

## VISOA Bulletin - FEBRUARY 2015

# Two Court Cases Affecting BC Strata Owners

By Sandy Wagner

Early 2015 brought us news of two court cases, with implications for all strata owners. The cases were most interesting!

### Essential Building Repairs and Special Levies

The first is about repairs: In *The Owners, Strata Plan VIS114 v. John Doe, 2015 BSC*, the strata council had to have the court's assistance to get needed building envelope repairs completed. The building was 40 years old, and had suffered water ingress problems since it was 12 years old. Repairs such as caulking or window and stucco repair were carried out from time to time. The owners had obtained a Building Envelope Condition Assessment in 2007, which recommended complete remediation of the wall cladding assembly and

windows "in the near future". The council attempted to pass a resolution to have the work completed, but the owners at the SGM authorized only a portion of the work and a subsequent SGM authorized another portion. Major remediation took place in 2008 and 2013 to two of the four exterior walls. Thus remediation of only 50% of the exterior walls more directly exposed to the elements was completed; remediation of the other two walls was not.

Owners living on the non-remediated sides of the building continued to report water ingress resulting in water pooling on sills and mold on the walls.

This was observed in a 2013 Depreciation Report which recommended remediation within one year. The 2014 Strata Council proposed an

AGM resolution to remediate the remaining two exterior walls, with the cost payable via Special Assessment. The motion failed, having received 63% and not the required 75%.

In December of 2013 the Strata Property Act S. 173 was amended to provide that a strata achieving less than a 75% vote in favour, but more than 50%, could petition the court to approve the resolution if the repair of the common property in question is needed to prevent significant loss or damage, or to ensure safety. The judge ruled in the strata's favour and the council was now free to remediate the remaining two exterior walls with a Special Assessment.

It's a long and complicated case, and you can read the complete decision here: <http://www.courts.gov.bc.ca/jdb-txt/SC/15/00/2015BCSC0013.htm>

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This case certainly changes the way in which special levy votes are achieved – owners are reminded that necessary repairs must be done. Period.

### Inadequate Rental Restriction Bylaws

The second case of note is about rentals: In *Carnahan v. The Owners Strata Plan LMS522, 2014 BCSC 2375*, the Carnahans petitioned the court to have their strata's rental restriction

bylaw declared invalid. The rental bylaw limited the number of units that could be rented, but did not include any process for the administration of the restriction.

The Strata Property Act S. 141 requires that a bylaw restricting the number of units that may be rented must set out the procedure to be followed by the strata corporation in administering the limit. The Carnahans had pointed out to the strata council the inadequacy of the strata's bylaw which therefore rendered it unenforceable, and then rented out their strata lot. The strata council began fining the owners \$300 per week for breach of the bylaws.

The strata corporation argued that, although not written in the bylaws, they did have a procedure which council had followed for many years in the past and which Mr. Carnahan not only knew about but had applied to others when he was formerly on council.

The judge, in referring to SPA S.141 stated: "The procedure must be

detailed enough that a strata owner, or a prospective strata owner, who reads the bylaws can clearly see how the strata corporation decides which strata owner is entitled to lease their strata lot when the rental restriction limit is not reached, and how a strata owner can attain that right."

The right of the Carnahans to rent out their strata lot was clearly supported by the judge, who declared the strata's rental restriction bylaw to be unenforceable, and all fines levied were cancelled.

The complete court decision can be found here:

<http://www.courts.gov.bc.ca/jdb-txt/SC/14/23/2014BCSC2375.htm>

Do your strata's rental restriction bylaws comply adequately with S.141? I hope so!

You can hear more details about these two cases at our AGM on March 1st, when Lawyer Tino Di Bella of Jawl Bundon LLP will be our featured speaker.

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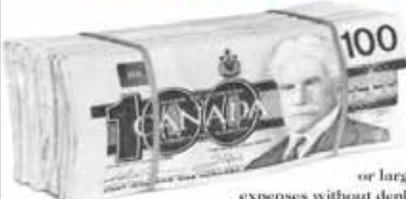
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# 10 Myths Delaying Depreciation Reports

By David Albrice



Listed here are the most common reasons I have heard some owners use for delaying the commissioning of a Depreciation Report (also called a

Reserve Study or a Capital Plan). I have included some reasons why these are based on false assumptions.

## Myth 1: We are a young building and don't need a capital plan until we get older.

Young buildings often find themselves going through a "teething" process, which includes warranty reviews to protect against any construction defects and adjustments to financial operations to address the artificially deflated marketing budgets established by some developers. Here are some more things to consider:

- The depreciation report provides advice on major maintenance activities to help extend the life of the young assets and these maintenance activities are most effective if started early in the life of the building.
- The report identifies the 2-5-10 warranty cycles that are paramount for consumer protection during the early years of the building.
- Young buildings are in the envious position of being able to leverage the power of the compounding effect of interest income that can be earned in the reserve account. Small adjustments early in the life of the building will have a positive impact down the road.

## Myth 2: We are a townhouse complex and don't have many assets to worry about.

While it is true that many townhouses include assets that are not part of the common property, such

as furnaces and water heaters, these types of developments have some unique features. Here are a few things to consider:

- Townhouses have significantly more roof area, exterior wall area and roadways, per unit, when compared to low-rise buildings and high-rise



The price of light is less than the cost of darkness. This is a call to action for 5000+ buildings in British Columbia.

developments. While there may be fewer assets, they are larger in size.

- There is a lot of buried infrastructure under the roadways and around the perimeter of each building, which is not readily apparent. This includes storm water pipes and sanitary pipes that typically last several decades but will be costly to replace.
- The depreciation report identifies the necessary major maintenance cycles to protect the owners' investment. For example, camera scoping surveys of the drain pipes, to detect any root intrusion and sediment build-up, can save many thousands of Dollars from water damaged basements and crawl spaces.

