


**VISOA**

**COLLECTIONS - HOW TO GET YOUR MONEY**

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PRESENTED BY SHAWN M. SMITH



Cleveland Doan LLP

Strata Lawyers

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**WHO WE ARE**

- We are a full service law firm with a primary focus on strata property law. We have been advising strata corporations since the introduction of the Strata Property Act in July 2000.
- We deal with all the issues strata corporations face, but with a particular focus on:
  - Collections;
  - Bylaws (drafting and enforcement);
  - CRT Claims;
  - Governance matters;

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**COLLECTIONS**



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 **COLLECTIONS**

Why collections is important:

- Strata fees are the only source of funding for common expenses;
- The strata isn't a bank (it should not carry out of pocket expenses such as repair costs);
- Fines generally aren't effective unless paid;

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 **MONEY OWED TO STRATA CORPORATIONS**

Three basic categories of money owed to a strata corporation:

- "Chargebacks"
- Fines
- Strata Fees and Special Levies

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 **WHAT ARE "CHARGEBACKS"**

Not a defined term, but generally includes such things as:

- Insurance deductibles
- Costs to repair damage to the common property or a strata lot
- Inspection or investigation costs
- Bylaw enforcements costs , including legal fees

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 **CHARGEBACKS**

▪ The general rule:

In the absence of a bylaw or rule giving it authority to do so, a strata corporation cannot charge an owner for costs it has incurred.

Ward v. The Owners, Strata Plan VIS #6115, 2011 BCCA 512

▪ A bylaw is not required where the owner agrees to pay the costs – Huang v. The Owners, Strata Plan EPS 1910 2019 BCCRT 1072

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 **CHARGEBACKS**

Ward has been applied in a variety of situations by the CRT:

- Plumbing repair costs - Robertson v. The Owners, Strata Plan NW 87, 2017 BCCRT 37
- Clearing a blocked pipe - Marchioni v. The Owners, Strata Plan LMS 31, 2020 BCCRT 1197
- Investigation to find the source of leak - Zhang v. The Owners, Strata Plan BCS 1559, 2020 BCCRT 1266
- Emergency drying costs - Hooper v. The Owners, Strata Plan LMS 1121, 2020 BCCRT 504

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 **CHARGEBACKS**

- Repairing damage to a strata lot – The Owners, Strata Plan LMS1092 v. Souki 2021 BCCRT 55
- Mould abatement - Cuthbertson v. The Owners, Strata Plan LMS 1023, 2020 BCCRT 472
- Engineering fees - Guo v. The Owners, Strata Plan NW 1975, 2020 BCCRT 1324

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 **CHARGEBACKS**

- Replacing damaged smoke detector in strata lot - Taub v. The Owners, Strata Plan NW 3249, 2020 BCCRT 628
- Bed bug treatment -Matthews v. The Owners, Strata Plan LMS 1335, 2020 BCCRT 1110
- Locksmith fees for gaining access - The Owners, Strata Plan LMS 3824 v. Kulak, 2020 BCCRT 427
- Legal fees - Rintoul et al v. The Owners, Strata Plan KAS 2428, 2019 BCCRT 1007

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 **CHARGEBACKS**

Insurance Deductibles and Damage Repair

- Most common chargeback type
- Success is dependant on two things:
  - a good bylaw which sets the correct test and addresses situations below the deductible
  - Good evidence (plumbers report, photos, etc.) to establish the source/cause.

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 **CHARGEBACKS**

- S.158(2) SPA allows the strata to sue an owner who is "responsible" for the damage giving rise to the deductible.
- "responsible" = strict liability (did it originate in the strata lot?) - The Owners of Strata Plan LMS 2835 v. Mari 2007 BCSC 740 and Strata Plan KAS 1019 v. Kieran 2007 BCSC 727.
- Bylaws which refer to "negligence" (or similar terms) set a different (higher) standard - Strata Plan LMS 2446 v. Morrison, 2011 BCPC 519

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 **CHARGEBACKS**

The exception to the general rule is s.133 SPA which provides that the strata corporation may:

- do what is reasonably necessary to remedy a contravention of its bylaws; and
- require that the reasonable costs of remedying the contravention be paid by the owner or tenant
- Must comply with s.135 to be successful in recovery

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 **CHARGEBACKS**

Situations where s.133 can be used:

- Damage to common property – Standard Bylaw 3(2)
- Removing items from common property
- Restoring unauthorized alterations
- Legal fees to compel enforcement (possible even in relation to a CRT claim)

However, must identify a bylaw that has been breached and have taken a step to *remedy* the breach.

