

- **3**06 620 View Street, Victoria, B.C. V8W 1J6
- General Office Email: information@visoa.bc.ca
- Office Telephone: (250) 920-0688 or 1-855-38VISOA (1-855-388-4762)
- Strata Support Team: 250-920-0222 or 1-877-33VISOA (1-877-338-4762)
- Web site: www.visoa.bc.ca

VISOA Bulletin - FEBRUARY 2021

Can Council Members Get Paid?

By Shawn M. Smith



Council members are volunteers. They devote often countless hours of their time to the operation of the strata corporation, doing so

for the benefit of themselves and their neighbours. Almost always that is done without compensation.

Sometimes council members are paid for carrying out tasks which are not directly related to their oversight role; such as acting as a handyman, overseeing the booking of the recreation facility, taking out the garbage bins, bookkeeping etc. Sometimes they are hired

In this issue...

for larger tasks such as providing landscaping services or acting as resident managers. Doing so is fine, provided that the requirements of the *Strata Property Act* (*SPA*) are complied with.

The provisions of the *SPA* with which council members who receive compensation/remuneration must be concerned with are sections 31, 32 and 34.

Section 31 establishes the standard of care which council members must meet in exercising the powers as a strata council member. They are expected to:

(a) act honestly and in good faith with a view to the best interests of the strata corporation, and

(b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

Section 32 deals with conflict of interest and the requirements that must be met by a strata council member when they have an interest in a contract or transaction with the strata corporation. A council member to whom those provisions apply must not be involved in the decision making process in any way.

Section 34 addresses compensation of strata council members for carrying out their duties. It

Continued on page 2

Can Council Members Get Paid? Shawn M. Smith	1
• Editor's Message Sandy Wagner	4
New Business Members	
Managing a Strata during a Pandemic Gail Roberge	7
Business Members	8
BC Strata Insurance Market Could Take Years to Correct Hayley Woodin	.11
The Curious Case of the Deficit Budget Wendy Wall	13
Remembering Harvey Williams	14
• You Asked	15
President's Message Wendy Wall	.17

BOARD OF DIRECTORS 2020

EXECUTIVE Wendy Wall - **President** • John Grubb - **Vice-President** • David Grubb - **Secretary** Graeme Campbell - **Treasurer**

MEMBERS AT LARGE André de Leebeeck • David Stinson • Joanne Thibault

Can Council Members Get Paid? Continued from page 1

provides as follows:

34 Any remuneration paid to a member of council for the member's exercise of council powers or performance of council duties must be approved in advance of payment

- (a) in the budget,
- (b) in the bylaws, or
- (c) by a resolution passed by a
- 3/4 vote at an annual or special general meeting.

S.34 does not, however, apply to every situation where a strata council member is paid for work done for the strata corporation. "Remuneration" is compensation related to acting as a strata council member. It does not include reimbursement for amounts spent on a given product - The Owners, Strata Plan LMS 2385 v. Field 2020 BCCRT 673. However, it can include things other than a direct payment to the strata council member. Paying for things such a dinner attended by strata council members is also remuneration -Townsend et al v. The Owners. Strata Plan NW 2545 2018 BCCRT 209.

Nor does s.34 apply to providing services to the strata corporation for things such as repair or building management. *Hoover v. The Owners, Strata Plan KAS1984* 2018 BCCRT 620; *The Owners, Strata Plan NW 2275 v. Emerson* 2019 BCPC 207. In those cases ss. 31 and 32 would apply.

The issue of reimbursing a strata council member for expenditures made by them does not fall within s.34 of the *SPA*. Whether a strata council member is entitled to reimbursement for

such expenditures comes down to whether they were properly authorized to make them. That issue was canvassed in great detail in The Owners, Strata Plan LMS 2385 v. Field 2020 BCCRT 673. In that case the tribunal applied section 31 of the SPA (council member's standard of care) in determining whether Mr. Field should have been paid for items he purchased on behalf of the strata corporation as well as payments made to certain trades. Most of the expenses made by Mr. Field were for physical items needed for the operation of the strata corporation (i.e. materials to build no parking signs, ice melting salt, gas for machinery).

In determining whether Mr. Field should have been compensated for these expenses, one of the things the tribunal looked at was whether he had been delegated the authority pursuant to the bylaws to acquire the items on behalf of the strata corporation. While it was not clear that he had authorization in advance, the tribunal noted the fact that the strata council compensated him for the expenses amounted to a retroactive delegation. (This was despite the fact that certain of the expenses were paid from the Contingency Reserve Fund when they should not have been. That was held to be an issue for the strata corporation to address, not Mr. Field).

Where Mr. Field claimed reimbursement for an item that he later returned, he was found to have breached his duty under section 31 and was required to repay that money.

Where Mr. Field encountered the most trouble was with respect to payments made to a landscaper for which he did not obtain an invoice or a receipt. Mr. Field simply "printed" his own receipt to submit along with the request for reimbursement. Doing so was held to fall below the standard of a council member under section 31 and he was ordered to repay the money to the strata.

Similarly, in The Owners, Strata Plan 302 v. Dyson 2019 BCCRT 59 the tribunal reviewed Ms. Dyson's entitlement to certain expenses including legal fees paid by her on behalf of the strata corporation, money paid to rent her garage for storage and monies paid to her for "bookkeeping" services. Ms. Dyson issued the payments in question when she was purportedly acting as treasurer. In the end, the tribunal ordered Ms. Dyson to compensate the strata corporation for all expenditures (other than the legal fees) because the expenditures had not been properly approved by the owners pursuant to the SPA (most notably s.34). The fact that she had been paid in the past for bookkeeping services did not amount to approval for the fiscal year in question. The only reason Ms. Dyson was not ordered to pay back the legal fees was because the strata corporation subsequently paid the lawyer itself for a second letter related to the same issue.

