

**VISOA's The Nuts & Bolts of
Strata Communication & Records in the Digital Age
Speaker Notes/Hand Out**

Seminar Date: June 22, 2014

Location: Comfort Inn, 3020 Blanshard St, Victoria, BC

Time: 1-4 PM, doors open at 12:15 PM

Seminar Speaker Notes:

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Hand-out notes are in chronological order of the Agenda

-- Strata Property Act: Duty of Care owed by strata council members to the owners (S. 31)

Council member's standard of care

31 In exercising the powers and performing the duties of the strata corporation, each council member must

(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.

-- Strata Property Act: Notice Given by Strata Corporation (S. 61)

Notice given by strata corporation

61 (1) A notice or other record or document that the strata corporation is required or permitted to give to a person under this Act, the bylaws or the rules must be given to the person,

(a) if the person has provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,

(i) by leaving it with the person, or

(ii) by mailing it to the address provided, or

(b) if the person has not provided the strata corporation with an address outside the strata plan for receiving notices and other records or documents,

(i) by leaving it with the person,

(ii) by leaving it with an adult occupant of the person's strata lot,

(iii) by putting it under the door of the person's strata lot,

(iv) by mailing it to the person at the address of the strata lot,

- (v) by putting it through a mail slot or in a mail box used by the person for receiving mail,
- (vi) by faxing it to a fax number provided by the person, or
- (vii) by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.

(2) The notice, record or document may be addressed to the person by name, or to the person as owner or tenant.

(3) A notice or other record or document that is given to a person under subsection (1) (a) (ii) or (b) (ii) to (vii) is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mail box, faxed or emailed.

-- Strata Property Act: Notice Given by Strata Corporation (S. 61)

Notice given to strata corporation

63 (1) A notice or other record or document that is required or permitted under this Act, the bylaws or the rules to be given to the strata corporation must be given to the strata corporation

(a) by leaving it with a council member,

(b) by mailing it to the strata corporation at its most recent mailing address on file in the land title office,

(c) by faxing it or emailing it to

(i) the strata corporation using the strata corporation's fax number or email address, or

(ii) a fax number or email address provided by a council member for the purpose of receiving the notice, record or document, or

(d) by putting it through the mail slot, or in the mail box, used by the strata corporation for receiving notices, records and documents.

(2) A notice or other record or document that is given to the strata corporation under subsection (1) (b) to (d) is conclusively deemed to be given 4 days after it is mailed, faxed, emailed or put through the mail slot or in the mail box.

How does a strata council set a policy regarding use of email?

- sample council resolution, sample strata Rule, sample strata bylaw

- *Sample Strata Council Resolution & notes to owners in the strata:*

It was **MOVED & SECONDED** to: designate the following email address: abc@123.com as the strata corporation's email address for the purpose of receiving correspondence, notices, records, or documents as considered under S. 63 of the Strata Property Act; and it was further declared that the Secretary of the strata council and the Vice President of the strata council shall be authorized at all times to have access to the account; and it

was further declared that the email account will be checked once per week; and it was further declared that responses to emailed inquiries be processed as all other correspondence to the strata council is processed - where all correspondence, other than a request for a Hearing under S. 34 of the SPA, is presented at the next strata council and actions taken regarding the correspondence are decided by majority vote of the council. Any request received at this email address for a Hearing shall be processed in accordance with S. 34 of the SPA.

MOTION CARRIED

NOTE TO OWNERS:

In the event of an emergency please follow the strata's existing procedure: please call 911 for all life safety emergencies; and please call 250-555-1212 to report any property damage or property/facilities emergencies.

-examples of email addresses: lms1234@fidu.ca, lms1234.council@fidu.ca

Sample Strata Rule & notes to owners:

It was **MOVED & SECONDED** to make a Rule of the Strata as follows:
LMS 1234 shall require each Owner to provide an email address for the purpose of permitting the strata council or strata corporation to deliver Notices, Records, Documents, or responses to Correspondence via email to each Owner, pursuant to S. 61 of the Strata Property Act.

MOTION CARRIED

NOTE TO OWNERS:

Further instructions on how to provide the email address to the strata will be sent to you.

The strata wishes to reduce its printing and photocopying costs. By sending owners Notices and other items via email, we can save approximately \$x per year.

The owners will have the opportunity to vote to convert this Rule to a Bylaw at the next Annual General Meeting of the strata.

If you do not use email, please consider asking a family member or other trusted person to act as your agent in this matter.