## Myth 3: We are a small building with few units so it is not affordable for us.

It is unfortunate that smaller buildings do not enjoy the economies of scale of larger building where costs are distributed across a larger number of owners. Some things for small buildings to consider:

- It is not unreasonable for the report to be restructured to match the scale and complexity of the smaller building. This can result in reducing the professional fees.
- Think about gathering as much data as you can to reduce the amount of time that the consulting team needs to spend on the building. A committee of some of the owners can work closely with the consultant to facilitate the report.

## Myth 4: We are waiting for the professional fees to come down.

Some people assume that consulting fees have been artificially inflated as a result of the demand created by the legislated requirement to commission a depreciation report. A few things to consider:

- It requires a team effort to prepare a good depreciation report and the prime consultant will sometimes need to engage the services of specialized sub-consultants. The total fee is therefore applied across various professionals, each of which has their own fee structure.
- The consultants are required to conduct an on-site visual inspection and meet other standards stipulated by the local regulations. The preparation of a depreciation report is a significant undertaking that cannot be taken lightly.
- The first "wave" of reports was completed within the deadline stipulated in the regulations and now there is a new wave of update reports that are being requested by the early adopters. While the fees cannot be reduced, the turnaround times are improving as the consulting firms have become more efficient in preparing the reports and have arranged additional resources to meet the demand.

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**Myth 5: We are too scared to see the results, which will make our lives miserable.**

Some owners assume that the report will inevitably bring bad news that will end up costing them more money. Here are fact checks to bear in mind:

- The majority of reports have indicated that the owners have been reasonably diligent in maintaining their buildings. A good report card provides peace of mind.
- No building is immune from large capital projects, regardless of how well built and how well maintained. Burying our heads in the sand does not make the projects go away. Many real estate agents have posted blogs expressing the opinion that it is better to have a report than not to have one.
- The owners have the final say in how they spend their money. The report provides information so that the owners can understand the risks and make informed decisions.

**No Depreciation Report**



Lots of surprises; not much peace of mind.  
"Failing to plan is planning to fail."

**With a Depreciation Report**



Few surprised; peace of mind.  
"Plan the work and work the plan."

**Myth 6: We think it is a witch-hunt and don't trust the consultants will be fair and reasonable.**

Given the "leaky condo" crisis in British Columbia, it is understandable that some owners lost confidence in the quality of construction. Here are some things to take into consideration:

- Engineers, and other regulated professionals, are bound by a code of professional ethics to be impartial. A good consultant endeavours to provide a report that makes reasonable forecasts of future projects and includes defensible estimates of these costs.
- The report must include disclosure of all methods and assumptions so that these can be reviewed and validated. This responsibility is not taken lightly and gives the owners "open book" access to the data collected by the consultant. Ask your consultant for references so that you can get input from other owner groups who ventured forward with their reports.
- A good report will not only help the owners plan for the eventual end-of-life renewal projects but will also provides useful information on maintenance activities to help stretch the dollars and potentially delay some big ticket items. The consultant is therefore a stakeholder in the development of a meaningful and useful report.

**Myth 7: We are waiting to finish a big capital project (or investigation) before we get our report.**

It is understandable that owners want the report to reflect all the positive work that has been done on their building. Some things to consider:

- A good depreciation report will recognize that a project is underway or is about to be launched. The data in the report can therefore be postdated to reflect this ongoing work.
- There is no harm in getting the process underway so that the owners

can evaluate the proposals and award the contract.

- It takes a few months to complete the depreciation report, which should preferably be obtained prior to the end of the current fiscal year so that it can be used to make preparations for the next fiscal cycle.

**Myth 8: It is too complicated and we don't know what to do.**

By reading this article you are now hopefully in the process of educating yourself. The challenge, however, is to take the message back to the ownership at large and to educate the group so that they climb the learning curve. Here are some things to consider.

- There are lots of free consumer guides that are just a few clicks away on the internet.
- Ignorance is not bliss. At some point, the owners may find themselves in an awkward position of having to explain why due diligence was not done.
- The legislation requires the board directors, who have been elected by the owners to serve in the corporations' best interest, to act like prudent and reasonable people in comparable circumstances. While the Directors have errors and omissions liability insurance, who wants to have to defend such an embarrassing claim.

**Myth 9: We passed a resolution at our last general meeting opting out.**

While the owners, in their collective wisdom, may not want to take a long-range view of their building, it important to consider the following:

- The exemption lasts for only one year and must be updated at each annual general meeting.
- Continued exemptions will likely get harder over the ensuing years as more buildings complete their reports and the culture in the market changes.

*Continued on page 5*

• Any building that is neglected will eventually take control of the owners.

**Myth 10: There is no enforcement process so it can't be that important.**

While it is true that the legislation has not (yet) set up enforcement procedures, here are some things to consider:

- Over the last few decades the legislation has gradually been tightened to steer the consumer towards responsible stewardship.
- The open market is serving as the enforcement police where the marketability of suites and resale value are compelling forces to contend with. Read the realtor blogs to get their perspective on the value of a depreciation report and how this impacts real estate buying decisions.
- Several thousand building have completed their studies and many studies are currently underway. Estimates are now at approximately 30-50% compliance and climbing.