In *The Owners, Strata Plan NW2775 v. Emerson* 2019 BCPC 207 the court considered whether a strata council member had been properly authorized to provide building management services for which she was paid. The court found that such services did not fall within the scope of section 34 as they were not related to exercising the powers

Continued on page 3

Can Council Members Get Paid? Continued from page 2

and duties of the strata council. However, that was not the end of it. The strata corporation (being led by a new council) was successful in recovering the monies paid to Ms. Emerson because of the way in which she went about getting hired for the job. Rather than removing herself from any discussion with respect to whether she should be hired, she actively inserted herself into the council decision making process in an attempt to "influence the other council members to hire her as building manager, purely for her personal benefit. She even engaged with them directly; at times, using disrespectful and threatening language". Not only was Ms. Emerson found to have breached section 32 of the SPA, the court also held that she had failed to meet her duties under section 31 of the SPA by insisting that she be given the job. In the end, she was required to repay the money she had been paid for acting as building manager.

Several important lessons can be taken from these three cases when it comes to strata council members getting paid for things they do and acquire. Those can be summarized as follows:

• Make sure the proper authorization is in place before you take money. Do the bylaws or budget expressly authorize the remuneration? Has council voted on the expenditure and authorized you to acquire the item?

• Keep the interests of the strata corporation first and foremost. Don't mix your interests with those of the strata corporation (even if your intentions are good).

• Be diligent and don't assume there won't be an issue later on. A future council may not view things in the same manner.

• If a decision (i.e. approving a contract) involves you, stay out of it.

A failure to take the time to properly address remuneration and compensation can have harsh consequences for an unwitting strata council member. They could end up being out of pocket a significant sum.

Compensating strata council members for managing the affairs of the strata corporation is ultimately a decision of the owners. The strata council, no matter how warranted it might be, cannot decide on its own to remunerate a particular council member. The owners must have given that authorization either in the budget, in the bylaws or after the fact by way of the ³/₄ vote.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn.





"Assisting Strata Councils and Owners since 1973"

VISOA Bulletin February 2021 • 3

Editor's Message



Sandy Wagner, Editor

Welcome to the first *Bulletin* of 2021. You may have noticed a new – but

old – photo above this message. Since "retiring" as *Bulletin* editor I've been co-editor with David Grubb, helping as needed and writing the occasional article. This year David and I are swapping roles, with me back in the lead, and David helping with editing and researching articles.

First, I have some sad news to report. VISOA's past president

Harvey Williams passed away at the grand age of 93. Harvey was a leader of this association after some perilous years and helped bring new life and passion to the entire board. A short tribute is on page 14.

We hope you enjoy the articles in this issue. We can always count on lawyer Shawn M. Smith and he has not let us down. The front-page article is on a topic we are often asked: "Can council members get paid?" Our president, Wendy Wall, ponders an intriguing question on strata deficits in her piece on page 13; and we found an excellent article on the strata insurance crisis in *Business in Vancouver* which the author has graciously permitted us to include for you. Find it beginning on page 11.

One of our members has contributed an article on managing a strata during a pandemic. Gail Roberge says she reads all the CRT strata decisions, and this one caught her attention. See Gail's article on page 7.

We hope you enjoy this issue of the *Bulletin*, and as always, if you have ideas for an article, just drop us a line at editor@visoa.bc.ca

> Sandy Wagner – Editor David Grubb – Co-editor

VISOA SERVICES DURING THE PANDEMIC

For the health and safety of our staff and volunteers, the VISOA office remains closed to the public until further notice. Our administrator is working from home and can answer emails and membership inquiries as usual. When phoning the office, please leave a message. Staff check messages on weekdays during normal business hours and return calls as soon as possible.

OFFICE EMAIL: information@visoa.bc.ca • Web: www.visoa.bc.ca • Office Telephone: 250-920-0688



Seminar sound system provided by PROSHOP SOUND & LIGHTING



sales rentals installations repairs lessons

Jack Paulo 250-361-1711 3 - 464 Bay St. Victoria BC

VISOA Strata Support Team (250) 920-0222 • General information - information@visoa.bc.ca

NEW BUSINESS MEMBERS FEBRUARY 2021

VISOA is pleased to welcome new Business Members

BUILDINGLINK CANADA

BuildingLink Canada is a complete property management solution designed to administrate building details, facilitate communications, track maintenance, automate front desk operations and engage residents. They offer integrated accounting software and flexible feature bundles to accommodate any size community or portfolio. Users connect through cloud-based software, mobile apps, resident portals, digital displays and smart home devices. For more information, contact Max Pharaon, Regional Manager at 604-561-0231 max@buildinglink.com or see their website buildinglink.ca

DROID MEDIA SOLUTIONS

Droid Media Solutions distribute and install the Galaxy Maestro automatic leak detection and shut off system that not only protects your building but may also help to reduce your strata insurance premiums by up to 20%. Not only do they offer the best leak detection and damage prevention system available, they also install it. Their professional installation crews are able to install Galaxy systems into new construction or retrofit existing buildings, condominium units, strata townhomes, and houses. For more information contact Don Dobbie, Co-owner at 250-220-9633 ricklacey@ gmail.com or see their website droidmedia.ca

PEMBERTON HOLMES

Pemberton Holmes strata division is a full-service agency licensed under the Real Estate Services Act of B.C. to manage and trade real estate in the province of British Columbia since 1887. Properties under their management portfolio include Condominiums, Town Homes, Bare Land Stratas, and Multi-Type Section Stratas, both existing established properties, and brand new construction. Serving Greater Victoria: Sidney, Saanich, Victoria, View Royal, Colwood, Langford, and Sooke.



