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The Implementation of the Strata Property Act

Gerry Fanaken, Property Manager
VANCOUVER CONDOMINIUM SERVICES LTD.

The story is hard to corroborate but it is an interesting one nevertheless. In 1966, when the Provincial government decided to permit condominium housing, there was no legislation to govern this ancient form of ownership new to British Columbia. The story goes that a Vancouver lawyer was engaged to create some legislation and just by coincidence he happened to be travelling in New South Wales, Australia. While there, he picked up the *Strata Titles Act* of New South Wales, brought it back to British Columbia and from that expedition we derived our original legislation known as the *Strata Titles Act* of B.C. 1966. In North America, B.C. is the only place that refers to this form of condominium housing as strata title.

In 1980 the government changed the name of the *Strata Titles Act* to the *Condominium Act* since it was felt that the public would have a better understanding of the legislation. Ironically, throughout the act itself there is no reference to the word "condominium," everything remains termed as strata. On July 1, 2000, the *Condominium Act* will be replaced by the *Strata Property Act* of British Columbia.

Despite the fact that the current legislation has been in effect for 34 years, there have been very few changes of any significance. In 1974 and 1975, there were some changes which were initiated by the then NDP Government premired by Dave Barrett, now of leaky condo fame. Apart from those few changes, there have been no meaningful amendments to the statute in all these years.

With the phenomenal growth of condominium housing in British Columbia in the last 10 to 15 years, not surprisingly there have been many problems associated with the administration of strata corporations and the provincial government has received numerous complaints, suggestions, criticisms etc.. Although it has been a long time in coming, there is a significant benefit to the new legislation in that it is a complete rebirth of the legislation and not merely a collection of

Gerry Fanaken, Author, Educator and President of Vancouver Condominium Services Inc., Vancouver. Mr. Fanaken has been actively involved in the administration of strata corporations for over 25 years. His company currently manages 225 residential strata corporations which represents approximately 13,000 individual condominium units.

amendments tinkering with the existing legislation. The new statute is based on the true needs of British Columbia condominium owners, strata councils, management companies and others associated with the administration of these properties. The Ministry of Finance staff have been working on the new legislation for the last decade and in 1994 a discussion draft was introduced which was an excellent production but unfortunately it got shelved due to other government priorities. The leaky condo crisis which came to a boil in 1998 perhaps gave the government some impetus in having the condominium legislation updated and, although there is not that much connection to the leaky condo crisis per se, it is very likely that we have the new statute now as a result of the sudden awareness by the government that condominium housing is a very large part of the housing inventory in the province.

The new legislation is completely home grown. It is logical, comprehensive and well written. It is easy to understand for the most part although there are some areas which will cause confusion and debate. What is most significant about the new legislation is that it is very different from the previous legislation and strata council members, property managers and others associated with the administration of strata corporations will have to do a considerable amount of homework to come up to speed on the requirements of the new act. The *Strata Property Act* becomes law on July 1st of this year and it will be applicable to every strata corporation, there are no exceptions.

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The Implementation of the Strata Property Act

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New strata corporations which are registered and filed in a Land Title Office after July 1, 2000 will automatically inherit the by-laws of the new *Strata Property Act*. Strata corporations which are already in existence prior to July 1, 2000 will continue to rely upon their existing by-laws whether they be the standard by-laws of the *Condominium Act* or any amendments or combination thereof that have been filed in the Land Title Offices up to June 30, 2000. This article does not intend to get into a long explanation about the transition of by-laws from the old act to the new act but it should be noted that existing by-laws which may conflict with the new act and its by-laws will be permitted to remain in existence until December 31, 2001. After that date, such by-laws will have to conform to the new act or, to put it another way, if they contravene the new act, those by-laws will be null and void. Perhaps future articles in the Strata-sphere can focus on the specifics of this process. The example does illustrate, however, that the implementation of the new *Strata Property Act* is a very complicated process and the reference here to the by-law issue is only one of many, many significant changes of procedures which everyone will have to learn.

In addition to learning the requirements of the new statute, there will be additional homework required with respect to what are termed the 'regulations' to the act. In fact, the existing *Condominium Act*, as did the original *Strata Titles Act*, has regulations which are part and parcel of the overall statute; however, to a large extent these regulations pertain to land title issues rather than day-to-day administrative issues. As an example, the existing *Condominium Act* has a regulation pertaining to the maximum allowable balance in a Contingency Reserve Fund. Few council members are aware of these provisions but, as stated, there were very few regulations which directly impacted on the administration of a strata corporation as seen by the strata council. Under the new *Strata Property Act* the regulations are vast, not only in quantity, but also in content. A strata council will find it impossible to administer the new *Strata Property Act* without specific and continual reference to the regulations which accompany the act.

Clearly, it can be established that strata councils, and vicariously strata property managers and others, will have a much greater degree of accountability and responsibility for adherence to the new statute. There are penalties associated with failure to comply with the statute and, in addition to this, there can be no doubt that there will be greater propensity for litigation or arbitration on various issues. It has already been said by strata council members, and to some degree there is truth, that being a council member after July 1, 2000 will place a huge burden of responsibility on individuals and this may have a chilling effect at Annual General Meetings when the floor is opened for nominations. Owners may simply not want to expose themselves to the possible risks associated with the stringent new obligations of the act.

A number of organizations in British Columbia are now planning information seminars and there is very little time to do all of this before July 1st. Nevertheless, every effort must be made to generate as much education as possible in the remaining few months to July 1st. Strata council members should obtain a copy of the *Strata Property Act*, the amendments that were subsequently passed and the regulations to the act, as soon as possible and start reading. It will be impossible to absorb all of it in a short period of time but a start must be made. In addition to these materials, council members should also obtain all the new forms which are required by the *Strata Property Act*. There is an extensive list of materials all of which is available through the government's web site. The web site address is: <http://www.fin.gov.bc.ca/strata.htm>

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Message from the President

Cora D. Wilson, Editor

JILL KELLY, PAST PRESIDENT & BOARD MEMBER, VANCOUVER ISLAND STRATA OWNERS' ASSOCIATION

Jill Kelly served as president of the Vancouver Island Strata Owners' Association for the last two years. She has been involved with the Association for over twelve years and still sits as a board member.