I close with a powerful quotation that offers some food for thought for those owners who are still considering whether to obtain their report:

*"The price of light is less than the cost of darkness"* (Arthur C. Nielsen)

David is a certified professional reserve analyst, and a specialist in building maintenance and planning with RDH Building Engineering Ltd. Find David on Twitter @DavidAlbrice

# VISOA PUBLICATIONS GO DIGITAL

As many of our members know, VISOA produces and prints several "self-help" publications to help educate strata owners. These are available for purchase in several ways: on our website, with a nominal added fee covering postage and handling; or with no postage charge if purchased in person – at our seminars or at our office.

For those members unable to purchase in person, we now offer a third purchase option: Digital download. On the "publications" page of our website, you will see that our seven VISOA publication are listed with two pricing options. Digital downloads are half the price of printed copies, and come with "instant gratification" – as soon as your payment is securely sent through PayPal (using a PayPal account or your credit card) your download begins. Once you own the digital version of the publication you can save it to your computer for future reference, or print it if you wish.

The following VISOA publications are now available digitally:

- What Every Strata Owner Should Know About the Strata Property Act, Regulations, and Standard Bylaws
- Sample Residents' Manual
- A Practical Guide to Budgeting and Financial Reporting for Residential Strata Corporations
- Strata Insurance
- Management of the Contingency Reserve Fund
- Depreciation Reports for BC Strata Corporations
- Best Practices for BC Strata Treasurers

In addition, our newest publication should be available shortly. "New To Council? An Overview of the Responsibilities of Strata Councils" is currently in production and will be available both in print and digitally this spring.

If you have comments on any of publications, or ideas for new topics, please connect with our office: administrator@visoa.bc.ca

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# Insurance Appraisals

## Insuring Your Property to Value

*By Margarita Carlos, MBA, CRP – Business Development Manager*

A strata property is a very valuable asset, and one of the key components to protecting it is obtaining a reliable and comprehensive insurance valuation performed by an experienced appraiser. An appraisal will guarantee that the entire property is insured to a supportable dollar amount. This is called the **TOTAL INSURABLE VALUE (TIV)**. The **STRATA PROPERTY ACT** requires a strata corporation to acquire and maintain full replacement cost insurance on the building, the common facilities and any insurable improvements. The corporation is also required to review the adequacy of this insurance annually.

Insurance appraisals are highly specialized reports that start with a site inspection followed by a property analysis to determine the calculation of supportable estimates for replacement costs. Qualified appraisers are able to produce reliable estimates based on expertise acquired through extensive training and experience. Moreover, experienced appraisers make their estimates based on an analysis of the current environment, and do not rely on third party software based outside the region or use generic information to determine their estimates.

The appraiser will have certain specialized skills to determine appropriate costing. There are several additional considerations to complete an effective insurance appraisal. The importance of bylaw reviews cannot be overstated as they are crucial to the appraisal process. In the event of a disaster, current municipal bylaws must

be adhered to when rebuilding the property. Consequently, an appraiser's review of the property must include an assessment of the current property composition compared to the current standards and regulations of the specific municipality and province in which it is located. Any code requirements that are not currently met are accounted for in the replacement cost estimate.

An experienced appraiser also considers current building practices and technological improvements that have become standard in new buildings. As a general rule appraisers assume a like-for-like replacement of all components of the property whenever possible. However, there are some circumstances where appraisers assume that the existing subcomponents within a property will be replaced with something that is similar but up to current standards. In these



situations, the as-built construction practices are considered obsolete, and modern construction methodology and materials is assumed in the appraisal value.

Accounting for demolition and removal costs is another important consideration in the appraisal process. This can prove to be quite costly and differs greatly by property type. Strata corporations should be wary of the

misused straight percentage calculation to estimate demolition and removal costs. A straight percentage often proves to be overly simplistic and ineffective in the event of major reconstruction.

Without the review and knowledge of such additional costs and considerations, there is potential for significant exposure, rendering the strata corporation liable for the difference.

**Example:** For a 150,000 sq. ft. residential tower (100 suites) with 20,000 sq. ft. of parking (100 stalls) area. After a building code and bylaw review, it may be determined that the following modernizations must be implemented if the building were to be built today:

- 40 additional parking stalls
- Lift for people with disabilities
- Sprinklers above the parking garage
- Demolition & removal of old building required



Added together, these items could total over  
**\$2.5MM**  
beyond the reconstruction cost of the existing items.

An insurance appraisal requires a unique skill set, and has specific demands that go beyond a house or commercial property review performed for a bank. Keeping up to date in construction methods, costs, building codes, bylaws, demolition, and the Strata Property Act are critical to providing a reliable TIV estimate. For this reason property owners are best served when they use appraisers who do this type of work full time.

For most people, their property is their most valuable asset. The importance of having a

reliable, comprehensive insurance appraisal to protect it cannot be over emphasized. When facing major repairs, a correctly performed insurance appraisal can save the owners millions of dollars. Failure to meet property damage replacement costs because of inadequate coverage means the strata corporation, and ultimately owners, are required to pay for any shortfall. Insurance brokers and underwriters understand the details and implications of property replacement estimates, and for this reason an expertly prepared appraisal is the best insurance a property owner can have.

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# You Asked

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This issue's questions are answered by David Grubb

## Why is the Real Estate Council Interfering in our Strata's Books?

**Q:**

Our Property Manager does our accounting and writes all cheques. We have two bank accounts (Operating and Contingency Reserve Fund) within the books of account. All revenue collected and cheques written are from within the Operating account.

Our practise has been that the monthly contingency assessment is transferred to the Contingency Reserve Fund from the Operating account only at the direction of the council treasurer. When we have expenditures from the Contingency Reserve Fund, normally the appropriate amount is transferred by our bank from the CRF to the operating fund, again, "only on written instructions from the treasurer."