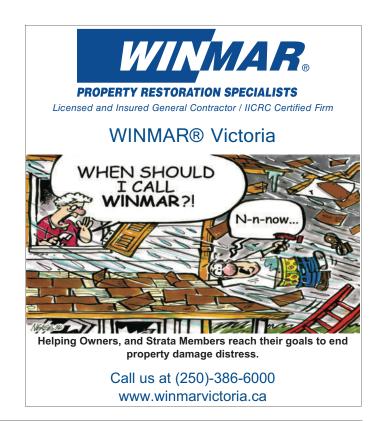
They have recently expanded to: Shawnigan, Duncan, and Cowichan Bay. Contact Erik Churlish, Managing Director at 250-478-9141 or erik@thepropertymanagers.ca or visit their website www.stratamanagers.ca

See our website for more details on all our Business Members

GROK EV CHARGER SERVICES

GROK EV Charger Services provides turn-key electric vehicle charging solutions to Multi Unit Residential Buildings, Strata complexes, Commercial buildings, and public access spaces. They offer consulting, design, engineering, installation, commissioning, and service. Solutions can include anything from the simplest, most basic "dumb charger" all the way through to a fully networked system of "smart chargers" providing fully enhanced functionality. Their goal is to install EV charging systems that can start small, and eventually be expanded to include all parking stalls in a facility, without having to remove any installed equipment or start all over due to limitations in the design of the initial installation. For more details, contact Doug Green, CEO at 866-629-6661 or by email, at info@grokev.ca or check their website grokev.ca

These businesses have chosen to support our member strata corporations and owners by joining VISOA's growing group of Business Members. We encourage all our members to return the support we receive from the business group by including these businesses in their consideration for provision of services for their corporation.



"Assisting Strata Councils and Owners since 1973"

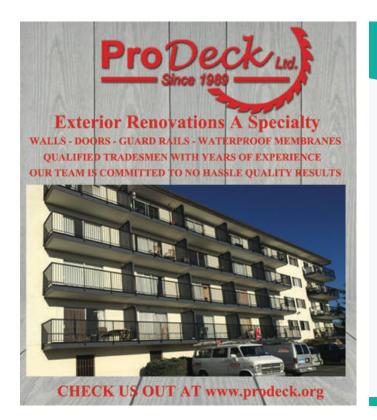




WE ARE CANADA'S INSURANCE APPRAISALS EXPERTS. We deliver peace of mind to owners, property managers, and insurance brokers with our industry-leading replacement cost reports and unrivalled customer service.

HEAD OFFICE:	604 221 8258
ALBERTA:	403 918 6566
ONTARIO:	416 879 8258

TOLL FREE: 1 888 887 0002 EMAIL: info@normac.ca WEBSITE: normac.ca



BULLETIN SUBSCRIPTIONS

BULLETINS are published quarterly.
You may also access over 10 years of past issues on our website.
Join the VISOA email list to receive a notification when a new issue is available online.
Go to www.visoa.bc.ca and look for the "Join Our Mailing List" button.

Managing a Strata during a Pandemic

by Gail Roberge

For this retired lady, the pandemic has been an opportunity to catch up on reading. And it's never a dull moment. With the new year comes a new batch of interesting decisions by the CRT.

Ten months after the state of emergency was announced, we are seeing CRT decisions over disputes that arose in stratas at the beginning of the pandemic. Let's face it: strata councils were doing their best to make timely decisions with the goal of keeping residents safe. These were unchartered waters. There was no guidebook to refer to, no case law to point us in the right direction. We were thrown into the deep end even though we didn't know how to swim.

Now we have several CRT decisions that provide guidance.

The issue in Oja v. The Owners, Strata Plan VIS4078. 2021 BCCRT 69 was whether the strata's decision to suspend Ms. Oja's housekeeping services during the pandemic was significantly unfair. In March 2020, residents of a 55plus independent living condo building met to discuss proposed safety protocols to prevent the spread of the coronavirus in their elderly population. They came to the conclusion it was best to stav at home and not take risks. However there was no communication about potential consequences for failing to stay home or engaging in behaviour that the strata deemed to be risky. including attending gatherings or using public transportation.

The next day some residents attended a funeral where attendees were not spaced 6 feet apart. The strata was concerned about the risks its residents would face due to their vulnerabilities. The Strata decided that, for 2 weeks, its housekeepers would not enter any strata lots of occupants who attended the funeral. Each of these owners received a refund for the portion of housekeeping services they did not receive.

The tribunal member said "little was known about the coronavirus in March of 2020. Therefore, it was reasonable for the strata to take steps to safeguard its residents and staff. However, as there is no indication that the strata was responding to an order from a public health official or WorkSafeBC, the strata's decisions had to be made within its authority under the *SPA* or the bylaws."

The key consideration was whether the *SPA* gave the strata the authority to make decisions to suspend owners' access to services funded by common expenses.

While the tribunal accepted that "the strata's decision was motivated by a desire to keep everyone safe and find that the strata did not act in bad faith when suspending Ms. Oja's housekeeping services", it found that "the decision to suspend services without warning was prejudicial to Ms. Oja, and therefore significantly unfair to her."

The Strata was ordered to "refrain from suspending support

services unless such a suspension is specifically authorized by a rule or necessary to comply with orders from public health authorities or WorkSafeBC" and to reimburse Ms. Oja the \$225 CRT fee.

I found these CRT decisions interesting too, as they all relate to the pandemic. They are easy to search at https://decisions. civilresolutionbc.ca/crt/en/nav.do

Brogan v. The Owners, Strata Plan 845, 2020 BCCRT 1196, regarding whether the strata had the authority to close a common swimming pool during the pandemic.

Shen v. The Owners, Strata Plan EPS3177, 2020 BCCRT 1157 and Balayewich v. The Owners, Strata Plan LMS317, 2021 BCCRT 110 regarding AGM procedures and allowing owners to freely choose a proxy.