If you still wish to receive strata Notices, Records, or Documents via pick up or via the mail, please note that you will be assessed the photocopying and postage charges for such service. If you wish to order hard-copies of strata records, the cost is \$.25 per page plus postage costs, if applicable. Please call _____ to order strata records or please write to:

_____.

Sample Strata Bylaw Resolution for ¾ vote consideration at an Annual General Meeting (for illustration purposes only)

(please have your strata's lawyer draft all proposed bylaws of the strata!)

Be it resolved that the Owners of Strata Plan LMS 1234 hereby adopt the following bylaw as conversion of an existing Rule of the Strata Corporation:

LMS 1234 shall require each Owner to provide an email address for the purpose of permitting the strata council or strata corporation to deliver Notices, Records, Documents, or responses to Correspondence via email to each Owner, pursuant to S. 61 of the Strata Property Act or as otherwise permitted by statutory right.

Records of the Strata Corporation: S. 35 & 36 of the Strata Property Act

The strata council communicating via email with Owners or Tenants:

- do we need to keep a record of these conversations?
- where should those records be kept?
- who has access to those records?

The strata council communicating via email with its strata manager, or any third party:

- do we need to keep a record of these communications?
- where should the records be kept?
- who has access to those records?

Division 2 – Records

Strata corporation records

35 (1) The strata corporation must prepare all of the following records:

- (a) minutes of annual and special general meetings and council meetings, including the results of any votes;
- (b) a list of council members;
- (c) a list of
 - (i) owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements,
 - (ii) names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,
 - (iii) names of tenants, and
 - (iv) assignments of voting or other rights by landlords to tenants under sections 147 and 148;
- (d) books of account showing money received and spent and the reason for the receipt or expenditure;
- (e) any other records required by the regulations.

(2) The strata corporation must retain copies of all of the following:

- (a) the records referred to in subsection (1);

- (b) the registered strata plan and any strata plan amendments as obtained from the land title office;
- (c) this Act and the regulations;
- (d) the bylaws and rules;
- (e) resolutions that deal with changes to common property, including the designation of limited common property;
- (f) waivers and consents under section 41, 44 or 45;
- (g) written contracts to which the strata corporation is a party;
- (h) 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;
- (i) the budget and financial statement for the current year and for previous years;
- (j) income tax returns, if any;
- (k) correspondence sent or received by the strata corporation and council;
- (l) bank statements, cancelled cheques and certificates of deposit;
- (m) Information Certificates issued under section 59;
- (n) the records and documents referred to in section 20 or 23 obtained by the strata corporation;
- (n.1) any depreciation reports obtained by the strata corporation under section 94;
- (n.2) 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;
- (o) any other records required by the regulations.

(3) Records referred to in this section must be retained by the strata corporation for the periods set out in the regulations.

Access to records

- 36 (1) On receiving a request, the strata corporation must make the records and documents referred to in section 35 available for inspection by, and provide copies of them to,
- (a) an owner,
 - (b) a tenant who, under section 147 or 148, has been assigned a landlord's right to inspect and obtain copies of records and documents, or
 - (c) a person authorized in writing by an owner or tenant referred to in paragraph (a) or (b).

(1.1) On receiving a request from a former owner, from a former tenant referred to in subsection (1) (b) or from a person authorized in writing by the former owner or former tenant, the strata corporation must, with respect to records and documents referred to in section 35 that, whenever created, relate to the period during which the former owner or former tenant was an owner or tenant, make those records and documents available for inspection by, and provide copies of them to, the former owner, former tenant or person authorized in writing, as the case may be.

(2) On receiving the request of a tenant, or a person authorized in writing by a tenant, the strata corporation must

(a) make the bylaws and rules available for inspection, and

(b) provide copies of the bylaws and rules.

(3) The strata corporation must comply with a request under subsection (1), (1.1) or (2) within 2 weeks unless the request is in respect of bylaws or rules, in which case the strata corporation must comply with the request within one week.

(4) The strata corporation may charge a fee for a copy of a record or document provided under this section of not more than the amount set out in the regulations and may refuse to supply the copy until the fee is paid.

What kind of a policy should the strata council have regarding who can add to, edit, or remove records from the strata's website/electronic records store?

- sample strata council resolution to be passed at the first council meeting after an AGM (or after a General Meeting where a strata council is elected)

1. Example: First adoption of a strata website for the purpose of storing the strata's records & notes to owners:

After consideration of X options, It was **MOVED & SECONDED** to enter into a contract with (insert vendor name here) for the purpose of providing the strata with a website where the strata's records can be stored & accessed in a secure fashion.

The cost of this service shall be charged to general ledger account 5055, Professional Services (or insert the GL code you wish to charge this cost to).

MOTION CARRIED

NOTES TO OWNERS:

The strata expects this service to cost approximately \$x per year. The strata expects to save approximately \$y per year in photo copying and postage costs.