Jill brings to the Association many talents, as well as an intriguing history.

During the war, Jill worked at the British Embassy in Washington, D.C., in the intelligence branch. She later went overseas with the United Nations Relief and Rehabilitation Administration (UNRRA), where she was stationed in England, Germany and France.

In 1952, Jill embarked on a teaching career in Canada at Oak Bay Highschool, Victoria. She taught highschool, grade 13, in Victoria and Toronto for many years. Jill married and enjoys two children, Sue and Alan.

In 1972, Jill went back to the University of Victoria where she graduated with a Masters Degree in Education. Coincidentally, she graduated with her daughter.

In 1986, Jill retired in Victoria. She became involved with the Association shortly after her retirement and has been actively involved ever since.

Jill set about the task of locating all of the strata corporations on Vancouver Island. She wanted to write to them and invite them to join the Association. Her dedication and dogged determination caused her to spend two weeks in the Victoria Land Title Office sifting through old records and plans in an attempt to locate addresses of stratas.

Her efforts did not go unrewarded. The Association now boasts of over 300 strata corporation members. This is a tribute to Jill's effectiveness during her presidency.

A strong proponent of education, Jill was heavily involved in the production and distribution of the now "*Vancouver Island Bulletin*."

Jill has a vision for the future of Strata Associations in British Columbia. Ultimately, she would like to see one main organization representing all BC strata lot owners. Each major regional association would elect or appoint a representative to the main organization. This body would have a mandate to serve B.C. strata owners providing a united, strong and effective political voice.

The implementation of this plan started with changing the name of the Greater Victoria Strata Association to the now Vancouver Island Strata Owners' Association. There is much work left to be done. As a Board member, Jill will continue to steer the ship in this direction.

Not only is Jill still involved with the Association, but much to her credit, she is also Fleet Manager with the Sidney North Saanich Yacht Club and, as such, organizes and manages the sailing races. She spends the rest of her time running a business with All Communications Network of Canada (ACN).

Thank you Jill for your invaluable contribution to the strata community. We hope that it will continue for many years to come.



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Strata Property Act: Highlights

MINISTRY OF FINANCE AND CORPORATE RELATIONS

On July 1, 2000 the new *Strata Property Act* (and Regulation) will replace the *Condominium Act* as the legislation governing condominiums in British Columbia. Highlights of the new act include the following:

OWNER DEVELOPERS' RESPONSIBILITIES

The responsibilities of the owner developer in the initial stages of the strata corporation have been expanded and clarified. New provisions include the following:

- Owner developers must act in the best interests of the strata corporation (Act, section 6).
- All owners must consent to contracts and transactions in which the owner developer has an interest (Act, section 10; Regulation, section 17.3).
- Owner developers must contribute start-up money to the contingency reserve fund (Act, section 12; Regulation, section 17.3).
- Owner developers must provide a more comprehensive set of documents to the strata corporation, including "as-built" plans and warranties (Act, section 20; Regulation, section 3.2).
- Property management contracts entered into by the owner developer will terminate at the second annual general meeting of the strata corporation (Act, section 24).
- Owner developers must compensate strata corporations for serious under-estimation of expenses, and for failure to call the first meeting or to transfer documents to the strata corporation (Act, sections 18 and 20; Regulation, sections 3.1 and 17.3).

STRATA CORPORATION GOVERNANCE

Fundamental rules of governance and procedure for the strata corporation have been enhanced and clarified. Many of these provisions have been moved from the bylaws to the body of the act to ensure that they will not be changed. Noteworthy provisions include the following:

- Strata council members must declare any conflicts of interest (Act, section 32).
- Strata corporations must keep more detailed information and records, including information provided by the developer and decisions of an arbitrator or judge in matters involving the strata corporation (Act, section 35; Regulation, section 4.1).
- Owners have the right to obtain copies of strata corporation records within a reasonable time (Act, section 36; Regulation, section 4.2).
- Owners may add items to the agenda for general meetings of the strata corporation (Act, section 46).
- Strata managers may not be proxy holders (Act, section 56).
- A 3/4 vote of the strata corporation must be reconsidered in certain circumstances (Act, section 51).
- Meetings of the strata corporation may be waived with the unanimous consent of all owners, and owners may attend meetings by electronic means if the bylaws permit (Act, sections 41, 44, and 49).
- Strata corporations may apply to court to deal with situations where a resolution requiring a unanimous vote is supported by all but one or a very small percentage of voters (Act, section 52).

PROPERTY ISSUES

Rules of common property ownership and management are fundamentally the same. New provisions include the following:

- Changes to the habitable area of an individual lot, as well as changes in the use/appearance of common property, may require strata corporation approval (Act, sections 70 and 71; Regulation, section 5.1).
- Strata councils may only grant owners the exclusive right to use common property for periods of up to one year (Act, section 76; Regulation, section 17.7).

FINANCIAL MATTERS

The *Strata Property Act* maintains the basic principles for the sharing of common expenses. Changes to the expense-sharing rules are allowed, but only by unanimous agreement (Act, section 100). Other significant changes include the following:

- The operating fund may be used for short term and recurring expenses only, whereas the contingency reserve fund is to be used for longer term or uncertain expenses (Act, sections 92, 96, and 97).
- The minimum contribution to the contingency reserve fund has been increased to 10%, and strata corporations have the option of basing contributions on the rate of depreciation of common property (Act, sections 93 and 94; Regulation, sections 6.1 and 6.2).
- The act introduces new rules for the financial management of the contingency reserve fund, including clarification of investment options (Act, section 95; Regulations, sections 6.3 and 17.5).
- Strata corporations must act in accordance with new guidelines for spending money out of the operating and contingency reserve funds, including guidelines for making unapproved expenditures (Act, sections 96, 97, and 98).