Chau v. The Owners, Strata Plan NW 155, 2020 BCCRT 1161, where a strata should not delay investigation of a noise complaint indefinitely when requiring access to a strata lot.

Kabos v. The Owners, Strata Plan KAS977, 2020 BCCRT 1391 regarding holding a hearing electronically.

Gail Roberge is a VISOA member who enjoys reading all the CRT's decisions involving stratas.

VISOA BUSINESS MEMBERS

APPRAISALS & DEPRECIATION REPORTS

BELL APPRAISALS

Insurance Reports & Depreciation Reports 250-514-3486 <u>www.bell-appraisals.ca</u> <u>bell.appraisals.consulting@gmail.com</u>

COAST PROPERTY APPRAISALS LTD.

Real Estate Appraisal Firm 250-388-9151 • Fax 250-388-4948 appraisals@coastappraisals.com www.coastappraisals.com

D R COELL & ASSOCIATES INC.

Depreciation Reports & Insurance Appraisals 250-388-6242 • Fax 250-388-4948 <u>shumphreys@drcoell.com</u> www.drcoell.com

MORRISON HERSHFIELD LTD.

Consulting Engineers 250-361-1215 victoria@morrisonhershfield.com nanaimo@morrisonhershfield.com morrisonhershfield.com

NORMAC

Insurance Appraisals, Depreciation Reports, & Building Science Services 250-575-6350 • 1-888-887-0002 • Fax 604-224-1445 info@normac.ca • normac.ca

PACIFIC RIM APPRAISALS LTD.

Depreciation Reports & Insurance Appraisals 250-477-7090 • Fax 1-866-612-2800 info@pacificrimappraisals.com pacificrimappraisals.com

READ JONES CHRISTOFFERSEN LTD.

Consulting Engineers & Reserve Fund Studies 250-386-7794 • Fax 250-381-7900 <u>rtram@rjc.ca</u> • <u>rjc.ca</u>

RDH BUILDING SCIENCE INC.

Building Envelop Engineering Consultants Victoria 250-479-1110 Courtenay 250-703-4753 • <u>vic@rdh.com</u> hgoodman@rdh.com • rdh.com

UNITY SERVICES CORPORATION

Depreciation Reports; Consulting Services; Project Development, & Management 250-893-3445 • <u>usc@shaw.ca</u> <u>www.unityservices.ca</u>

WM S JACKSON AND ASSOCIATES LTD. Insurance Appraisals & Depreciation Reports 250-338-7323 • 1-877-888-4316 dan-wsj@shaw.ca

www.comoxvalleyappraisers.com

BUILDING SUPPLIES

CENTRA WINDOWS INC. Window Manufacturer & Installer; General Contractor 250-412-2525 info@centra.ca • www.centra.ca

INDUSTRIAL PLASTICS & PAINT

Building & Maintenance Products 250-727-3545 ext. 105 Fax 250-727-7066 ron.sherring@goindustrial.ca coindustrial.ca

PREMIUM FENCE COMPANY INC.

Fence Supply & Installation 250-800-9734 <u>derek@premiumfence.ca</u> premiumfence.ca

VAN ISLE WINDOWS LTD.

Window Manufacturing & Installation Services 250-383-7128 • Fax 250-383-7271 sales@vanislewindows.com www.vanislewindows.com

FINANCIAL

COAST CAPITAL SAVINGS CREDIT UNION Strata Account Pricing Program 250-483-8710 nicole.gervais@coastcapitalsavings.com coastcapitalsavings.com

INSURANCE & RELATED SERVICES

BFL CANADA INSURANCE SERVICES INC. International Insurance Brokers and Consultants 1-866-669-9602 • Fax 604-683-9316 vkirk@bflcanada.ca BFLCanada.ca

DFLCanada.ca

SCHILL INSURANCE BROKERS

Insurance Brokerage 250-724-3241 • 604-585-4445 mmesic@schillinsurance.com www.schillinsurance.com

SEAFIRST INSURANCE BROKERS

Shawn Fehr & Doug Guedes 250-478-9110 • Fax 250-652-4427 <u>sfehr@seafirstinsurance.com</u> seafirstinsurance.com

WAYPOINT INSURANCE

Commercial Insurance Specialist 604-990-8350 • Fax 250-751-2965 jadams@waypoint.ca waypoint.ca

LEGAL SERVICES

CITADEL LAW CORPORATION Strata Property Law, Estate Litigation, Tenancies 778-945-9990 • Fax 604-688-0933 info@citadellawyers.ca • www.citadellawyers.ca

CLEVELAND DOAN LLP, SHAWN M SMITH

Barristers & Solicitors 604-536-5002 • Fax 250-604-536-7002 shawn@clevelandoan.com

JASON ROHRICK

Barrister & Solicitor 778-432-0447 jrohricklaw@shaw.ca • jrohricklaw.com/

REED POPE LAW CORPORATION Legal Services 250-383-3838 • Fax 250-385-4324

tmorley@reedpope.ca • www.reedpope.ca MAINTENANCE & PROJECT

MAINTENANCE & PROJEC

ALL-BRITE CLEANING Cleaning Services Phone/Fax: 250-480-5234 allbritecleaning@shaw.ca www.allbritecleaning.ca

BLAST OFF PRESSURE WASHING

Cleaning Services 250-474-4715 blastoffvictoria@gmail.com www.blastoffvictoria.com

BUILDINGLINK CANADA

Software & Hardware Solutions for Property Management 604-561-0231 max@buildinglink.com • www.buildinglink.ca

CALLAWAY PLUMBING AND DRAINS LTD.