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 **CHARGEBACKS**

- Ways to collect a chargeback:
  - Bring a claim at the Civil Resolution Tribunal
  - Collect it under the Form F when the owner sells
- However, beware of the “limitation period”
- A claim at the CRT must be brought within 2 years of “discovering” the claim (usually the date of the incident)

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 **FINES**

- Get your “ducks in a row”



- Strict compliance is required - Terry v. The Owners, Strata Plan NW309 2016 BCCA 449
- A failure to comply strictly and rigorously with s.135 will result in fines being struck

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 **FINES**

s.135 requires a strata corporation to:

- receive a complaint about the contravention,
- give the owner or tenant the particulars of the complaint in writing,
- provide a reasonable opportunity to answer the complaint, including a hearing if requested;
- give notice of the complaint to the landlord and the owner (in the case of a breach by a tenant);
- give notice, as soon as feasible, notice in writing of a decision to impose a fine or charge a cost

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 **FINES**

A fine **cannot be put** on a ledger until s.135 is complied with.

A **failure to comply** with s.135 can be fixed by:

- reverse the fines and start the process over – Cheung v. The Owners, Strata Plan VR1902, 2004 BCSC 1750, S.M. v. The Owners, Strata Plan ABC, 2017 BCCRT 23.
- hold the hearing before going any further - Fortunato v. The Owners, Strata Plan EPS1232, 2020 BCCRT 87

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 **FINES**

- Ways to collect fines:
  - Bring a claim at the Civil Resolution Tribunal
  - Collect it under the Form F when the owner sells
- However, the limitation period does not apply to fines - see *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2015 BCSC 2273, aff'd 2016 BCCA 370
- A bylaw that applies strata fee payments to fines is not enforceable - *The Owners, Strata Plan BCS3648 v. Podwinski*, 2016 BCSC 2253

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 **THE CRT**

- It has jurisdiction over claims related to "money owing, including money owing as a fine, under the Strata Property Act or a regulation, bylaw or rule under that Act" - s.121 *Civil Resolution Tribunal Act (CRTA)*
- It can make "an order requiring a party to pay money" - s.123 CRTA.
- Cannot go to Small Claims - a court must refuse to hear a claim over which the CRT has jurisdiction - s16.1 CRTA

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 **THE CRT**

- Unlike other types of litigation, no vote of the owners is required to commence a CRT claim.
- Have to consider funding - is there enough money is Operating Fund?
- General rule is a strata council member "represents" the strata. However, that does not mean the strata cannot have help from a lawyer to draft materials.
- Where a case is complex, the CRT will allow a lawyer to "represent" the strata - *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153

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 **THE CRT**

- First things first... notice must be sent as required under s.112(1) SPA:

Before.... an initiating notice is given by the tribunal under section 6 (1) of the Civil Resolution Tribunal Act in respect of the collection of money from an owner or tenant, the strata corporation must give the owner or tenant at least 2 weeks' written notice demanding payment and indicating that action may be taken if payment is not made within that 2 week period.

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 **THE CRT**

The "devil is in the detail" when it comes to notice:

- Comply with s.61 of the SPA re method of notice -The Owners, Strata Plan BCS 3372 v. Manji, 2015 BCSC 2503
- Get the number of days right (at least 14 =20) - The Owners, Strata Plan VR2266 v. 228 Chateau Boulevard Ltd., 2019 BCCRT 1262
- Mention everything that is going to be sought - The Owners, Strata Plan LMS 2174 v. Angara Properties Ltd., 2020 BCCRT

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 **THE CRT**

Methods of giving notice (s.61 SPA)

- leaving it with the person,
- leaving it with an adult occupant of the person's strata lot,
- by putting it under the door of the person's strata lot,
- by mailing it to the person at the address of the strata lot (or an outside address if one was given),
- by putting it through a mail slot or in a mailbox used by the person for receiving mail,
- by faxing it to a fax number provided by the person, or
- by emailing it to an email address provided by the person for the purpose of receiving the notice, record or document.

