have bylaws permitting electronic attendance at general meetings. This changed when the BC government issued Ministerial Order M114 back in the spring, which allows for electronic attendance at all meetings without a bylaw amendment.

According to the facts, the strata council encouraged owners to attend by proxy only. The council’s entreaties must have worked because out of 311 strata lots, only 16 owners attended in person, and another 132 owners sent in proxies. When all was said and done, the resolution to terminate the strata manager received 75.34% support, just enough to affect a termination.

Although there was no evidence that anyone even wanted to attend the meeting electronically, the CRT found that the SGM was not lawful under the strata’s bylaws or the *Strata*

Continued on page 4

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Property Act, so it set aside the results of the SGM.

The CRT found that the strata's failure to provide for electronic attendance at the SGM violated s. 56 of the SPA, which says that all eligible voters may attend meetings in person or by proxy. By not having an option for electronic attendance at the SGM, the strata effectively disenfranchised otherwise eligible voters who wanted to attend the meeting in person but could not do so because of COVID concerns.

The CRT also expressed serious concerns about the SGM notice, how notice was given, and whether the strata can designate someone as a proxy on the form included in the notice. I will deal with those aspects of the decision in a future strata alert.

However, it is important to understand that this decision does

not mean that stratas cannot use "restricted proxies" or that stratas cannot encourage owners to participate by proxy only. All the decision says is that strata meetings, including restricted proxy meetings, must be held in accordance with the SPA and the strata's bylaws.

Here are my takeaways from this decision:

1. The strata can have a proxy meeting, and it can even encourage everyone to attend only by proxy, so long as the strata also allows in-person attendance or electronic attendance. Remember, electronic attendance is equal to attending in person.

2. An information meeting (virtual or otherwise) before the general meeting does not relieve the strata of its duty to conduct

the general meeting in accordance with the SPA and the strata's bylaws. You must still call the meeting to order and go through the agenda the same way you would at any other general meeting.

3. Even if 100% of the participants attend by proxy, the meeting must still be called to order, and the agenda must be followed. Motions must be

moved and seconded, and votes must be counted at the meeting. You cannot treat proxy forms like mail-in ballots and record the proxy vote results before the meeting or without following the meeting agenda.

4. As the pandemic persists into 2021, all strata councils should consider what bylaw amendments could be made to allow for expanded use of proxies and even mail-in ballots.

Proxies are a frequent source of conflict in stratas. There is a general misconception that proxy voters "don't understand" what they are voting on and that some people use deceitful tactics to solicit proxies. These things may be true, but they are not relevant for determining whether a strata meeting was properly run. The SPA gives every owner the right to vote, regardless of their intelligence or their level of understanding, and it treats all votes the same, regardless of whether the voter attends in person or by proxy. Further, decisions made at meetings where proxy voters outnumber in-person voters are no less valid than any other decision.

Paul Mendes is a partner of Lesperance Mendes law firm and advises strata corporations and strata management companies on all aspects of strata governance and running meetings. For more information, please contact Paul G. Mendes at 604-685-4894 or by email at pgm@lmlaw.ca

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Communicating with Difficult People... AKA 'Strata Council Bullies'

Tribe (on line) Magazine

As a member of Council, you volunteer your time, giving up evenings to attend meetings and following up with owners and tenants about issues in your building. You threw your hat in the ring to offer some help, perhaps to provide a particular set of skills and knowledge, or because you thought it would be a great way to be a part of your community.

And you were right – it is a great way to be a part of your community! But like anything in life, it also comes with a few headaches. Particularly the headaches caused by those difficult people (you know who we're talking about) who make it their life's mission to criticize and cause angst about everything council does...let's call it Strata Council harassment.

Meet the Strata Council bullies

Often referred to as "strata trolls", it is borrowed from a very prominent character we have all become familiar with over the last decade or so – the internet troll. You know this character...they post inflammatory, off-topic or just plain unnecessary comments in online communities. Read the comment section on any news site – it will be rampant with internet trolls.

"In this era of keyboard warriors, being a jerk has become synonymous with speaking your mind," points out Paul Mendes, Partner, Lesperance Mendes Law Firm, "But the internet troll is no different from

what I call the Strata Council bullies".

The Strata Council bullies are the kind of person who enjoys annoying people, thinks everyone is up to something and monopolizes conversations. Unfortunately, they do exist! And while you may even have more than one, fear not, there are simple ways to deal with Strata Council bullies.