Plumbing & Drain Cleaning 250-216-7159 <u>info@callawayplumbing.ca</u> <u>www.callawayplumbinganddrains.ca</u>

CBS MASONRY

Masonry, Concrete, Stone, Brick, Pavers, Flagstones 250-589-9942 <u>charlie@cbsmasonry.com</u> www.cbsmasonry.com

CLEAR LAKE SOLUTIONS

Invasive Aquatic Plant Control Phone/Fax: 604-910-0127 info@clearlakesolutions.com www.clearlakesolutions.com

For more information regarding Business Memberships please contact us at 250-920-0688 or toll free at 1-877-338-4762 or <u>businessmembers@visoa.bc.ca</u>. (Please note that VISOA does not guaranteed or warranty the goods, services or products of our Business Members)

VISOA BUSINESS MEMBERS

MAINTENANCE & PROJECT CONTRACTORS continued

DRAINSCOPE

Plumbing and Drainage Contractors 250-590-1535 · Fax 250-590-9183 service@drainscope.net office@drainscope.net

DRI-WAY CARPET & UPHOLSTERY CARE

Carpet & Upholstery Cleaning 250-475-2468 • inquiries@dri-way.ca www.dri-way.ca

DROID MEDIA SOLUTIONS Control Valves, Hardware & Software solutions 250-220-9633 · droidmedia.ca ricklacey@gmail.com

EDWARDS ELECTRIC (2003) LTD. **Electrical Contractor** 250-652-9166 office@edwardselectric.net www.edwardselectric.net

EMPIRE LANDSCAPING & GARDEN SERVICES

Landscaping, Maintenance, & Design 250-532-1155 empiregardening@gmail.com www.empiregardening.com

FALLINGWATER PROPERTY SERVICES INC

Landscape Maintenance & Construction 778-679-6822 office.fallingwater@gmail.com www.fallingwaterlandscapes.com

GROK EV CHARGER SERVICES

EV Charger Solution Design and Installation **Building Energy Management** 866-629-6661 info@grokev.ca

<u>grokev.</u>ca

HEAT SAVERS FIREPLACE & PATIO CO. Phone: 250-383-3512 info@feelthewarmth.ca • www.feelthewarmth.ca FB & Twitter: @heatsavers

ISLANDERS' CHOICE PAINTING CORP Residential/Commercial Painting 250-208-1787 evan@islanderschoicepainting.com

www.islanderschoicepainting.com

MR SPARKLE EXTERIOR CLEANIING Exterior Cleaning Company 250-714-6739 • 1-877-291-1251

mrspark1@shaw.ca www.mrsparkle.net

OKELL WATERPROOFING LTD.

Restorative Waterproofing for All Buildings 250-479-8453 • 250-479-8409 billokell@shaw.ca

www.okellwaterproofing.com

OLIVER'S POWER VACUUM & CHIMNEY SWEEP

Heating Systems Cleaning, Chimney Service 1-866-734-6056 • Fax 250-336-8095 oliverspowervac@shaw.ca www.oliverspowervac.ca

PACIFIC ECOTECH

Insulation & Ventilation 1-800-747-6816 pacificecotech13@gmail.com www.pacificeco.ca

PRO DECK LTD. **Exterior Renovations**

250-592-1622 info@prodeck.org www.prodeck.org

STERLING FIRE & ASSOCIATES

Fire Safety Consulting & Fire Alarm Upgrades 250-661-9931 sterlingfire@ymail.com www.sterlingfireassoc.com

TSS CLEANING SERVICES

Dryer Duct Cleaning Services for Vancouver Island Stratas 1-866-447-0099 or 250-729-5634 info@cleandryerducts.com www.cleandryerducts.com

VICTORIA DRAIN SERVICES LTD. Drainage & Plumbing 250-818-1609 · Fax 250-388-6484 info@victoriadrains.com

www.victoriadrains.com

WE PAINT INC.

Paint Contractor 250-888-5385 wepaintinc@yahoo.ca swww.wepaintinc.com

WINMAR VICTORIA **Property Restoration Specialists** 250-386-6000 · Fax 250-386-6002 victoria@winmar.ca www.winmar.ca

WSP CANADA INC.

Building Sciences 250-475-1000 kevin.grasty@wsp.com www.wsp.com/en-CA

PROPERTY MANAGEMENT

BAYVIEW STRATA SERVICES Strata & Property Management 250-586-1100 • Fax 250-586-1102 reception@bayviewstrataservices.ca www.bayviewstrataservices.com

GRACE POINT STRATA MANAGEMENT INC.

Strata Management Services 250-802-5124 · Fax 250-591-5124 tom@GPstrata.com www.GPstrata.com

OAKWOOD PROPERTY MANAGEMENT I TD.

Manager for Stratas, Co-ops, and Rentals 250-704-4391 • Fax 250-704-4440 carol@oakwoodproperties.ca www.oakwoodproperties.ca

PEMBERTON HOLMES

Strata Management Services 250-478-9141 • Fax 250-478-9103 erik@thepropertymanagers.ca



www.stratamanagers.ca

SOUTH ISLAND PROPERTY MANAGEMENT LTD. Strata Management Services 250-595-6680 · Fax 250-595-2022 reception@sipmltd.com www.sipmltd.com

STRATA COUNCIL RESOURCES

PROSHOP MUSIC CENTRE SOUND & LIGHTING Sound Systems for General Meetings 250-361-1711 jpproshopmusic@yahoo.ca

STRATACOMMONS Strata Software Development 250-871-4537 jlhooton@stratacommons.ca www.stratacommons.ca/home

STRATAPRESS

Online Communication Tools & Document Archiving for Strata Corporations 250-588-2469 info@stratapress.com www.stratapress.com





• VINYL SIDING • ROOF DEMOSSING • WINDOW CLEANING • GUTTER CLEANING • POWER WASHING

860 Oakley Street, Nanaimo, BC Toll Free: 1-877-291-1251 • (250) 714-6739 • www.mrsparkle.net Email for Free Estimates: mrspark1@shaw.ca

Serving Mid Vancouver Island Strata's since 1992

STRATA MANAGEMENT DONE RIGHT!