- Requirements for budgets and financial statements are set out in the regulations (Act, section 103; Regulation, sections 6.6 and 6.7).
- Money-borrowing options for strata corporations have been clarified, and rules for imposing special levies have been established (Act, sections 111 and 108).
- Strata corporations may only impose user fees for the use of common property if the fees comply with certain requirements (Act, section 110; Regulation, sections 6.9 and 17.4).
- Owners may pay a disputed debt (owed to the strata corporation) to the court or the strata corporation to hold in trust to enable the sale of a lot (Act, section 114).

BYLAWS AND RULES

Rules and procedures for bylaw (and rule) creation and enforcement are substantially the same. Significant provisions include the following:

- Owners must ratify new rules of the strata corporation at a general meeting (Act, section 125; Regulation, section 17.10).
- The act does not prohibit age bylaws (Act, section 121).
- New age and pet bylaws will not apply to currently resident persons and pets (Act, section 123; Regulation, section 17.12).
- Strata corporations must observe new procedures for bylaw enforcement, which include giving persons against whom a complaint has been made a hearing before imposing any penalty (Act, section 135; Regulation, section 7.2).
- The act makes tenants responsible for complying with the bylaws of the strata corporation, and makes landlords responsible for disclosing the bylaws to tenants (Act, sections 130, 131, 137, 145, and 146).

RENTALS

The new act maintains and clarifies a strata corporation's ability to pass bylaws limiting or prohibiting the rental of lots. However, it contains the following new provisions:

- Rental restriction bylaws will not apply to family members (Act, section 142; Regulation, section 8.1).
- Owners will have one year to comply with any new rental restriction bylaw (Act, section 143).
- An owner developer's exemption from rental restriction bylaws will end when the first purchaser sells the lot (Act, section 143; Regulation, section 17.15).

INSURANCE

Enhanced insurance provisions include the following:

- Strata corporations must obtain liability insurance (Act, section 150; Regulation, sections 9.2 and 17.4).
- Strata corporations must review and report on insurance coverage annually (Act, section 154).
- The act clarifies that an insurance deductible is a common expense, and that its payment does not require the approval of the owners (Act, section 158).

DISPUTE RESOLUTION ISSUES

The dispute resolution provisions of the *Condominium Act* have been significantly expanded. The *Strata Property Act* contains detailed arbitration rules and procedures, including a new method of appointing an arbitrator and a requirement to consider mediation (Act, sections 175 to 189; Regulation, section 17.16), as well as a provision that allows strata corporations to adopt a voluntary dispute resolution bylaw (Act, section 124).

SCHEDULE OF STANDARD BYLAWS

The *Strata Property Act* includes a new set of Standard Bylaws for new strata corporations. On January 1, 2002 these Standard Bylaws will replace the bylaws of existing strata corporations except to the extent that different bylaws have been filed at the land title office (Regulation, section 17.11). Significant provisions of the Standard Bylaws include the following:

- Owners may keep pets, including one dog or cat (Standard Bylaws, section 3).
- Strata corporations will have to repair and maintain certain property, as will owners (Standard Bylaws, sections 2 and 8).
- Owners must obtain the approval of the strata corporation before making any alteration to common property (Standard Bylaws, section 6).
- Tenants may participate in general meetings of the strata corporation (Standard Bylaws, section 26).
- Owners may request and attend council meetings, and strata councils must post council minutes (Standard Bylaws, sections 15, 17, and 19).
- Strata councils may delegate their powers, including spending powers, but only in accordance with certain rules (Standard Bylaws, sections 20 and 21).

Bylaws and the Strata Property Act

Cora D. Wilson, Condominium Lawyer

C.D. WILSON & ASSOCIATES



The *Strata Property Act* (the “SPA”) does not change the basic principles of the *Condominium Act*. However, there are many nuances which must be reviewed.

TRANSITIONAL: A bylaw or a rule passed before the SPA comes into force will continue to be valid during the transitional period even though they may conflict with the new legislation (s. 293(2)).

The grandfathering ends on December 31, 2001. Thereafter, the provisions contained in Part 1 - 17 of the SPA will govern to the extent that such provisions deal with the same subject matter as the bylaws (Regs, Section 17.11)

BYLAW MAKING POWER: The strata corporation must have bylaws (119(1)). The bylaw making power is very broad and “*may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation*” (s. 119(2)).

The SPA provides that, “*the bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office*” (s. 120(1)).

There are 30 provisions which make up the Schedule to Standard Bylaws. They deal with the duties of owners, tenants, occupants and visitors; the powers and duties of the strata corporation; council members and meetings; enforcement of bylaws and rules; annual and special meetings; voluntary dispute resolution; and, the marketing activities by the Owner/Developer. Some of the Part V Bylaws under the *Condominium Act* have been incorporated into the statutory provisions of the SPA. As such, they may not be altered, without statutory authority.

However, the Standard Bylaws may be amended in accordance with the provisions of the SPA.

BYLAW AMENDMENTS: The bylaws of a strata may be “*changed, repealed, replaced, added to or otherwise amended*” as long as this is done in compliance with Division 2 of the SPA (s. 126). A 3/4 vote of unit owners is required at a general meeting to approve the bylaw amendments (s. 128). Amendments are not effective unless the bylaw is filed in the Land Title office within 60 days of the amendment being approved (s. 128(2)). The time limitation of 60 days for filing the amendment is new. Strata councils should refer to the other provisions under Division 2 of the SPA for further restrictions for bylaws.

UNENFORCEABLE BYLAWS: Section 121 of the SPA is new and clarifies what constitutes an unenforceable bylaw, as follows:

- (a) A bylaw which contravenes the SPA, the regulations, the Human Rights Code or any other enactment or law;
- (b) A bylaw which destroys or modifies an implied easement; or,
- (c) A bylaw which prohibits or destroys the right of an owner of a strata lot to freely sell, mortgage or otherwise dispose of the strata lot or an interest in the strata lot. This provision is essentially the same as section 29 of the *Condominium Act*.