Identifying the Strata Council bullies

First – know who they are. According to Mendes, there are a few ways to identify them:

1. The bully is someone who writes offensive correspondence to Council and management. They spam you with dozens of emails a day with insults and complaints.
2. You can identify them in the minutes; they often make multiple privacy complaints.
3. They have many demands for information.
4. They ask for records, minutes, and correspondence that you wrote years ago.
5. They like to monopolize the discussion at meetings.
6. To the Strata Council bullies, the purpose of an AGM is to satisfy their cu-

riosity about the strata.

7. They love extra-long meetings.

8. They disrupt meetings with offensive behaviour, yelling, accusations, recriminations.

Once you identify these bullies, it is essential to take action. This kind of behaviour is not good for your community's health, let alone the health of your Council Members.

STOP the Strata Council bullies

Bullying goes against by-laws. WHAT? Yes, you heard us. This kind of Strata Council harassment is not allowed, and according to Mendes, it is a contravention of your Strata's Bylaws.

"The Strata Council bullies are often outraged by everything, and it's difficult to figure

Continued on page 6



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out what their motivation is”, explains Mendes. “But regardless of their motivation, it is very important to enforce your bylaws to maintain control of the situation and send a message that this behaviour will not be tolerated.”

Tips for dealing with the Strata Council harassment

1. There is no obligation to respond to Strata Council harassment. For example, opinions about how things should be done need no answer at all. Simply respond in a standard

manner – “your letter is taken under advisement”.

2. Don't feed the bullies – they like to bully, and they need to be ignored. If you engage with them, they view it as a success. Only act on things that require action!

3. Don't fight fire with fire. Everything you write might be read by a judge, CRT, or tribunal member. They will judge you in the same way as them.

4. Follow proper procedures for enforcing your bylaws (your management should know these procedures). This includes sending bylaw violation notices

(section 135) and possibly issuing bylaw violation fines.

5. Keep a record of their correspondence, and their offensive, disruptive behaviour. Remember, each trolling incident is an infraction of the bylaws.

The world of strata, not unlike the rest of the world, is made up of diverse personalities with unique communication styles, needs and ways of perceiving the world. Keep a level-head, communicate clearly, record everything, and enforce your bylaws.

Good luck!

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NEED
SOME
FEEL-GOOD
NEWS!"

Condominium Law - Election of Council

By Fisher & Company

Election of strata council members can be a heated part of an Annual General Meeting (“AGM”), and can be a focal point for any other disputes or factional divisions amongst owners. We also often see untrusted council members appointed to council because there is a misunderstanding as to how the elections should take place.

Properly electing strata council members can make the difference between having effective, fair and economical leadership of the strata corporation throughout the year ahead, or having a quarrelsome strata council which is unable to effectively protect the strata corporation’s interests or fulfill the basic obligations of the strata corporation in terms of maintenance, governance and administration.

The *Strata Property Act* (the “Act”) requires that council elections must take place at each AGM, and that they must be conducted by majority vote; however, there is no specified procedure in the Act, the Regulations, or the Standard Bylaws as to exactly how the election should be administered. Therefore, it is open to the strata corporation to pass a bylaw setting out how the election is to occur, as long as the method specified is otherwise legal, fair and reasonable.

Who is eligible to serve on

council depends upon the strata bylaws, but typically includes owners, designated representatives of corporate owners and tenants with valid assignments of owner rights. Specific bylaws may exclude owners in arrears, and may include other categories of people, such as spouses of owners, as eligible to serve on council. Each strata lot can only supply one council member at a time, unless all owners are on council, in which case each strata lot has only one vote at a council meeting.

If there is no bylaw setting out the procedure for elections, the ownership can adopt fair and lawful procedural guidelines for the purpose of the AGM by majority vote.

An appropriate voting method will ensure that only owners approved by a majority of votes serve on the strata council. “Majority Vote” is defined as follows:

“Majority vote” means a vote in favour of a resolution by more than 1/2 of the votes cast by eligible voters who are present in person or by proxy at the time the

vote is taken and who have not abstained from voting.

An increasingly popular system is set out here, as an example of a practical, fair, legally valid and easily administered method for conducting a strata council election:

1. Each eligible voter is provided a ballot at sign-in with one line for each available position on the strata council (assume 7 spaces on council, which is typical).

2. A ‘Call for Nominations’ is delivered and the ownership has an opportunity to discuss the election, and nominees have a reasonable opportunity to speak.

Continued on page 10



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3. Each eligible voter may then vote for as many as 7 unique names, with no duplications permitted.