On occasion, when we have had impending CRF expenses, rather than transfer funds from the CRF bank account to the Operating bank account, we have delayed the transfer of funds to the CRF bank account from strata fees, retaining those funds in the Operating bank account to pay the invoices, then transferred the balance and subsequently recorded the appropriate transactions on our own books of account. This is a simple, understandable and

convenient bookkeeping adjustment.

Our Property Manager has recently informed us that the Real Estate Council of BC, which licenses Strata Property Managers, has directed them that they "must" transfer every month any portions of the owners' fees identified for deposit to the CRF from the strata's Operating account to its CRF account, apparently without first being directed to do so by the strata council.

Our concern with the Real Estate Council is that they are only the licensing authority for strata property managers and therefore have no authority with regard to regulation of the Contingency Funds of a strata, which can only be dealt with by the strata council in accordance with the *Strata Property Act*.

**A:**

Before the requirement for strata managers to be licensed (on January 1, 2006), property management companies could "pool" all the monies received from all their strata clients in one bank account, and then pay the bills of each client or make investments from that account, and thereafter reflect the payments, and "transfers" of CRF money to and from "investments" (along with any "proportionate accrued interest"), by journal entry in their own books alone. In this arrangement, managers had only that one pooled account with a financial institution and therefore any monthly bank statement would be in the name of the property manager and did not necessarily reflect any specific clients of the manager.

Their argument was that by pooling the assets of all their clients

into a very large fund, they could achieve far better earnings through a much more diversified portfolio of investments than each strata could earn on its own whether in savings accounts or other "safe" instruments such as GICs and bonds. Then they could credit the higher earnings to each strata in proportion to its particular capital investment. Moreover, the property managers contended, with only one chequing account, they were saving each strata higher bank service charges which they would incur if each strata had its own accounts.

Many, including VISOA, objected to this practice - **common before regulation and licensing of strata managers** - for some time since it could result in a very opaque view of the property manager's accounts and could be subject to "mistakes" (accidental or otherwise). How could the clients determine how much the manager was "taking off the top" of the total return on investment for "administration"? Despite any "instructions" from council, how could a strata be sure of the accuracy of its own income and payments, the actual amounts of money in any of the Operating account, CRF account or a special level account, or of its true portion of the investment earnings, without verifiable information? In such cases, it was very difficult, if not impossible, for an individual strata to be able to get separate bank reconciliations to assure themselves, since any bank statements would generally refer only to the property manager's cheques or deposits without necessarily identifying the strata itself.

*Continued on page 11*

The only way to rectify this situation was through some form of regulation, so the government chose the Real Estate Council of BC to do so under the *Real Estate Services Act* (RESA).

RECBC is not just the licencing authority in terms of setting standards of training and competence for Realtors. They have much greater responsibilities through the BC government's Financial Institutes Commission (FICOM), which includes the Superintendent of Real Estate who regulates all matters concerning the Real Estate Industry including overseeing the operations of the RECBC. In 2006, the government included the administration of licencing and regulating strata property managers (licensees and brokers) under RECBC.

Under FICOM, neither the Superintendent of Real Estate nor RECBC have any significant responsibilities or authority with respect to abiding by or enforcing the provisions of the SPA. Likewise, a strata council, despite its responsibility to manage the finances of the strata corporation effectively, cannot – even in a contract with a property manager – dictate how the manager must operate their accounting practices. If the council is concerned, they are entitled to administer the finances themselves and omit the accounting functions from the contract with the property manager.

Nevertheless, under the authority of RESA, the RECBC is authorized to create "Rules" (which are as enforceable on property managers under RESA as "Bylaws" are for stratas under the SPA). **The RECBC rules are quite clear and they state:**

7-9 (1) *This section applies to a brokerage that provides strata management services.*

(2) *A brokerage must, for each strata corporation on behalf of which the brokerage holds or receives money, maintain the following brokerage trust accounts:*

(a) *at least one separate trust account in the name of the strata corporation;*

(b) *if the brokerage is to hold contingency reserve fund money, at least one separate trust account in the name of the strata corporation for the contingency reserve fund money;*

(c) *if the brokerage is to hold special levy money, at least one separate trust account in the name of the strata corporation for the special levy money.*

(2.1) *If a brokerage receives money that is subject to subsection (2) by means of direct electronic deposit into a brokerage trust account that receives funds on behalf of more than one strata corporation, the money must be transferred to the applicable trust account under subsection (2) no later than 3 days after the day on which it was received.*

Subsection (3) details how the brokerage must separate all the amounts received on behalf of a strata into the appropriate Operating, Contingency Reserve and Special Levy trust accounts of that strata.

However, in addition to subsection (2.1), subsection 7-9 (4) is most significant to your question in reference to mandating when the property manager must transfer money to the strata's CRF or Special Levy trust accounts:

(4) *If subsection (3) (d) applies, within 7 days after the end of*

*the month in which the contingency reserve fund money or special levy money was received, the brokerage must either*

(a) *if the brokerage is to hold the money on behalf of the strata corporation, transfer it to an applicable trust account under subsection (2) (b) or (c), or*

(b) *pay the money over to the strata corporation.*

(You can see the whole of this section of the Rules at <http://www.recbc.ca/licensee/rules.html#section7-9>)

**Editor's note: text in red has been revised from the original online Bulletin.**

Thus, your strata's property manager is abiding by the Rules in a clear and transparent manner, and despite the apparent inconvenience to your desire to "retain" some CRF money in the Operating chequing account in anticipation of an expenditure, you should be happy that the manager is conforming to the Rules, since:

1. Their monthly financial statements will be clearer to understand by any owner and can be easily reconciled

*Continued on page 12*

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with the financial institution's monthly statements (not always the case with some property managers).