The following is a discussion of some of the more controversial bylaws:

PET BYLAWS: Pet bylaws have always been controversial. It is important to ensure that the bylaws are fair and reasonable.

The control of pets is frequently addressed in the bylaws of a strata corporation in the context of pet restrictions, nuisance, such as cleaning up after an animal defecates and noise. The scope of pet bylaws ranges from prohibition of pets, to a limitation on which types of pets may be kept in the unit, to restrictions on pet upkeep to no restrictions.

The law is clear that a strata corporation can enforce a restriction on pets. The bylaws are registered at the Land Title Office so the Owner is deemed to have notice of the bylaw when he takes title. Such a bylaw would not be enforceable for pets that may be required for medical reasons, nor can it be made to apply retroactively to someone currently owning a pet. The bylaw may prevent the acquisition of new pets or the replacement of a pet once an existing pet has died.

Cora D. Wilson, Condominium Lawyer & Educator, C.D. WILSON & ASSOCIATES, Nanaimo. Ms. Wilson has represented condominium interests for over a decade. She currently represents Strata Corporations from Victoria to Port Alice. She is a regular lecturer on Condo issues at Malaspina University College, Editor of “*Voice from the Strata-sphere*,” Publisher through Strata-sphere, of the first ever Vancouver Island Condominium Directory and frequent lecturer and chair of numerous Strata-sphere conferences.

The SPA provides that any bylaw which prohibits a pet will not apply to a pet living with an owner, tenant or occupant at the time the bylaw is passed and which continues to live there after the bylaw is passed (s. 123(1)). This is consistent with the current understanding that bylaws are not intended to apply retroactively.

AGE RESTRICTION BYLAWS: The SPA clears up the confusion surrounding age issues. Age restriction bylaws will be permitted pursuant to the *Human Rights Act*, which prevails over the SPA. As with pet bylaws, an age bylaw passed in accordance with the SPA will not apply retroactively. Any person who resides in the strata lot at the time the bylaw is passed and who continues to reside in the strata lot will be grandfathered from the effects of an age restriction bylaw (s. 123(1)).

VOLUNTARY RESOLUTION OF DISPUTES: Section 124 of the SPA permits a process for voluntary resolution of disputes among owners, tenants and the strata corporation or any combination. This section recognizes that bylaws often create considerable conflict. Division 6 of the Standard Bylaw clarifies the procedure for this type of dispute resolution.

This section does not create a binding decision, such as a court process or arbitration. Any statements or admissions are made on a without prejudice basis so that they may not be used in other legal proceedings. This allows the parties to communicate freely without worrying about legal ramifications.

As this provision is new, it will remain to be seen how it works in practice.

RENTAL RESTRICTION BYLAWS: Section 141 of the SPA permits rental prohibitions of residential strata lots or limitations on the number or percentage of residential rentals as well as the period of time for which the strata lot may be rented. The bylaw must set out the procedure to be followed by the strata corporation administering the limit. Hardship to the owner continues as an exemption to a rental restriction bylaw (s. 144(1)). These provisions are similar in principle to the *Condominium Act*.

New provisions prohibit the strata corporation from screening tenants, establishing screening criteria or requiring strata corporation approval of the tenant as a precondition to rental (s. 141(1)).

The SPA clearly states that a bylaw cannot prevent the rental of a strata lot to a member of the owner's family (142(1)). These terms are defined in the Regulations as a spouse, parent, child of the owner or a spouse, parent or child of the owner's spouse. “*Spouse of the owner*” includes 2 years of cohabitation in a marriage like relationship, including a relationship between persons of the same gender (Regs. 8.1).

Also, rental restriction bylaws do not apply to the strata lot until one year after the expiry of either the date a tenant vacates or the anniversary date of the passage of the bylaw, as the case may be (s. 143(1)). These bylaws are complex and should be carefully reviewed.

The maximum fine for rental bylaw contraventions is \$500.00 for each contravention of the bylaw. The maximum frequency for a continuing contravention of a bylaw is every 7 days. (Regs. 7.1(2) and (3)).

Conclusion: There are many nuances in the SPA. Strata councils should consult with a condominium lawyer to have their bylaws reviewed in light of the *Strata Property Act*.



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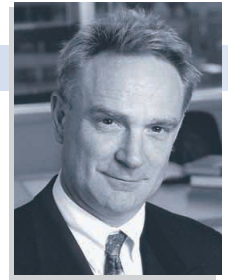
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Can Strata Council Members be Sued? Liability & the Strata Property Act

Allan R. Tryon, Litigation Lawyer
CREASE, HARMAN & COMPANY



With limited exceptions, the strata council is the body and means through which the strata corporation functions. The strata council has the primary responsibility for supervising and managing the common property, assets and finances of the strata corporation. Persons with varied backgrounds and levels of experience comprise the typical strata council. Despite the complex responsibilities of the strata council, its members are usually volunteers. Strata council members generously sacrifice their time and energy for the good of all the owners.

What is the personal legal liability of a strata council member? Can a strata council or its members be sued if decisions made today prove wrong tomorrow? In this era of leaky condo repairs and related litigation, a strata council may be required to make decisions which can significantly affect the financial position of unit owners for years to come. Though fortunately rare, strata councils and their members do receive letters and other communications chiding them about their decisions and threatening dire personal consequences for wrong decisions. In this article I will examine the legal liability of a strata council and its individual members for the decisions which are made.

A strata council makes its decisions by “meeting together for the conduct of business” (*Condominium Act*, Section 121(1)(a)). This procedure can be contrasted with the manner in which the board of directors of a corporation might make its decisions. Directors of a corporation can circulate a resolution and, provided the resolution receives sufficient support, the resolution can be passed without any meeting actually taking place. It appears a strata council cannot conduct its business in that fashion. A strata council must conduct its business through actually meeting together.