4. The votes are then counted by current council members or management, with volunteer scrutineers observing.

5. The 7 candidates with the highest number of votes total, and who each receive one vote from more than 50% of the eligible votes (not counting abstentions), are then tabulated

6. The result is then confirmed by a simple majority vote (by show of voting cards) approving the newly constituted council and directing the destruction of ballots.

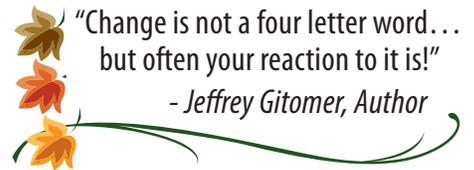
A method which is very pop-

ular among less formal strata corporations is to agree collectively and informally on who will serve, and then ratify that group as the Strata Council by majority vote. Although legally compliant and workable when there is no controversy, that system fails where controversy develops, and it may be necessary to resort to the ballot system if that occurs.

The Standard Bylaws contemplate that votes can be cast by various means, including show of voting cards, roll call, or secret ballot, but allows for the demand for a secret ballot by any one eligible voter. If a secret ballot is requested the Strata Council must take reasonable steps to ensure the secrecy of the vote, including creating a confidential voting

area. Secure ballots, cardboard voting booths, and ballot boxes should be kept at hand for such votes.

Fischer and Company has a great deal of experience in bringing order to contentious meetings, and helping to resolve long-standing problems. For more information on conduct of meetings or assistance in running a contentious meeting or election, please contact our office for assistance at (250) 712-0066 or matthew@fischerandcompany.ca.



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Nanaimo Senior Wins Fight Against Strata for Physical Disability Discrimination

By Spencer Sterritt, Nanaimo News Now

“No one should have to spend their golden years fighting with their strata to get their accommodation requests addressed.”

An elderly Nanaimo woman essentially trapped in her apartment due to accessibility issues has triumphed over her strata council.

A ruling from the BC Human Rights Tribunal last week awarded Ada Jacobsen \$35,000 from her strata at Eagle Point Bayview on Blueback Rd. for injury to dignity. The strata is also ordered by the tribunal to rectify the three major accessibility concerns Jacobsen brought to the Tribunal. “No one should have to spend their golden years fighting with their strata to get their accommodation requests addressed,” Tribunal member Grace Chen ruled. “The Strata did not take her requests seriously until she filed her human rights complaint.”

The complaint was filed in 2017, three years after Jacobsen first raised concerns about accessibility in the hallway to her second floor apartment.

Three major concerns were raised in the complaint, with several smaller issues withdrawn since they were eventually fixed.

At issue were the three steps in the hallway, which she has to navigate in her wheelchair, a steep ramp from the front door to the parking lot and an equally steep ramp to the community centre which she can't navigate for fear of going too fast and losing control.

In a late July hearing, Jacobsen testified discussions about building a small portable ramp over the three hallway steps went nowhere

and she didn't receive a response on the issue for one year.

The Rick Hanson Foundation, which promotes accessibility and provides funding for accessible options and another consultant were eventually called upon after the Tribunal complaint was filed.

They determined a ramp in the space wouldn't be appropriate given the design on the building.

“It is not enough for the Strata to stop searching for solutions after it determines the first option is not feasible,” Chen wrote in her decision. “It has an obligation to take all reasonable and practical steps to remove and avoid the negative on Ms. Jacobsen.”

Chen found the Strata did not fully explore options to fix the two ramps Jacobsen had issues with, especially the ramp to the community centre which was built in 2018 after the complaint was filed.

“A c c o m m o - dation is an ongoing process,” Chen wrote, saying while the path was appreciated it didn't meet the standard of the Strata doing all it could since Jacobsen still had issues with the steepness of the ramp.

“The Strata has not demonstrated that it took a lead role to investigate solutions as it is required to do. Rather, it appears

to have made no serious attempts to address concerns until Ms. Jacobsen filed her human rights complaint.”

Chen also found the allegation a strata member (a condo owner) called Jacobsen a “loser”, which would cost them money, was in line with the prior behavior of the strata council (condo Board of Directors).

To rectify the issue, Chen ordered the Eagle Point Bayview strata install an elevator or lift in the hallway for Jacobsen, reasonably accommodate her with alternative options to the front ramp and remediate the steep pathway to the community centre. Condos should not play games with a resident's human rights.

Reprinted in Condo Living Newsletter (October 4, 2020) by H. Marshall

STRATA MANAGEMENT DONE RIGHT!