2. Such records protect the council as well from being accused by owners of "manipulating" funds in some way since the transfer of monies to the CRF of that portion of their monthly contributions will be accurately recorded, and transfers from the CRF account to Operating, noting the purpose, will be equally clear.

There are many concerns that have been raised about both RECBC and the property managers not being required to be subject in some manner to the provisions of the SPA, but we cannot be dissatisfied with any measure the RECBC takes to make managers more accountable to their strata clients for the administration of the strata's affairs. Transparency in financial management is certainly one of those measures.

## YOU ASKED - Does the Owner Have to Pay the Strata's Insurance Deductible?

**Q.**

When we noticed that there was water coming from a door lintel and pooling on the floor we notified the strata council as well as our own insurance agent who put us in touch with an adjuster.

At a meeting with our adjuster and a council member, it was established that the water came from a leak in the roof. Therefore our adjuster withdrew from any further involvement since any insurance claim for damages, including to the attic, a considerable amount to our floor and possibly some of the walls, would be covered by the strata corporation's policy, not ours.

The council member felt, however, that, in accordance with the strata's bylaws, the \$3,000 deductible required under the strata's insurance should be paid by us.

Who should be protecting the strata owner? My own insurance

policy (which does not penalize me) or the strata's policy (which demands the deductible be paid first)? It seems that either way we are not being fully covered by either insurance.

**A.**

First, because the source of the leak was from the roof, your own adjuster was entitled to withdraw since your insurance company would not be responsible for the claim (except under certain circumstances noted at the end of this answer). The strata's insurer would need to appoint its own adjuster.

In the circumstances you describe, however, it was inappropriate for the council member to require payment of the \$3,000 deductible from you.

Under section 155 of the *Strata Property Act* (SPA s.155), you are one of the "named insureds" in the strata corporation's insurance policy.

155 *Despite the terms of the insurance policy, named insureds in a strata corporation's insurance policy include*

(a) *the strata corporation,*

*Continued on page 13*

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(b) the owners and tenants from time to time of the strata lots shown on the strata plan, and

(c) the persons who normally occupy the strata lots.

This means that you are one of the owners of the policy and may make a claim against it (it doesn't have to be the council which initiates it).

There is no bylaw which can take precedence over the SPA, so the deductible would be paid by the strata corporation. In accordance with SPA 158(1) and (3), this is permissible without having to call an SGM:

158 (1) Subject to the regulations, the payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).

(2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to

the claim.

(3) Despite any other section of this Act or the regulations, strata corporation approval is not required for a special levy or for an expenditure from the contingency reserve fund to cover an insurance deductible required to be paid by the strata corporation to repair or replace damaged property, unless the strata corporation has decided not to repair or replace under section 159.

However, while the strata cannot, by bylaw, automatically demand that an owner pay the deductible, SPA 158(2) does permit the strata corporation to sue an owner to recover the deductible if the owner is considered "responsible" for the loss or damage.

Note: It has been established through court decisions that "responsible" does not necessarily mean "at fault". It pertains to – in this case – where the leak came from in the first place. Since it has been established that the source was from a leaky roof (common property), which is the strata's responsibility to maintain and repair, it is therefore also their "responsibility" to cover the deductible. If it had emanated from a pipe solely within the strata lot, it could have been deemed an owner's "responsibility", even though the leak could not necessarily have been anticipated

(i.e. "blamed" on the owner for lack of attention).

It is in this context that most stratas have amended their bylaws to include one which will ensure that an owner will be required to pay the deductible if found "responsible". In addition, stratas need to take into consideration the situation where the cost of repairs is less than the deductible which would preclude the strata from making any claim. Stratas should always obtain a legal opinion, but the following is a sample of a bylaw suggested by a lawyer who specializes in strata property law:

(a) An owner will indemnify and save harmless the strata corporation from all expenses for any maintenance, repair or replacement rendered necessary to the common property, limited common property, common assets or a strata lot if the owner or the tenant, occupant, contractor, agent, guest or invitee of the owner is responsible for the loss or damage to the extent that the loss is not covered by the strata corporation's insurance.

(b) In the event that loss or damage occurs to common property, limited common property, common assets or any strata lot that gives rise to a valid claim under the strata corporation's insurance policy the owner shall reimburse the strata corporation for the deductible portion of the insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

Continued on page 15



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# BC Law Institute Strata Property Law Project - Phase Two

by Pat Williams

BC's strata property legislation has gone through three generational changes. In 1966, the Strata Titles Act was passed and it was not detailed. A new act under the same name emerged in 1974 – this Act was much more comprehensive and included new concepts such as limited common property. That act was changed to the Condominium Act in 1980, but it was essentially the same. The current legislation, the Strata Property Act (SPA) came into force in July 1, 2000 and remains the governing act. There have been legislative changes to the SPA (depreciation reports, and parking stalls and storage lockers noted on Form B's to name a couple), but they have been not been comprehensive changes.

The BC Law Institute (BCLI) implemented a Strata Property Law Project. In Phase One of that Project, the BCLI set out to determine whether the time was ripe to begin thinking about and planning for the next generation of strata legislation. A number of

professionals in the strata industry were consulted and the conclusion was to proceed to Phase Two. The issues that Phase One selected for reform were:

- a. Fundamental changes;
- b. Complex stratas;
- c. Leasehold stratas;
- d. Common property;
- e. Governance issues;
- f. Insurance issue; and
- g. Land title issues.

These issues formed the mandate of Phase Two, which commenced July 4, 2013 and is scheduled to be completed by December 15, 2016.