The *Condominium Act* requires the strata corporation to control, manage and administer the common property, facilities and assets of the strata corporation “for the benefit of all owners” (sec. 116(a)). Since the duties of the strata corporation must be exercised and performed by the strata council, the strata council when controlling, managing and administering the common property, facilities and assets of the strata corporation must do so for the benefit of all owners. However the strata council is not liable to an aggrieved owner because it later turns out a decision taken did not benefit the owners generally or a particular owner. The *Condominium Act* protects strata council members from liability for decisions made, regardless of whether the decisions are reasonable or in the best interests of the strata corporation or the owners. The *Condominium Act* states:

“A member of a strata council is not personally liable for an act done in good faith in carrying out his or her duties as a member of the council.” (sec. 122 (4))

Provided the strata council member is acting in the performance of his or her duties as a member of the council, there is no personal liability for an action done in good faith.

Good faith is not a technical legal term. The phrase “good faith” as it applies to a strata council has been considered by the British Columbia Supreme Court. The phrase describes a state of mind. The phrase denotes “honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to ones duty or obligation” (*Blue-Red Holdings Ltd. v. Strata Plan VR857* [1994] B.C.J. No. 2293). In the absence of dishonesty or an intention to defraud or being deliberately unfaithful to the strata council’s duties or obligations, the strata council and its members are protected from personal liability.

Strata council members and unit owners are naturally concerned about whether the steps now being recommended to repair leaky condo problems will be effective. There is concern about whether the rain screen technology will, over time, prove to be the solution. In the meantime, strata corporations and strata councils are obliged to proceed with the repairs necessary for the proper maintenance and preservation of the condominium building. Those repairs may prove not to be effective or to have unexpected consequences. As a result some

Allan R. Tryon, Partner, Crease, Harman & Company, Victoria. Mr. Tryon was called to the B.C. Bar in 1978. His practice is confined to civil litigation with emphasis on construction law, commercial law and insurance defence. Mr. Tryon represents several strata corporations involved in leaky condos.

owners may suffer losses. Those losses could be a reduced selling price for an owner’s strata lot or damage to personal property, such as furnishings or floor coverings. Is the strata corporation responsible for those losses?

In a 1996 case, the British Columbia Supreme Court dealt with the claim of an owner against the strata corporation for damages when repair efforts implemented by the strata council and the strata corporation proved to be ineffective to prevent water leaking to the owner’s unit. After several years of ineffective repair efforts, the owner sold her unit on a “as is” basis at a loss. The court noted the many efforts by the strata council and the strata corporation to repair the exterior wall and stop the entry of water into the owner’s unit. Experts were retained and the recommendations of the experts implemented. The court dismissed the owner’s claim. The court observed the strata corporation, acting through the strata council, did all that could reasonably be done to perform the statutory duty of maintaining and repairing the exterior walls of the building. The strata corporation and the strata council were found to have acted reasonably in the circumstances. Therefore, the strata corporation was not liable to the unit owner for the losses which she suffered because the building envelope repairs were ineffective or not timely.

The *Condominium Act* contains no statement about the standard of conduct to which a strata council or individual council members must adhere. The *Condominium Act* does not require the council or its members to act competently or reasonably.

The present situation for strata council members should be contrasted with the situation which will prevail after July 1, 2000 when the *Strata Property Act* comes into force. The *Strata Property Act* will replace the *Condominium Act*. The new *Strata Property Act* will prescribe standards of performance for the strata council and its members. The *Strata Property Act* will require each council member to:

- (a) act honestly and in good faith with a view to the best interest of the strata corporation, and;
- (b) exercise the care, diligence and skill of a reasonably prudent purpose in comparable circumstances.

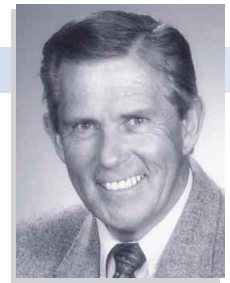
The *Strata Property Act* will also require a strata council member to disclose conflicts of interest and abstain from voting on affected contracts and absent himself or herself from discussion and the vote on the affected contract.

While the *Condominium Act* governs, strata council members are not obliged to perform their duties with the care or skill of a reasonably prudent person. It appears the *Strata Property Act* will not give strata council members the same protection from lawsuits as does the *Condominium Act* presently. The obligation to act in “good faith” is only one of the many obligations of a strata council member under the *Strata Property Act*. Also, the *Strata Property Act* does not contain the equivalent protection from legal proceedings now afforded by section 122(4).

In conclusion, for the time being strata council members are now protected from legal liability for all decisions made in good faith. After July 1, strata council members will have additional obligations, including being required to meet an objective standard, namely, the care, diligence and skill of a reasonably prudent person in comparable circumstances. Undoubtedly this will cause some owners to think more carefully about whether to volunteer or stand for election to the strata council.

A Case for Licencing Strata Managers Why a Property Manager?

Bob Ellis, Property Manager,
DUTTONS & CO. REAL ESTATE OF VICTORIA.



Every few days I receive a call from a strata owner to inquire about our firm managing the strata corporation of which they are a part. A few questions usually reveals that the caller is experiencing some frustration over the interaction between various owners, either with each other or with the strata council. It may be as trivial as the allocation of a parking spot or as important as a question about management of the contingency fund.

A few days ago, an extreme case was discussed in the Times Colonist. There, a council chairman was accused of treating the owners as tenants and personally profiting from his office, by renting out space to friends and family and keeping the owners in such a state of anxiety that they wished they could move away.

In almost every one of these situations, the problems could be overcome with guidance of a property management firm and its licensed property managers. Why? Because of the education, training and experience of the property managers, situations can be dealt with in a stress free atmosphere of negotiation and cooperation without pitting neighbour against neighbour in a mood of confrontation. Why is this? Because the manager's responsibility is to the strata corporation as a whole, with a duty to maintain the property and the quiet enjoyment of all the owners.