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- Suffering from strata council “fatigue”?
- Management fees gone sky high?
- Small strata unable to find management for a reasonable fee?
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"The secret to change is to focus all your energy not on fighting the old, but on building the new."

- Socrates

Rising Insurance Rates

From The Toronto Condo News, August, 2020

(It is very evident that insurance rates are affecting all our stratas across Canada one way or another. It shows the need for careful management – including building a healthy Reserve fund – and proper maintenance of the strata. Ed.)

For the past ten years there has been a high degree of rate stability in the insurance industry. This period appears to be coming to an end. Premiums are increasing along with deductibles. Policies that incur overall losses are not being renewed or, if renewed, subject to changes in premium, coverage and deductible.

Changes are the result of numerous factors.

Weather

A changing environment is resulting in more frequent and severe weather events. This is causing more damage, and more claims for larger amounts of money.

Consumer Attitude to Liability

There is an attitude among some that, if anything happens, it is acceptable to go after the insurance carrier for money. Trip on the way out of an elevator. Rather than accept liability for not paying attention some see opportunity in claiming the elevator was not level with the floor. There may be a lawsuit or the insurance carrier may choose to settle for economic reasons. Since the cost of insurance for the corporation is paid by condo owners, monthly condo fees increase.

Liability Transfer

One approach used by insurance companies to keep premiums stable is to increase the deductible.

A deductible is a specified amount of money the insured must pay before an insurance company will pay a claim. A higher deductible means more money must be paid by the corporation or its owners when a claim is made. Condo fees may increase to cover this higher deductible. Personal homeowner insurance premiums may also increase when policies include coverage for this higher deductible.

A water leak, perhaps from a faulty dishwasher, may cause damage to a unit. Units below and common areas may also be affected as water travels downward. A higher deductible for the corporation means they must pay more to repair common area damage. Furthermore, each affected unit will have to make a claim on their homeowner's policy with fewer opportunities to rely on the corporation policy.

This transfer of liability keeps premiums lower for the corporation policy. Liability has been

shifted to the corporation and owners/residents.

Undervaluation of Properties

Undervaluation offers a way to reduce insurance premiums while maintaining coverage. Carriers are insisting on more accurate insurable values to ensure properties can be rebuilt should major damage occur. Higher valuations require higher premiums.

Improved building maintenance, fewer claims and lower claim amounts all help to keep insurance costs down. Insurance companies may monitor the frequency of emergency repairs and breakdowns. Repair damage as it occurs. Don't postpone regular or preventative maintenance. Fewer problems help maintain lower premiums.

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Raiding the Honey Pot

From The Toronto Condo News, November, 2020

[An interesting view from the East in reaction to the BC Government's Bill 14, passed in July, 2020, which, under Section 98 of the Act, now permits a strata to use money from either the operating fund or the contingency reserve fund in an emergency (i.e. without calling an SGM) to pay for an increase in the insurance premium! Ed.]

British Columbia is looking to raid reserve funds as a partial solution to paying insurance rates that have risen an average of 50 percent over the past year. This isn't the first time a province has attempted to raid reserve funds. It wasn't long ago that Ontario allowed condominium corporations to pay for installation of electric vehicle charging systems through the

reserve fund.

The concept of a reserve fund is simple. A study is undertaken to determine when, for what specific purposes and how much money is needed to maintain a community's infrastructure. Owners pay into the fund to ensure money is available when needed.

When money is removed from the fund for unfunded purposes, there will not be enough left for all anticipated expenditures. Since money doesn't grow on trees, the fund will be inadequate unless contributions are increased. In British Columbia, using reserve fund money to pay rising insurance premiums is no solution to what appears to be a long-term history of underfunding for building maintenance and repairs.

Using the reserve fund for expenditures without first having set aside the funds is not sustainable and inappropriate regardless of what government authorities may suggest. Governments should not be encouraging communities to deplete reserve funds to achieve non-reserve fund purposes.

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Who is Responsible? A Condo Toilet Overflows

[It is fortunate that BC has the Civil Resolution Tribunal, which undoubtedly has saved many litigants a very expensive legal bill in addition to making repairs. But this does point out the difference between “responsibility” and “neglect”. Ed.]

When the owners got the bill, they refused to pay, claiming that they did nothing wrong.

H. Marshall Sep 14, 2020
Lozano v. TSCC No. 1765, 2020 ONSC

The owners of a condo unit left the country for five months. During their absence, they had a relative, and then a friend, check on their unit every couple of weeks.