- Self managed and struggling to keep up?
- Suffering from strata council "fatigue"?
- Management fees gone sky high?
- Small strata unable to find management for a reasonable fee?
- Getting mediocre service?

Sound familiar? We provide customized, reliable service at a fair price.

OAKWOOD PROPERTY MANAGEMENT LTD.

EXPERIENCED • **RESPONSIVE** • **LOCAL** carol@oakwoodproperties.ca 250-704-4391

🖲 StrataCommons

Is your council struggling with complicated email messages and misplaced documents?

StrataCommons gives you one simple place to manage conversations and important records.

Visit our website at stratacommons.ca to learn more about our free online services.



B.C. Strata Insurance Market Could Take Years To Correct

by Hayley Woodin

It may take years before British Columbia's "unhealthy" strata insurance market normalizes, according to the BC Financial Services Authority (BCFSA).

In its final report to government, the BCFSA cautioned that there is no simple fix for a market that has seen premiums and deductibles jump by double- and triple-digit percentage increases in a relatively short period of time.

"What has been occurring in this province is not typical," the report notes. "It will take time to bring the market back to a healthy state, possibly years."

A number of factors have contributed to a dramatic increase in the cost of insurance in parts of B.C. – an issue that has left some strata corporations scrambling to secure and afford coverage.

"We found that there was a bit of a perfect storm of both local and global events, which has really created this unhealthy marketplace," explained Frank Chong, vice-president and deputy superintendent, regulation, with the BCFSA.

"There are actions that are going to need to be taken by all stakeholders to be able to bring everything back to a healthy state, and it will take some time to do so. There is a new norm for prices, and premiums are stabilizing at existing levels, but price stability, not reduction, is really the realistic short-term goal here."

Part of the problem is cyclical. After more than a decade under soft market conditions – characterized by increased competition, ongoing profits for insurers and flat or decreasing premiums – markets began to harden in late 2018.

In a hard market, insurers struggle with profitability. Last year, *BIV* reported that a number of insurers exited Greater Vancouver's residential strata insurance market, which reduced competition in the region. Fewer remaining players



were faced with a greater number of buildings that needed coverage, which concentrated their risk. Prices increased.

In addition to this market shift, the BCFSA's final report identified four foundational issues that have significantly contributed to B.C.'s condo insurance crisis.

These include rising claims costs. In order for premiums to come down, those costs – which come from claims for things such as water damage – need to show sustained improvement, said Chong.

Supply needs to be increased to meet existing and future coverage demand, and concentration risk – which bears costs for insurers – ought to be considered.

The report also suggests that a better flow of information between stakeholders, and greater education

for strata councils and owners, could help address knowledge gaps and communication issues that can complicate the strata insurance process.

Regulatory changes to date

Following the BCFSA's interim report, the provincial government last year announced a number of changes to address the issue of expensive residential strata insurance.

These included banning the practice of insurers paying referral fees to strata property managers, and requiring insurance companies to give strata corporations more notice around material changes to their coverage.

Also among the changes was an end to best terms pricing, where all insurers involved in a strata property subscription policy receive the rates and terms established by the best quote made among them. This practice, which ended last year, meant that insurance prices were being set by the highest bidder.

While the end to best terms pricing will help alleviate premium increases on some properties, the BCFSA says the change will not bring overall premiums down.

"The key factor is claims costs. For a reduction in premiums and deductibles to occur, claim costs needs to improve and demonstrate a sustained improvement over time," the report states.

Reprinted with permission of the author, hwoodin@biv.com. Originally published in Business in Vancouver in January 2021. https://biv.com/ article/2021/01/bc-strata-insurancemarket-could-take-years-correct-bcfsa





The Curious Case of the Deficit Budget

By Wendy Wall



I like a good puzzle, so I was intrigued when asked "Can our strata present a deficit budget for

approval at the AGM?"

Section 105 of the *Strata Property Act* tells us what a strata corporation is permitted to do with a surplus, and what it is required to do with deficit, at the end of the fiscal year. However the Act doesn't state explicitly whether a strata is permitted to plan for a deficit in the budget that is presented at an AGM for approval by the owners.

Let's imagine а strata corporation where the current fees are about \$400 per month and that a large increase in premiums insurance has resulted in the strata fees needing to double to \$800 per month. The owners know fees need to increase but they don't want to go higher than \$600. The council presents a budget where the operating expenses and contribution to the CRF total \$400,000, but the proposed operating fund (strata fees) totals only \$300,000. This would be a deficit budget because there is a planned deficit of \$100,000.

The wording of *SPA* section 92 provides guidance. It says "To meet its expenses the strata corporation must establish, and the owners must contribute,

by means of strata fees, to an operating fund for common expenses that usually occur either once a year or more often than once a year."

The phrase "to meet its expenses" implies that the amount of the operating fund must be enough to cover the expenses of the strata corporation. Clearly the operating fund of \$300,000 does not "meet its expenses" of \$400,000. So there is an argument to be made that a deficit budget is not permitted.

Even if it was permitted, how can a strata corporation manage its affairs without enough money to cover its expenses?

Problem 1: At some point in the fiscal year, the strata is going to find it doesn't have any money to pay its bills. Theoretically they could take a loan from the CRF for a temporary shortage, but it would need to be paid back to the CRF before the end of the fiscal year. In this scenario it's fairly certain that there would be no money to pay back the loan on time.