There is a tendency to equate property managers with resident managers or building managers. Those persons do an excellent job of caring for the physical plant which is their duty as employees of the strata council, but do not stray beyond that limit. The property manager's function is much broader, covering the entire spectrum of management from collecting fees to financial audits, from assisting the council in preparing budgets, to maintaining the accounts, and from monitoring maintenance contracts to overseeing renovation projects.

Property management is defined and regulated through the *Real Estate Act*. A property management firm is licensed and is strictly monitored by the Real Estate Council, and must answer to stringent auditing procedures. Each firm must employ a nominee who is a holder of an agents' license. As well as several years experience before being allowed to write the examination for licensing, the agent must complete an arduous educational program. Individual licensed property managers are now required to complete a year long study program and score highly on examinations. Every individual is required, after licensing, to carry errors and omissions insurance and must work under the guidance of an agents license. Currently, strata managers are not required to be licensed and there are no educational requirements which must be met as a precondition to managing strata corporations. When your strata corporation contracts with a property management firm it puts itself under the umbrella of protection afforded by the very strict auditing and management processes required by the various statutes. Unlicensed strata managers are not governed by this type of statutory protection.

What do property manager's do? Starting with establishing budgets in consultation with your strata council, we manage the day to day operation of your strata corporation. We collect your assessments, pay your bills and your taxes, see that you are properly insured, monitor routine maintenance from

Mr. Ellis is a condominium manager. He has a background in banking and credit management, construction and real estate sales. He took time out to acquire a law degree along the way.

gardening to gutter cleaning, from painting to key cutting and from keeping the sidewalks swept to replacing your roof when required. We schedule meetings, keep the minutes and record the votes, then make sure everyone is advised of the results. We will see that your property is maintained and protected, which is the primary duty of the strata council under the statutes. We will see that regulations are adhered to with diplomacy and tact, keeping anonymous the source of complaints. Likewise, we will see that strata fee accounts are kept up to date without embarrassment. Rented properties within the strata will be controlled according to the bylaws in place. In short, we will see that the atmosphere of the building or project is kept free of conflict by careful management and effective but diplomatic enforcement of regulations. In all it is our job to keep your complex a happy place in which to live.

The *Strata Property Act* will expand the responsibilities of the strata council and the property managers once it comes into force on July 1, 2000. Given the importance of the property manager's role, one has to question why there are currently no licensing requirements, educational requirements and statutory safeguards in effect to govern condominium managers and afford some degree of protection to the public.

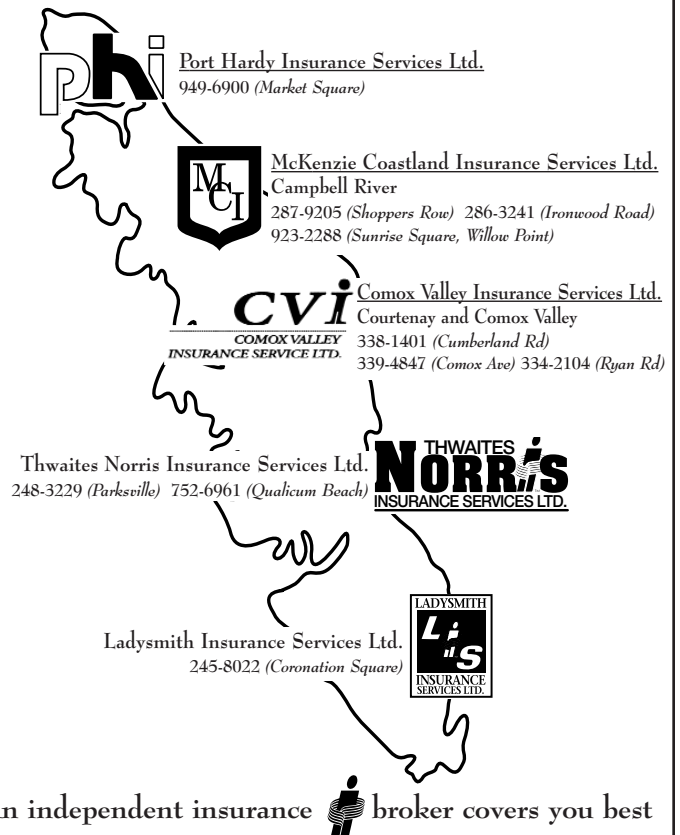


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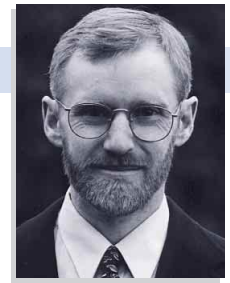
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And you thought the Management of Strata Plans was a Challenge in the 90's?

Ian Stuart, Property Manager
NEWPORT REALTY PROPERTY MANAGEMENT

Like all fields of endeavor in today's highly computerized and automated world, property management of strata plans has become a do more in less time endeavor. Property managers should be planning on spending a great deal of time communicating with the strata councils in the very near future. This is not the letters you sent out about bylaw infractions and other routine matters of property management but the direction and priorities that each strata council should have. The recently announced enforcement of the *Strata Property Act* has made this of the greatest priority. Some strata councils will rush to embrace the provisions of the new *Strata Property Act* and its regulations; others will be resistant to the necessary changes. Each situation will have its challenges. Property managers have had some time to prepare and should be ready to provide some advice to strata councils on the areas of immediate concern: Budget and financial reporting, Bylaws and Common property maintenance and Depreciation reports.

BUDGETING AND FINANCIAL STATEMENTS

Many strata councils rely on the property manager's statements to provide the owners with the required information. In most cases the financial statements and budget information a property manager produces will fulfill the new requirements. It would be very prudent to have a letter on file from a professionally designated accountant attesting to this. Property managers and strata councils will need to review the methods that are currently used to ensure that changes are made before a complaint is brought forward by an owner which should have been foreseen.