The Phase Two Project Committee, chaired by Patrick Williams, includes BCLI staff Greg Blue, QC and Kevin Zakreski; lawyers Elaine McCormack, Stanley Rule and Ed Wilson; managing agent Allen Regan; consultant Garth Cambrey; land title deputy registrar Tim Jowett, surveyor David Parkin; realtor Judith Matheson; government policy advisor Veronica Barlee; deputy executive officer for RECBC Larry Buttress; and Tony Gioventu and Sandy Wagner, representatives of CHOA and VISOA respectively. The Committee meets monthly at a minimum.

The Committee determined the most pressing issue was Fundamental Changes and the most pressing of those was the Termination of a Strata Corporation. Many months were spent addressing this issue and by May, 2014 the first draft of a

Consultation Paper was circulated, with requests for input to be received by the end of September, 2014. It would take far too many words to describe all the changes suggested in that Consultation Paper. The key change was changing the requirement of every strata lot owner voting in favour of termination or cancellation – the new threshold recommended was 80% of all owners in favour. This recommendation received widespread approval. A further recommendation was that a court order not be necessary for termination. A number of industry leaders were concerned that the owners and chargeholders disputing termination would not have access to the courts. The Committee has rethought that recommendation and the eventual report will include the requirement to obtain a court order to terminate a strata corporation or cancel a strata plan.

The Committee having completed the fundamental changes part of its mandate is now in the throes of addressing complex stratas. What is a "complex" strata? A strata corporation with sections. As one who lives in a sectioned strata corporation can easily attest, sections governance can be very difficult, complex and divisive. The Committee continues to wrestle with sectioning – should they be altered, eliminated, become types, and so on? It is not appropriate to communicate the various determinations and views of the Committee at this time, save to comment that there is not presently universal consensus among Committee members and that each Committee member has a constituency that must be considered. I feel confident that when a Consultation Paper on changing the legislation with respect to complex stratas is circulated, the Committee will have conducted its due diligence in a very in-depth manner and the

*Continued on page 15*

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recommendations made, while perhaps controversial, will be well thought out and all exigencies addressed.

*Pat Williams is Chair of the BCLI Strata Property Law (Phase Two) Project Committee. He is a partner of the Vancouver law firm Clark Wilson LLP, and member of the firm's Strata Property Group.*

*You Asked  
Continued from page 13*

Of course, if the person wants to dispute it, they can appeal to the courts, but one hopes most people would not want to take on such an expense.

This also points to the need for every owner to have their personal "condo insurance" which contains a clause covering their portion of the strata's deductible for any circumstances (including earthquake).

Moreover, as indicated in the first paragraph, an owner's personal insurance would have to cover any repair/replacement if damage has occurred to any "improvements" (whether by a current or former owner) to original fixtures which were installed by the owner-developer.

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- March 1 - Victoria - AGM & Seminar COMFORT INN
- April 12 - Nanaimo BOWEN CENTRE
- May 24 - Courtenay CROWN ISLE RESORT
- June 28 - Victoria COMFORT INN
- September 20 - Nanaimo BOWEN CENTRE
- November 15 - Victoria COMFORT INN

# YOUR PAGE

## Letters to VISOA



### Residents Support Students at James Bay Community School

Since 1997 the South Harbour Partners, a group of condo owners in the James Bay area, have raised funds to help support students at James Bay Community School. Students at James Bay range from Kindergarten to Grade 5. The funds raised by this group of community minded citizens have helped in many ways; they have purchased technology and reading resources and supported arts programs, just to name a few. Every Christmas, for the past 18 years, this group of Elves have prepared Goodie Bags for each child in the school. **Many thanks to South Harbour Partners for supporting children in their neighbourhood!**

Would you and your neighbours like to help children in need? For further information on how you can support children in your neighbourhood school please contact Sandra Matthews, CommunityLINK Facilitator with the Greater Victoria School District #61. Phone 250-475-4241 or email [smatthews@sd61.bc.ca](mailto:smatthews@sd61.bc.ca)

### North Saanich Strata Council Members

An informal problem-solving group is planned for strata council members in the North Saanich area. The group's focus would be to share information and gather answers to the questions that arise during strata meetings.

If you are on a strata council, have questions, experience or answers, please contact **Renee Woodsend** at [woodsend@shaw.ca](mailto:woodsend@shaw.ca) with your email address within ten days so a list of interested participants can be generated.

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## STRATA - DOCUMENT RETENTION GUIDE

TYPE OF DOCUMENT	MINIMUM RETENTION PERIOD
List of council members	Current copy
List of owners including: - strata lot addresses - mailing addresses (if different); - strata lot numbers as shown on the strata plan; - unit entitlements; - names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60 of the <i>Strata Property Act (SPA)</i> ; - names of tenants, - assignments of voting or other rights by landlords to tenants under sections 147 and 148 of the SPA.	Current copy
Strata Property Act and the Regulations.	Current copy
Strata Bylaws and Rules.	Current copy
Personal information collected in the course of a bylaw infraction matter.	One year from the date that the original decision was made by the strata corporation
All correspondence sent or received by the strata corporation and strata council	Two years
Bank statements	Six years
Book of accounts showing money received and spent and the reason for the receipt or expenditure.	Six years
Budget and financial statement for the current years and for previous years.	Six years
Cancelled cheques	Six years
Certificates of deposit	Six years
Income tax returns, if any.	Six years
Information Certificates issued under section 59 of the SPA.	Six years
Minutes of annual general meetings.	Six years
Minutes of special general meetings.	Six years
Minutes of strata council meetings.	Six years
Waivers and consents under sec. 41, 44 or 45 of the SPA.	Six years
Financial records obtained under section 23 of the SPA, if any.	Six years after the transfer of control referred to in section 22 of the Act.
Insurance policies.	Six years after the termination or expiration of the contract or policy.