Problem 2: If there is a deficit at the end of the fiscal year, it has to be eliminated during the next fiscal year. So by trying to keep their strata fees artificially low, these owners have only compounded the problem. In the following year, if all operating expenses remained the same and the strata had to

eliminate a \$100,000 deficit, strata fees in the next fiscal year would be \$1,000 per month. Alternatively, the strata owners could approve a special levy to eliminate the \$100,000 deficit.

Best practices

An adequate operating fund is essential for a council to manage the strata's affairs. Generally expenditures speaking, the required to manage the common property are not discretionary. The gas bill has to be paid or there is no heat. The gardener has to be paid or the lawn won't get cut. Waste and recycling need to be picked up. Insurance is required by law. Common area carpets need to be cleaned, drains cleared, snow shovelled.

When preparing a proposed budget for the upcoming year, aim for a balanced budget. For each line item, council should look at current rates, any expected increases, and trends over the last few years. Once the expenses and contribution to the CRF have been established, the strata must calculate the required level of strata fees to fund the total amount.

For more information, watch the video from VISOA's webinar "Strata Operating Budgets".

Remembering Harvey Williams

Harvey Dean Williams (Nov. 24, 1927 - Jan. 16, 2021)

Born on the cusp of the Great Depression, Harvey obtained a BS at the University of Washington and his MS and PhD at Oregon State University and became a professor of science education at the University of Manitoba. Having grown up in forested Grays Harbor Co., Washington State, and aware that his own rise was made possible by public education and other public programs, he was a lifelong advocate for education and the environment.

Harvey worked and taught in the US in the 1950's and 60's, and ran for Washington state legislature in 1958.

After accepting a position at the University of Manitoba in 1971, he spent the rest of his career as a professor of science education. In the 1980's he landed a large IBM grant to finance Project Prometheus, the purpose of which was to integrate computer technology into the classroom. Harvey became a Canadian citizen in 1978.

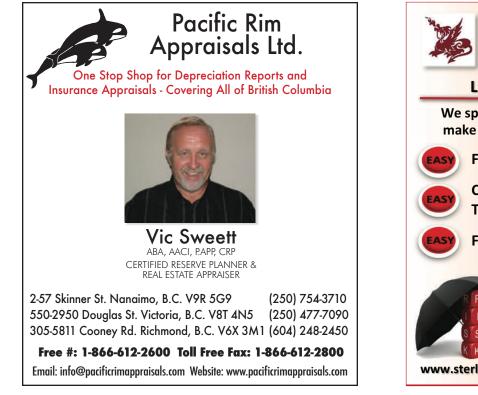


A dedicated environmentalist and political activist, he was president of Nature Manitoba, on the board of Canadian Parks and Wilderness Society and the National Parks Board. He was instrumental in the development of Wapusk National Park in northern Manitoba.

In 1997 Harvey and his wife Maida moved into their condo in Victoria, BC. They found the building in disrepair and the finances in disarray. Not content just to make these things right, Harvey joined the Vancouver Island Strata Owners Association and volunteered for your Board where he shared all he had learned in his own strata, and became a passionate advocate for proper financial statements.

During a period when this association was near closure, Harvey led and revitalized the organization as president, including answering the Helpline calls and emails for many years. Even after he "retired" from your board, he answered the phone lines until just a few years ago, as he really did enjoy speaking to you all. He was VISOA's first Honourary Lifetime Member.

Harvey, we'll miss you.





VISOA Strata Support Team (250) 920-0222 • General information - information@visoa.bc.ca

YOU ASKED By VISOA Strata Support Team

Have a question about managing your strata corporation? Ask us, we've had a lot of experience helping strata corporations solve problems - perhaps we can help you. Questions may be rephrased to conceal the identity of the questioner and to improve clarity when necessary. We do not provide legal advice, and our answers should not be construed as such. However, we may, and often will, advise you to seek legal advice.

Is an owner with unpaid fines eligible to vote?

Q. If a unit owner has not paid a fine imposed by council, and has not appealed the fine, are they allowed to put forth motions or vote at the AGM?

A. First, *SPA* s.46 states that it is the council that sets the AGM agenda, and so there would be few, if any, alterations or amendments. The Act is silent on whether any voter may make a motion at the actual AGM or SGM because the majority of those motions have been established in the agenda published with the Notice of meeting.

For the main part of your question, the *SPA* does not permit the strata to make a bylaw to ban a person from voting just because there is an outstanding debt. The Act tries to balance the right of every owner to have input into the running of their investment, against the right of the other owners to ensure that each owner pays their fair share of the expenses of the strata.

Thus, to balance these two points, *SPA* s.53 (2) and (3) permit the strata to create a bylaw which would ban an owner from voting only if the strata can show that it is in a legal position to place a lien on the strata lot.

Number of votes per strata lot 53 [....]

(2) Despite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).

(3) If, in accordance with a bylaw passed under subsection

(2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).

The difficulty in many a layperson's mind comes from the interpretation of the word "entitled" in the phrase "...*entitled to register a lien*....".

The council (and others) may be well aware that the owner of unit #X has not paid dues for three months. Thus there is no arguing #X is "in arrears". Because of this, the strata seems to be automatically "entitled" to register a lien, so all that need to be done for an AGM or SGM is to advise the owner of the fact in writing. To many this means that at the meeting the chair can automatically exclude unit #X from voting.

Wrong!

The vote cannot be barred simply because the owner is in arrears

(Azura Management (Kelowna) Corp. v. Strata Plan KAS 2428, 2009 BCSC 506, varied on another point 2010 BCCA 474). In order for the strata corporation to be "entitled to register a lien" under s. 116(1), notice must have been given under s. 112(2) and at least two weeks must have passed (excluding the day the notice was sent and the meeting day, under s. 25 of the Interpretation Act, plus in most cases four days for delivery under s. 61 of the Strata Property Act). Naturally, the council must give similar treatment to owners in similar circumstances to avoid offending s. 164, particularly if there is a contentious vote and disgualification could affect the outcome.