BYLAWS

The requirements of Part 7 of the new *Strata Property Act* will have an impact on all strata plans but with very differing effects. Those strata plans which over the years have attempted to rewrite the *Condominium Act* will find themselves in a position of having to ensure that many of their bylaws are not unenforceable. Many strata councils will be tempted to consult a lawyer, which is the correct procedure, but only after the property manager and strata council have identified those bylaws which are required by the strata council and owners to govern the strata plan and need to be added or changed. This is an excellent opportunity for strata councils to do some housekeeping of their bylaws. Of paramount importance are making the bylaws simple and understandable. Sample drafts of proposed changes to the bylaws and rules should be circulated and after the strata council has reached agreement, or at least tried to, the draft should then be reviewed by a lawyer. Until the courts have made some rulings on some of the more controversial areas of the new act, caution needs to be the watchword of bylaw rewrites. Many new owners' rights have been encompassed within the *Strata Property Act*; property managers and strata councils need to ensure that these new rights are respected and adhered to.

COMMON PROPERTY

MAINTENANCE AND DEPRECIATION REPORTS

There is really no such thing as an "average" strata plan and therefore the maintenance of common property needs to be tailored to the individual complex. The property manager needs to be aware of all maintenance activities that take place. Some strata councils rely on volunteers to assist in the maintaining of the common property. While in itself this doesn't pose a problem the requirements of the *Strata Property Act* in several areas make this practice a new danger zone, for both strata councils and property managers. The *Strata Property Act* includes a greatly expanded conflict of interest section which should be reviewed by both the property manager and strata council, before accepting the recommendations of any owner and/or member of strata council on whom to use for maintenance activities.

In many cases the property manager will be the person signing the Form B - Information Certificate (which replaces the section 36 certificate) and therefore must be able to provide copies of work orders. For some property managers this will be nothing new, for others who have arranged maintenance work over the phone a change of procedure will be required. The wording of the Information Certificate

Ian A. Stuart: A property manager for 12 years in Victoria. Ian works primarily with Strata Corporations for Newport Realty Property Management, a company with a strong presence in the strata management field in Victoria.

is not clear. For example, does "work orders received" mean written? Or otherwise? The strata council and property manager should place the onus on the owner making the request to do it in writing and should provide each strata lot owner with some blank work order forms and a copy of the maintenance request procedures. Excepting emergencies, strata councils should deal only in written communications, (faxes and e-mails included and printed copies should be retained). Larger strata complexes with resident caretakers or other caretaking arrangements need to ensure that records are kept up to date and are available for a monthly review, at a minimum, by the strata council and property manager. Both the property manager and the strata council need to ensure that maintenance items are either dealt with or brought forward for later actions.

The depreciation report requirement (Part 6, Section 94 of the *Strata Property Act*) will cause those who have done only a bare minimum of advance planning a great deal of work over the coming months and years. The depreciation report will become a key element in the long range planning that the strata council and property manager must do for both contingency funds and operating budgets. Property managers can be sure that realtors and prospective purchasers will be scrutinizing the depreciation report. Strata councils should not rush into getting a group of contractors and estimators on the strata's property, without first preparing a list of questions and requirements for each item which must be reported on. Some items (hallway carpets & painting, exterior fencing, to name a few) should be priced only for quantity and not for colour or type as the requirements and tastes of the owners may change, during the interval between the estimate and date of replacement. Other items on the depreciation report should be replaced with what is standard in the industry and not necessarily what the developer/builder supplied with a building. Air handling units (HVAC), boilers and elevators all might be made more energy efficient or provide a better level of service if the replacement equipment is chosen not only on price. Consulting with competent professionals will allow a strata council to reach a reasonable and prudent balance of cost versus quality and efficiency. Owners and others should be made aware of items in the depreciation report that are being considered for betterment. The consulting of such professionals should be built into the preparation cost of the report,

Strata council and property managers should be ready for the challenge of relearning many of the items they now take for granted in the management of strata plans.



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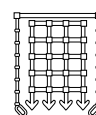
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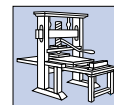
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UPDATE ON THE STRATA PROPERTY ACT

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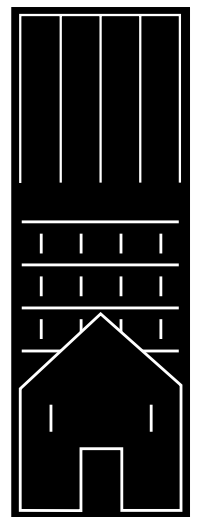
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Why you need to have an Insurance Appraisal

Stephen Pollock, Manager
SUNCORP VALUATIONS LTD.

With the onset of the new *Strata Property Act* (the "Act") it will now be even more important than ever to establish the replacement value on the common property of your strata corporation. Under the proposed changes, strata corporations will be required to insure the property to 'full replacement value.' The new proposed legislation of the Act (Part 9, Section 1 and 4) refers to insurance as follows:

- 149 (1) The strata corporation must obtain and maintain property insurance on
- common property,
 - common assets,
 - buildings shown on the strata plan, and
 - fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the original construction on the strata lot.
- (4) The property insurance must
- be on the basis of full replacement value, and
 - insure against major perils, as set out in the regulations, and any other perils specified in the bylaws.

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STEPHEN POLLOCK, Manager, Suncorp Valuations Ltd.. Suncorp has developed the leading insurance appraisal program in B.C.. It has been appraising Corporations for over 40 years, and currently serves over 1,000 B.C. strata corporations.

An appraisal of your property is the most cost effective and sound way of establishing the value. This appraisal should be carried out by a recognized insurance appraisal firm, one that specializes in dealing with the particulars of Condominiums, and is experienced in the B.C. marketplace. Your insurance brokers will confirm if they are familiar with the company and its work, and may have companies that they can suggest. Most appraisal firms offer three-year custodial programs with full construction and mechanical reviews, limited municipal bylaw studies, and updates included as part of the program.

Many properties, particularly those that are self-managed do not have a recent appraisal and may be relying on values that have been updated based on 'factors' that have been deemed appropriate. In older buildings this practice can lead to significant exposure if there is a loss on the property. If the property has a co-insurance clause in the insurance policy, and there is a partial loss on the property, the strata could be faced with a bill of several hundred thousand dollars, especially if they have not met the co-insurance requirements of the contract.