## STRATA - DOCUMENT RETENTION GUIDE

TYPE OF DOCUMENT	MINIMUM RETENTION PERIOD
Written contracts entered into by or on behalf of the strata corporation by the owner developer.	Six years after the termination or expiration of the contract or policy
Written contracts to which the strata corporation is a party.	Six years after the termination or expiration of the contract or policy
Any reports obtained by the strata corporation respecting repair or maintenance of major items in the strata corporation, including, without limitation, engineers' reports, risk management reports, sanitation reports and reports respecting any items for which information is, under section 94, required to be contained in a depreciation report	Retained until the disposal or replacement of the items to which the reports relate.
All warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information respecting the construction, installation, operation, repair and servicing of any common property or common assets, including any warranty information provided to the owner developer.	Retained until the disposal or replacement of the common property or common asset to which they relate, or the expiration of the warranty coverage, whichever comes first.
Any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation.	Permanently
The registered strata plan as obtained from the Land Title Office.	Permanently
Resolutions that deal with changes to common property, including the designation of limited common property.	Permanently
Names and addresses of all contractors, subcontractors and persons who supplied labour or materials to the project, as required by the regulations.	Permanently
Any disclosure statement required by the Real Estate Development Marketing Act or section 139 of the Strata Property Act.	Permanently
All plans that were required to obtain a building permit and any amendments to the building permit plans that were filed with the issuer of the building permit.	Permanently
Any document that indicates the actual location of a pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the owner developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on a plan or plan amendment filed with the issuer of the building permit.	Permanently
Any depreciation reports obtained by the strata corporation under section 94.	Permanently

This document was prepared in accordance with the Strata Property Act and Regulations, and PIPA. 2009-09-07 (As of 1 October, 2014)

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## VISOA is pleased to welcome these new Business Members.

*See our website for more details on all our Business Members*

**STRATA RESERVE PLANNING** assists clients by providing clients with a choice of financial options and a recommendation for a financial plan to fund repairs and replacements while minimizing the need for special assessments and strata loans. They also provide a guide to strata corporations for supporting the market value of their complex and all units in re-sale values. Contact: Toll Free: 1-855-2828 for more information. On the web at [stratareserveplanning.com](http://stratareserveplanning.com)

**PALMER APPRAISALS** has served at the forefront of real estate appraisals to meet the needs of clients on Southern and Central Vancouver Island, and the Gulf Islands, for over 25 years. The wide scope of appraisals and other services provided by its team of highly qualified, licensed appraisers is listed on their website at [www.palmerappraisals.com](http://www.palmerappraisals.com). Contact: Louise McGee at 250-388-9102

**TORBRAM ELECTRIC SUPPLY** supplies of a wide range of environmentally friendly electrical products for application, renovation and replacement projects in strata corporations, including homes and commercial uses. Torbram works with strata corporations and contractors to assist stratas in developing long range plans to address replacement and upgrading of electrical systems throughout the corporation. Torbram offers free energy audits to strata corporations. Contact: [tesvic@torbramelectric.com](mailto:tesvic@torbramelectric.com) or [jmckinnon@torbram](mailto:jmckinnon@torbram), or phone 250 480-4818

**BARTLETT TREE EXPERTS** is an international company, whose local well-experienced arborists have provided a variety of services to help their customers in the Capital Region and the Cowichan Valley for more than 10 years. They are experts in diagnosing and treating problems to help protect your plants as well as your landscape investment. Contact Kailey MacLeod at 250-479-3873 or [kmacleod@bartlett.com](mailto:kmacleod@bartlett.com) for written estimates and yearly tree and shrub maintenance plans. See [www.bartlett.com](http://www.bartlett.com) for more information.

**CLEAN AIR YARD CARE** – guided by their vision “...to make a significant and measurable impact on the reduction of air and noise pollution from the landscape and yard care industry using renewable energy” – uses solar powered machines to reduce noise pollution and eliminate carbon emissions from gasoline powered equipment and put owner’s minds, ears and lungs at ease! They are pleased to offer stratas a FREE estimate and demonstration based on a unique contract to suit the landscape, budget and timetable of each strata. Contact: Richard Larkin 250 889-5375. [Richard@cleanairyardcare.ca](mailto:Richard@cleanairyardcare.ca) [www.cleanairyardcare.ca](http://www.cleanairyardcare.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 corporations.*

## SEAFIRST INSURANCE BROKERS

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[sfehr@seafirstinsurance.com](mailto:sfehr@seafirstinsurance.com)

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Island for over 40 years.*

## A Big Thank You to all VISOA’s volunteers:



Alice Blasutig	Elizabeth Chase	Marlyne Smith
Ann Scott	Elsie Lockert	Martina McComb
Barbara Zimmer	Gloria Martins	Mike Dennison
Betty Taylor	Jen Nemeth	Nancy Stewart
Bev Grubb	Jill Davies	Pat Chern
Brian Smith	John Carver	Pat Davis
Carol O’Fallon	Karen Krossoy	Pat Dupuis
Claire Tugwell	Kelly Konrad	Paulette Marsollier
Claudio Procopio	Kelsey Ye	Peter Blumel
Cleve Patterson	Loretta Nichols	Peter Kanigan
Daryl Jackson	Lorraine McDonald	Ray Webber
Dave Gerrand	Maida Neilson	Renee Gagne
Diana Marsh	Malcolm Watkins	Sheri Hall
Diane Runnals	Margaret Lounds	Tony Davis
Don Luke	Marion Davis	Nico Lohman
		Lu Den



# Civil Resolution Tribunal Update, January 2015

By Shannon Salter, CRT Chair



This promises to be a busy and exciting year for the Civil Resolution Tribunal! There have been several key milestones towards implementation since my last update in October 2014.