SPA s.112 states:

Notice to owner or tenant of money owing to strata corporation

112 [.....]

(2) Before the strata corporation registers a lien against an owner's strata lot under section 116, the strata corporation must give the owner at least 2 weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that 2 week period.

So you will first have to have the bylaw in place regarding barring owners of a unit from voting if the whole lien process has been completed to the point of the strata being legally *eligible* to impose

Continued on page 16

the lien (even if it hasn't yet been imposed).

Additionally, using *SPA* s.28 in such circumstances, stratas may combine the two permissible bylaws in their own bylaws to stop owners from serving on council if the strata can apply a lien, since a councillor is perceived as someone who should lead by example in adhering to the law.

Eligibility for council

28 (3) Despite this section, a strata corporation may, by bylaw, provide that no person may stand

for council or continue to be on council with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).

Note that throughout all this, the strata does not necessarily have to put the formal lien in place – yet: but it does need to go through the rest of the legalities so that it is in a position to do so from now on at any time until the arrears are brought up to date.

And a more important point to note is that a lien cannot be

registered for fines. For this reason, even if your strata had a bylaw as permitted in s.53 or s. 28, it would not be effective against an owner who owes fines - fees and special assessments and actual debts are included, but definitely not fines!

A strata council would be well advised to have a strata lawyer assist them to ensure that the process is properly done so there is no question about a unit's owners being barred from voting or holding office because of arrears.

BULLETIN ADVERTISING 2021

ISSUE	ARTWORK DUE ON OR BEFORE	CUT OFF FOR PAYMENT
Мау	April 1	April 1
August	July 1	July 1
November	October 1	October 1
February	January 1	January 1



Shawn Fehr, BA, CAIB, CIP, provides expert advice whether you're insuring a duplex or a 500-unit strata complex. Call him today for a competitive quote! **250-478-9110** or e-mail <u>sfehr@seafirstinsurance.com</u>

SeaFirst Insurance Brokers have been providing our clients with the finest in general insurance services on the Island for over 40 years. ~ DISCLAIMER ~

The material in this publication is intended for informational purposes only and cannot replace consultation with qualified professionals. Legal advice or other expert assistance should be sought as appropriate.

Watch videos of VISOA webinars on YouTube

- Best Practices for Strata Meeting Minutes
- How to Enforce Strata Bylaws
- Strata Operating Budgets
- Creating a Strata Privacy Policy
- Best Practices for Strata Record Keeping
- Plus more!





President's Message



ACCENTUATING THE POSITIVE

– by Wendy Wall

We can all agree that the last 11 months have not been the best of times, but some very positive things happened in my year as president of VISOA.

VISOA has always worked to advocate on behalf of strata owners. VISOA has been there throughout the pandemic, raising issues and working towards positive change to improve legislation to assist in the management of strata corporations.

Since March 2020, VISOA has been meeting regularly with the Housing Policy Branch, CHOA, and representatives of the property management, insurance, and real estate sectors. These meetings have been productive, focusing on the insurance crisis and issues that have emerged in stratas due to the pandemic. I found myself working with a group of people who really listened to each other. While we all come from different industries, I found the discussions to be centred on the real and immediate needs of strata owners.

VISOA's voice is being heard and I can honestly say that some of the ideas and concerns we brought forward have been acted upon. Right away the industry panel recognized that a solution needed to be found so that stratas could hold their AGMs: budgets needed to be approved, elections needed to take place. The idea of allowing electronic meetings was debated, and some felt they would be too difficult for large numbers of participants. But VISOA reminded the group that not all stratas are large. About 75% of strata corporations are 20 units or smaller, a very manageable size for an electronic meeting. Why not allow stratas the choice to use electronic methods?

Once in motion it did not take long to come into effect. Ministerial Order M114 was issued on April 15, 2020 permitting electronic AGMs and SGMs if called during a state of emergency, even when a strata does not already have a bylaw permitting electronic meetings.

And so it went with VISOA and others providing input that resulted in other Orders, new Regulations, and changes in legislation with the passing of Bill 14 and Bill 19.

And while there is no magic wand to solve the strata insurance crisis, VISOA and others have made inroads. Raising the real life stories of strata owners affected by increases in premiums and deductibles has made an impact. While the changes so far may seem small, they are important. At least 30 days before the expiry of the policy, the strata's insurance agent must inform the strata corporation of material changes to the terms and conditions of the strata insurance contract such as an increase in an insurance premium or deductible, and of an insurance company's intention not to renew. This is a vast improvement over learning of these changes a day or two before the strata's policy expires. Agents must now disclose the amount of their commission and property managers are not permitted to receive a commission. And most recently, we have learned that "best-term pricing" is a thing of the past in B.C.

Over the past year I and other board members have been your voice "at the table" for various focus groups and consultations including: the Financial Services Authority, the Insurance Bureau of Canada, the City of Colwood's review of off-street parking regulations, the Building Benchmark BC program, the City of Victoria's Zero-Waste initiative, Volunteer Victoria's training program for volunteerism in stratas, and working with the Ministry of Energy on EV charging funding programs.

There is still work to be done. As long as we have members providing us with the support to keep this society going strong, VISOA will be there. Speaking for you. Fighting for you.

VISOA is now in it's 48th year, the oldest organization of its kind in Canada. I have been involved as a board member since 2013 and have found it to be a very rewarding experience. I see the impact that VISOA has in improving the lives of strata owners and it's a good feeling.

I invite you to consider serving as a board member too. We each have skills, expertise and experience that can benefit the organization. Together we can make a difference in the lives of strata owners all over B.C. Please feel free to contact me if you are interested in learning more about becoming involved as a board member.

> Wendy Wall president@visoa.bc.ca



VISOA Bulletin February 2021 • 17