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 **THE CRT**

- Rule 9.5 - costs are only awarded where there are exceptional circumstances
- Exceptional circumstances is conduct during the proceedings deserving of rebuke- Parfitt et al v. The Owners, Strata Plan VR 416 et al, 2019 BCCRT 330
- A bylaw allowing recovery of legal fees can be "exceptional circumstances" - Wadler v. The Owners, Strata Plan VR 495, 2018 BCCRT 567

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 **COLLECTING ON A JUDGEMENT**

- A judgement by the CRT can be enforced by filing it in court:
  - Provincial Court (Small Claims) if under \$35,000
  - Supreme Court if over \$35,000
- At that point it can be enforced as if it were an order of the court.
- No vote of the owners required to file the judgment in court.

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 **COLLECTING ON A JUDGMENT**

Several collection options:

- Garnish the owner's bank account;
- Seek a payment order (if registered in Small Claims);
- Send the Sheriff to seize assets;
- Register the judgement on title to the strata lot;

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 **COLLECTING ON A JUDGMENT**

Once the judgment is registered against title to the strata lot, the strata corporation can either:

- Seek a sale of the strata lot to satisfy the judgment
  - Requires a ¾ vote under s.171 SPA
  - Is not a proceeding to enforce a lien so it ranks behind other prior charges (i.e. mortgage)
- Wait until the owner sells or refinances
  - Must renew the judgement every two years
  - Must sue to sell the strata lot within 10 years

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 **STRATA FEE COLLECTION**

Ways to collect unpaid strata fees and special levies:

- CRT claim
- Lien (ss.116 - 118 SPA)
- Under the Form F
- Lien is preferable option

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 **STRATA FEE COLLECTION**

The lien:

- Ranks in priority to other charges (except those in favour of the Crown);
- Makes the strata a secured creditor in the event of a bankruptcy;
- Is a straight forward process (one venue – Supreme Court);
- Allows for recovery of legal fees;

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 **STRATA FEE COLLECTION**

The process:

- Demand letter (s.112(2) SPA)
- File a lien (s.116 SPA) and notify lender(s)
- Commence a petition for judicial sale (s.117 SPA)
- Court sets deadline for owner to pay
- Sell the strata lot if lien is not paid

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 **STRATA FEE COLLECTION**

- Remember that the Limitation Act applies to strata fees and special levies (2 years)
- Limitation period starts to run the day after the payment is due
- Filing a lien does not stop the limitation period (only a court proceeding or CRT claim does)
- Can't collect expired amounts - *Kornylo v. The Owners, Strata Plan VR 2628, 2018 BCCRT 599*

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 **STRATA FEE COLLECTION**

The Owners, Strata Plan BCS 3372 v. Manji, 2015 BCSC 2503:

- 14 days = 20 days (so give 21 days to pay)
- Notice must go to the right place by the right method (s.61 SPA) - no registered mail
- Lien amount can only include strata fees/levy amounts (not estimated legal fees or non-lienable amounts such as fines) - otherwise invalid

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 **STRATA FEE COLLECTIONS**

- Legal fees incurred by the strata corporation to register and enforce the lien are included in the lien amount (s.118 SPA);
- It is the actual amount spent (so long as it is reasonable) that is recovered - The Owners, Strata Plan KAS 2428 v. Baettig, 2017 BCCA 377
- Demand letter costs can only be charged if there is a bylaw - 625536 B.C. Ltd. v The Owners, Strata Plan LMS4385, 2020 BCSC 633

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 **SUMMARY**

Strata corporations should:

- Review their bylaws to ensure they have provisions which allow for chargebacks and legal fee recovery
- Review their accounts receivable for any amounts nearing or past the limitation period
- Implement a standardized collection process and budget accordingly

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 **QUESTIONS**

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[www.clevelanddoan.com](http://www.clevelanddoan.com)

The information provided during this presentation is of a general nature and should not be taken as legal advice about a specific situation.

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