While they were away, a part broke in their toilet, which was not used during their absence. This caused the toilet to overflow and damage the unit below and the common elements.

Because the owner committed an “act or omission” which led to damages, the condo corporation charged the owners \$5,473.63, the cost of the repairs.

The owners claimed that they did nothing wrong so they refused to pay. In response, the corporation registered a lien on their unit. Off to Superior Court they go.

The judge ruled that:

“This is not a case where the

unit owners were negligent in their care and upkeep of the Unit. Rather, this is a case where the failure to retain a plumber who could make thorough repairs constitutes an omission for which the Lozanos must be held responsible. Further, while the Lozanos were conscientious in arranging family and friends to check on the Unit during their prolonged absence, it would have been additionally prudent to have shut off the water to the Unit during their trip. Doing so would presumably have mitigated against any damage of the kind suffered here and is reflective of the level of care and diligence that is expected of condominium owners.”

The high cost of going to court

So before going to court, the owners paid the condo corporation \$10,022.33 to cover the repairs and to have the lien removed from their unit. They will also have to pay the corporation’s legal costs plus pay their own lawyer. (Costs will be determined by negotiation or, if

the two sides cannot agree, by the judge.)

It is a good idea to turn off your kitchen and bathroom valves if you are going away for a vacation.

You need to understand that it is not the corporation’s responsibility to repair the plumbing that belongs to your suite. Toilet gaskets and parts, washing machine hoses, shower cartridges, shut-off valves and sink traps deteriorate over time.

It is a good idea to have all your plumbing checked by a licenced plumber every few years. The dishwasher, washing machine, shower cartridges and toilets should be inspected and your shut-off valves exercised.



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YOU ASKED By VISOA Strata Support Team

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Can you explain when to use SPA Section 71?

By Graeme Campbell

Q. We have new owners moving into our complex. Their adult son, who will not reside with them, is wheelchair bound. He will visit as he resides 3 blocks away. We are one level townhouses and in conversation with the new owner, they would like to install some type of wheelchair access via the front door.

How do we deal with this as a "non-owner need?" I assume they will need to make the request and in that request they will probably be required to in-

clude a plan of what they want to construct or purchase.

When and if this is received do we put it out to the other owners for a vote which I assume needs a 3/4 vote to pass?

A. Council will have to determine whether this is what the *Strata Property Act* (SPA) considers a "significant change in use":

Change in use of common property

71 Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless

(a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or

(b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.

Some guidelines (and they're only guidelines) the courts have used are:

1. Whether the proposed change is visible to other owners or the general public;
2. Whether the change will affect the use or enjoyment of one or more strata lots;
3. Whether the change will impact market value;
4. The number of units in the strata; or
5. Whether the development is residential, commercial or mixed use.

Not all conditions must be met, but it's also been used in the past by the Human Rights Tribunal to make such decisions.

If council determines that this is a significant change in use, a vote could possibly be required. I say "possibly" (as opposed to "yes", based on the SPA), because this could touch on issues of BC human rights legislation. For that reason, if council does determine this is a significant change, I would strongly encourage them to include a 3/4 vote resolution at the next AGM or SGM in accordance with SPA s.71(a).

If, however, council determines that this does not meet the bar as being "significant" then council itself is permitted to approve the change, and supervise the process. This would likely include any permits, drawings, etc., that would make council feel comfortable with the process.



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How Tall is Your Fence?

By Sandy Wagner



I was driving recently through a nice neighbourhood here in Victoria, and saw two similar houses with different fences.

One had a very tall solid wood fence, with a heavy hedge behind it. The house was almost invisible except through the driveway opening.

The other house had a shorter-than-average picket fence, with flowers planted around it. The house was, naturally, clearly visible. This reminded me of the principles of CPTED (Crime Prevention Through Environmental Design). CPTED's goal is to

prevent crime by designing a physical environment that positively influences human behavior. The theory is based on four principles: natural access control, natural surveillance, territoriality, and maintenance.

The theory is that the house with the short fence in the well-groomed yard may be less likely to be a victim of a crime than the house with the tall forbidding fence.

Great principles to follow – but this is not an article about CPTED or fences!

Can you take the CPTED principles and to prevent strata disputes by fostering an environment of openness by providing access without surveillance of

territoriality as well as ensure good maintenance?

An example would be a strata council meeting. Do you exclude owners? That's a "fence" for sure. Some stratas have amended Standard Bylaw 19 (*check #*) and do not allow owners to attend as observers. Those owners might wonder, "What is the strata council hiding?" If own-



ers are allowed to observe, does the council over-use "in camera" sessions? Again, what might they be hiding?