Owners will be able to access all of the strata's records as permitted under the Strata Property Act, through this website, once your account is validated by the strata council.

2. Example of authorization to manage the strata's records (self-managed strata):

It was **MOVED & SECONDED** to authorize the Secretary and the Treasurer of the Strata Council to add to, remove, or edit the records of the strata as permitted or required under the Strata Property Act.

MOTION CARRIED

NOTES TO OWNERS:

The strata's records are proprietary and confidential. Please treat these records as you would any other records associated with your owning real estate in this strata.

Accrediting users of a strata's website, managing user accounts, and passwords

- review of PIPA

See attachment - Privacy Guidelines for Strata Corporations, published by the Office of Information & Privacy Commissioner (BC)

- REMINDER: Owners must opt-in to receive Notices from the Strata

- REMINDER: The Strata Council must declare if it is willing to receive Notices from Owners via email

- sample language to allow an owner to opt-in to receive Notices from the Strata via email

Example of authorization to approve access to the strata's website & notes to owners:

It was **MOVED & SECONDED** to authorize the Secretary or the President of the Strata Council to activate or deactivate user accounts or "members" of the strata's website (lms1234.fidu.ca) including determining the rights of individual user accounts to access records of the strata or otherwise to access the strata's website.

MOTION CARRIED

NOTES TO OWNERS:

If you wish to access the strata's website, please go to: www.lms1234.fidu.ca and click on "Become a Member". Your application for access will be sent to the strata council and once your identity and ownership is confirmed, your account will be activated. You will receive an email from the website to confirm your account being activated.

The strata council and the website provider do not have access to your password.

Example of language to allow owners to opt-in to the strata's email delivery service:

NOTE: This language should be on the sign-up page of the strata's website (where the user is applying to join the strata's website):

Welcome to LMS1234's website. To request to join LMS1234's website, please fill out the form below. Please note that by requesting to join LMS1234's website, you are providing LMS1234 with an email address for the purpose of receiving Notices, Records, or Documents of the strata, as permitted under S. 61 of the Strata Property Act.

Strata Council Voting by email or by electronic polling

- what kind of a policy should the strata council have?

The strata council should pass a policy that confirms that from time to time it will conduct votes by email.

The strata council should consider presenting this policy in the form of a bylaw to the owners at the next general meeting (NOTE: The proposed bylaw should be drafted by the strata's lawyer).

Sample council resolution to declare email voting policy:

It was **MOVED & SECONDED** to adopt a policy whereby the strata council may conduct votes by email so long as the following conditions are met:

1. No vote shall be deemed concluded until 7 days after an email is sent by a strata council member to ALL other strata council members asking for a vote on a specific strata council resolution; and
2. If all members of the strata council have responded via email to the vote request earlier than 7 days after an email was sent by a strata council member requesting a vote on a specific resolution then the vote will be deemed to be completed as of the date and time of the last email received from a council member related to the vote; and
3. If any council member objects to the vote being taken by email the council member shall inform all council members via email of the objection and the vote shall be POSTPONED until the next duly-convened strata council meeting; and
4. All votes taken by email shall be ratified by majority vote at the next duly-convened strata council meeting.

MOTION CARRIED

- when should that policy be updated?

The strata council should strongly consider asking the owners to convert this policy to a bylaw of the strata corporation at the next Annual General Meeting.

Until this policy is converted to a bylaw, it is recommended that that this policy be re-affirmed at the first strata council meeting convened after each General Meeting where a strata council was elected (IE at the first council meeting after each AGM).

- ratifying electronic votes at the next strata council meeting

Sample Heading on every strata council meeting Agenda and on every set of strata council meeting Minutes:

Prior Votes Conducted via Email

Example of a resolution to ratify an email vote conducted prior to the strata council meeting:

It was **MOVED & SECONDED** to ratify the email vote of the strata council as it pertains to the following MOTION:

(insert wording of motion that was voted on via email)

The email vote count was x In Favour, X Opposed, X Abstained. The Motion was CARRIED/DEFEATED

MOTION CARRIED

Using a web-based tool

- what information should be kept in a Task Manager tool?
- who should have access to a Task Manager tool?
- where should the data in a Task Manager tool be kept?

Example of strata council resolution to adopt a Task Manager tool & to authorize strata council member(s) to manage access to the tool:

It was **MOVED & SECONDED** to adopt the (insert vendor's name & tool name) as the strata council's online Task Management tool. All Strata Council Members will be granted access to this tool and it was further agreed that the (STRATA MANAGER OR) Secretary or President of the Strata Council be authorized to activate or de-activate individual user account access to this tool.

MOTION CARRIED