Last November, we launched an implementation website for the CRT: [www.civilresolutionbc.ca](http://www.civilresolutionbc.ca). The website has information about how the tribunal will work, updates on implementation, guest posts on a variety of issues related to the CRT, as well as a way for the public to provide feedback and ask questions. The response to the website has been very positive, with lots of engagement from the public, particularly those who look forward to using the CRT to resolve strata disputes.

Late last fall, we selected a technology partner, which will build

the CRT's online platform. I will be sharing more detailed information about the technology development and testing in the coming months.

We are moving forward with hiring staff and appointing tribunal members. I am pleased to welcome our first staff member, Richard Rogers, who is the acting Registrar/Executive Director on a temporary assignment during the CRT's implementation phase. Richard has a legal background and provides a wealth of experience in tribunal management, government policies and processes, and financial analysis. Richard will be a tremendous asset to the CRT during this important time in its development.

As with most tribunal members in B.C., the CRT's tribunal members are appointed by the provincial government, in consultation with the Chair of the Civil Resolution Tribunal. The provincial government will be appointing several part-time

CRT tribunal members in the near future. The deadline for applications is February 3, 2015. For more information about the position and the application process, please see the Board Resourcing and Development Office posting ([www.brdo.gov.bc.ca](http://www.brdo.gov.bc.ca)).

Finally, I have continued to meet with groups, big and small, to provide information about the CRT and answer questions about its operation. In particular, we have been working with community advocacy organizations to ensure that the CRT develops a clear understanding of the needs of participants with barriers to accessing the justice system, and that we explore options to address these needs.

As we work towards implementation, I will continue to give you regular updates. In the meantime, be sure to check out the CRT implementation website ([www.civilresolutionbc.ca](http://www.civilresolutionbc.ca)) for more information.

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# President's Report



In this issue of the Bulletin, we highlight changes.

Sandy Wagner

- Shannon Salter, the Chair of the Civil Resolution Tribunal, talks about changes in the way stratas will handle disputes in future in an article written for VISOA members.
- The BC Law Institute will be recommending some changes to the Strata Property Act in the future, after much discussion and consultation. Patrick Williams, the Chair of the BCLI Strata Property Law Project (Phase Two) has an update for us.
- Two recent court cases, while not “changing” the SPA, certainly give clarity to parts of it and may change the way stratas view their responsibilities regarding repairs, and rental restrictions bylaws. See the article on page one for more details and links to the actual court decisions.
- Depreciation Reports - have you changed your mind? We at VISOA hope we have educated our members on the importance of the Depreciation Report – but there are still over 5000 stratas in BC who have not yet completed one. Some of the “reasons” (excuses?) are highlighted in an article by David Albrice of RDH Building Engineering Ltd.
- VISOA’s publications are changing - we are going digital, as explained in a short article on page 5.
- Three years ago we published a “document retention guide” and we include an updated version in this issue. The change to note is that any depreciation reports must be

kept on file permanently.

• Change is also inevitable at the VISOA Board. At our AGM March 1st, we will be saying goodbye to three board members who are not seeking re-election. Harvey Williams has served the board for 14 years including 2 terms as President, and is the voice of our Helpline. Harvey will continue to answer the Helpline calls on a volunteer basis. Deryk Norton has been our Bare Land Strata expert and Government/Media Relations person for the past eight years, and will be continuing to volunteer with Google Ads. Esther Harvey has been our Treasurer for the past two years. We will miss all three of these outgoing board members!

At our AGM, to be held Sunday March 1st, we will ask you to approve criteria for Honourary Lifetime Membership. The current bylaw states “Criteria for Honourary Lifetime Membership shall be set from time to time at a General Meeting”. At that AGM we do hope to award some members with lifetime membership. You will need to attend the AGM to see whom we honour! See our website for the AGM package.

Following our AGM, we will have two guest speakers. Veronica Barlee of the Provincial Office of Housing and Construction Standards, to inform us on the new strata information website which will eventually replace the Strata Property Guides. (More changes!)

After Veronica’s presentation we will hear from strata lawyer R.C. (Tino) Di Bella. Tino will enlighten us on recent court cases that set precedents for changes in the way stratas undertake repairs, and requirements for rental bylaws as mentioned above and on page one. Tino will also help us to understand Proxy Voting, one of the vaguest

parts of the SPA.

One thing that has not changed – we value your input. If you have any questions or comments at any time, email me at [president@visoa.bc.ca](mailto:president@visoa.bc.ca)

Sandy Wagner,  
VISOA Board President

In closing, here are some interesting quotes on the subject of “change”.

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“Change is the law of life. And those who look only to the past or present are certain to miss the future.”  
— John F. Kennedy

“Progress is impossible without change, and those who cannot change their minds cannot change anything.”  
— George Bernard Shaw

“If you don’t like something, change it. If you can’t change it, change your attitude.”  
— Maya Angelou

“There is nothing permanent except change.”  
— Heraclitus

“Never believe that a few caring people can’t change the world. For, indeed, that’s all who ever have.”  
— Margaret Mead

## BULLETIN SUBSCRIPTIONS

VISOA provides 4 information-packed bulletins each year.

- Corporate membership fees include emailed bulletins to up to 4 council members.
- Individual membership fees include emailed bulletins.
- Postal mailed bulletins are available to members for \$15 annually per address. Non-members may subscribe to these bulletins at the following rates:

**By email: \$15.00 per year and by postal mail \$25.00 per year**

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