An inclusive council will permit observing owners to ask a question or offer a comment during a council meeting, with the chair's permission; or they may provide an open "Question and answer" session at the end of the meeting. This is a good practice if you can arrange it.

Less control and surveillance – to me that also means not charging around looking for bylaw infractions. Yes, the strata corporation is required to enforce its bylaws – but do you walk around with a clipboard noting infractions, or are these complaint-driven? You need to find the balance between

not necessarily noticing minor infringements, and actively looking for bylaws to enforce. And if you do see something a bit "off" you can have a short word with the owner. Just letting them know that they might be in breach of a bylaw often caused the offending behaviour to stop; they may not have been aware of the bylaw, and now they are. Easier for everyone, instead of a following all the steps in S135 to enforce that bylaw!

Less territoriality is related to being inclusive of all owners. Perhaps at your AGM there were one or two council candidates who were not elected, or an owner who hasn't put their name forward but may be a good candidate in the future – by all means ask them to help council by being on a committee. For example, your "maintenance committee" can never have too many members and non-council members should be welcome.

That brings us to good maintenance. (Nice segue or what?) If the strata is kept in good repair, the owners have communication from the council to keep them informed, the CRF has enough cash to fund the maintenance items on the near horizon, (at least 5 years) then your strata owners should be happy. But if the owners are kept in the dark about repairs, they may be understandably displeased with the council.

So – how tall is your fence?

President's Report



Wendy Wall

AN OUNCE OF PREVENTION

I'm not sure what brought it to mind, but I found myself thinking about the "preventable" TV commercials. You know the ones...someone uses a chair as a ladder on a staircase, a woman is texting while walking down plaza steps, boaters sail out into the harbour without wearing life jackets...and the commercials end with "Seriously?" These short and quirky clips pack powerful messages reminding us that thousands of injuries each year can be prevented. (The Community Against Preventable Injuries. preventable.ca)

When I think of how many court and tribunal cases involve strata owners and strata corporations, the word "preventable" pops up. How many of these cases could have been averted if the people involved had a better understanding of the basics? Here are 6 areas we can all work on to reduce the likelihood of disputes.

#1: Understand the strata plan: When was the last time that you took a really good look at your strata plan? While an owner may glance at it when purchasing their unit, this is a document that is often filed and quickly forgotten. Yet, the strata plan is the document that informs and influences every

aspect of the strata corporation's existence. It is the "Big Bang" that created the strata's universe. Any part of the bylaws or *Strata Property Act* that refer to a strata lot, common property or limited common property, cannot be applied correctly if the reader has misunderstood the strata plan. An example comes to mind where owners had been parking in the wrong stalls for decades until new owners moved in and wanted their stall.

#2: Accept that the majority rules. Let's be frank: Owners don't always agree and nobody likes to be on the "losing" side. Like it or not, the Supreme Court has stated that within a strata corporation you are all in it together. For better or worse the majority of owners make the rules, and the minority of owners are to abide by those rules.

#3: Bylaws apply to everyone: Owners sometimes take the view that bylaws and rules don't apply to them. Or they reason that fines should be removed because "they didn't know". Sorry folks, owners have a legal responsibility to know the bylaws and they can't pick and choose which bylaws to follow. Bylaws (properly created and filed and not in conflict with the SPA) are enforceable by a court or tribunal regardless of whether the owner thinks the bylaw is important or not.

#4: Learn about document requests: A surprising number of disputes revolve around failure to provide copies of documents. This is unfortunate as sections 35 and 36 of the Act are quite straightforward. Owners should

learn these sections to understand which documents they can request. Councils and managers have to comply with the Act. The regulations permit the Strata to charge up to \$0.25 per page.

#5: Repair your strata lot: Believe it or not, some strata owners expect the strata to repair their dripping faucet, running toilet, broken dishwasher, even replace light bulbs. The bylaws set out who is responsible for repairs. This can, at times, be confusing so it is not surprising that duty to repair and cost of repairs are common themes in litigation.

#6: Ask first: Your home is not actually your castle. Alterations you make in your strata lot could negatively affect building systems or neighbours, so you can't necessarily do whatever you want. Never assume, for example, that you can remove a wall, change the heating system or replace a smoke alarm. Refer to your bylaws and submit written requests for approval for alterations and renovations. This is far easier than finding yourself in a position where you have to remove the alteration and return the strata lot to its original condition.

Let's all try to practice prevention in our stratas. Seriously!

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