



COVID 19 AND STRATA CORPORATIONS

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By Shawn M. Smith

With the COVID 19 virus pandemic gripping the world, strata corporations need to consider how they are going to respond to that and continue to carry on operations. Here are some issues to consider.

Conducting Council Business

The Standard Bylaws allows for strata councils to conduct meetings “by electronic means, so long as all council members and other participants can communicate with each other”. Consider using platforms such as Skype to conduct meetings, especially hearings. Decisions can also be made by email. However, those decisions (unless the bylaws address email decision making) need to be ratified at the next in person meeting.

Consider a single meeting to delegate decision making for certain matters to individual council members using Standard Bylaw 20 (or the equivalent). Make sure any such delegation has clear parameters and a sunset provision (so it does not carry on indefinitely).

General Meetings

Unless a strata corporation’s bylaws allow for it, general meetings cannot be held by electronic means. This means that all meetings must be conducted in person. Consider using proxies to reduce the number of people in attendance at a meeting. Owners who may have been exposed to the virus through travel should be asked to attend by proxy.

Smaller strata corporations can avail themselves of the provisions of S.41 and s.44 of the *Strata Property Act* (SPA) and approve resolutions in writing without the need to hold a meeting.

Give thought to the location of any general meetings. Do they allow for “social distancing”? If using a common room, have it thoroughly cleaned before and after the meeting.

Where the notice of meeting has already been sent, the strata council can change the date or location of the meeting so long as notice of the change is sent out prior to the day of the meeting by the same method that notice was given for the meeting itself.

Postponing a meeting indefinitely will likely require the meeting to be convened and then a vote taken to adjourn and reset it at the discretion of council. There is no ability for council to unilaterally cancel a meeting.

Postponing the Annual General Meeting is a decision that must be carefully made. Pandemic or not, s.40(2) of the SPA still requires it to be held within 2 months of the fiscal year end. More importantly, s.104(3) maintains the status quo when it comes to the budget. It provides that:

- (3) Until a new budget is approved, the strata corporation may spend money out of the operating fund only in accordance with section 98 or
 - (a) on the type of expenses that are set out in the previous budget and that usually occur once a year or more often than once a year, and
 - (b) up to the maximum amount set out in the previous budget for each category of expense.

That may not be feasible in an era of rising insurance premiums.

Common Facilities (meeting rooms, gyms, pools, etc.)

Closing these facilities is a significant change in the use of the common property. S.71 of the SPA requires approval by way of a $\frac{3}{4}$ vote. However, the decision to do so can be made by council where “there are reasonable grounds to believe that immediate change is necessary to ensure safety”. Clearly, those exist in the current climate.

Deep Cleaning Public Use Areas

Areas such as lobbies, entry doors and mailboxes may need to be cleaned more thoroughly and more often than usual. This could put a strain on operating budgets. Councils must keep the unapproved expenditure limit in s.98(2) of the SPA in mind if using funds from the Operating Budget. (For strata corporations who have not addressed the issue in their bylaws, that is a cumulative amount of \$2,000 for the fiscal year). S.98(3) of the SPA allows emergency expenditures from the Contingency Reserve Fund where “there are reasonable grounds to believe that an *immediate* expenditure is necessary to ensure safety”. That provision can only be relied on in the short term (i.e. the next couple of weeks). It arguably cannot be used long term since the expenditure is no longer *immediate*.

Restricting Activities Within the Strata Corporation

S.125 of the SPA allows council to pass rules “governing the use, safety and condition of the common property”. This could be used by councils to implement restrictions in relation to the use of the common property such as prohibiting the use of outdoor spaces or limiting the use of elevators to those with mobility issues.

Strata Fees

Owners who are affected financially as a result of contracting the virus may have difficulty paying their strata fees. While the council has no ability waive those fees, it does have discretion in terms of allowing an owner time to pay them. However, council must keep in mind its duty under s.31 to act in the best interests of the *strata corporation*. There are still bills to pay and the strata corporation needs money to do so.

In the end, owners and strata councils would do well to remember the historic adage:

“KEEP CALM AND CARRY ON.”

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.