Amount of Insurance Carried ____ X Amount of Loss = Recovery Amount

Amount of Insurance Required

Eg: On a \$1,000,000 building with a 90% Co-Insurance clause where the insured has NOT met the co-insurance requirements and only carried insurance to 70% of the replacement cost (\$700,000);

$$\frac{\$700,000}{\$900,000} \times \$20,000 = \$15,555.55$$

is the amount the Insured will recover in this loss.

•Note• The larger the loss in this example, the larger the financial penalty the insured will suffer!

How can you limit your exposure?... by having Stated Amount co-insurance. This 'Stated Amount' should also be established by an insurance appraiser in order that you have their company to back up the value, with experience, expertise, and their own Errors & Insurance coverage. This will ensure that the Directors and Officers of your Strata have fulfilled their obligations with regards to the Act, and it will also ensure that potential losses are covered under your insurance policy.

In summary, to protect everyone's financial interest as well as the fiduciary responsibilities of the strata corporation's Directors and Officers, an appraisal should be completed on a yearly basis.

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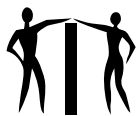


Dispute Resolution in Condominiums changes under SPA

Sharon Kelly, Chartered Arbitrator and Mediator
SHARON KELLY CONSULTING SERVICES

There are many significant changes to the dispute resolution structure in the *Strata Property Act* ("SPA"). Section 177 for instance provides that a tenant can also refer a dispute with the strata corporation, another owner or tenant to arbitration! So, potentially we can see tenant's initiating a condominium arbitration outside the provisions of the Residential Tenancy Branch. It is also possible that a tenant could initiate a complaint in the Residential Tenancy Branch and be told that the issue can't be heard there - because of the new SPA legislation.

In the current *Condominium Act*, it mentions that a referral to arbitration can be about "any matter". In SPA it outlines those disputes that may be referred to arbitration and these include: interpretation/application of the Act, regulations, bylaws or rules; common property or assets; use and enjoyment of the strata lot; money owing; an action or threatened action/decision of the strata corporation (including the council) towards an owner or tenant; and an exercise of voting rights of a person who holds 50% or more of the votes at a general meeting. While before the door was wide open in terms of disputes that could be arbitrated, now it is more clearly defined.



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Sharon Kelly, experienced mediator, arbitrator and President of Sharon Kelly Consulting Services Inc.. Ms. Kelly has an extensive background in property management and has taught courses at various colleges and private institutions. She is a member of the B.C. Arbitration and Mediation Institute and holds the designation "Chartered Arbitrator." She has experience in mediating construction disputes and currently serves on the Board of Directors of The Mediation Development Association of B.C.. She is also listed on the B.C. Mediator Roster Society.

The *Condominium Act* had no set procedure in place in terms of forms for initiating arbitration - SPA does. The new statute provides for various prescribed forms to be utilized in arbitration. These include a Notice Beginning Arbitration and a Notice of Reply. There are time limits established for the appointment of an arbitrator or arbitrators. Another change is that Arbitrator's chosen need no longer own and occupy a strata lot. A further twist is that the appointed arbitrator can involve a third party if the arbitrator believes they may be directly affected by the issues. The person affected can make a written statement to the arbitrator, or at the request of the arbitrator and consent of the other parties the party can be joined as a party to the arbitration. The current *Condominium Act* gives no direction on joining third parties.

As a mediator, it is nice to see that before commencing an arbitration, the appointed arbitrator must discuss the potential of resolving the dispute through a mediated settlement. Given that construction disputes under \$10,000 are now automatically referred to mediation in the Nanaimo area, I anticipate that this will be a new experience for many parties.

In the written award provided by the arbitrator, it provides that this can include ordering a party to "do something, refrain from doing something, or pay money as damages." The current *Condominium Act* provides that an arbitrator can make an award that is "just and equitable" and leaves it vague in terms of general costs.

Another part of SPA deals with Dispute Resolution within the community. For example, under the bylaws there is a provision for "voluntary dispute resolution." The bylaws provide that internal disputes within the strata corporation can be resolved through mediation and suggests the creation of a dispute resolution committee. This dispute resolution committee has the authority under the new Act to attempt to resolve disputes. Time will tell how often such committees are formed within strata corporations and how effective they are.

The government of the day is pro mediation and believes that alternative methods should be utilized to resolve issues besides the courts. Within the next five years it will be interesting to see the impact of SPA and how ultimately, disputes are resolved in the strata community.

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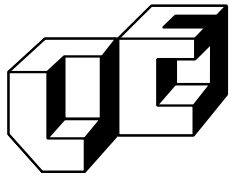


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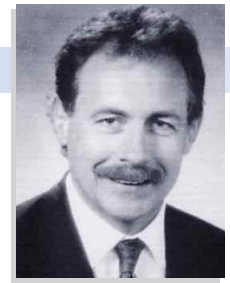
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The Role of the Property Manager In the Retrofit Process

Brian Chatwin, P.Eng., President
CHATWIN ENGINEERING LTD.

The construction retrofit process is a complex process involving strata council, Strata members, approval authorities, contractors, consultants, etc.. This process can be often confusing and if not coordinated properly, a longer process than necessary.

A key member of the project team for ensuring that there is a good liaison amongst the various parties and a proper flow of information and process is the Property Manager. Chatwin Engineering has worked with a number of excellent

Brian Chatwin, P.Eng. is a Professional Engineer who specializes in contract administration. Mr. Chatwin has over 25 years of experience in this field and has successfully administered many construction contracts in the field of construction engineering.

Property Managers in the construction retrofitting process. These individuals are skilled and trained in assisting in the coordination of the overall retrofit of leaky condos. The difference between an experienced Property Manager assigned to your construction retrofit program and one without experience could mean the difference in not only construction cost savings but extended time delays in the project. A good portion of the responsibility for the overall timing and budgeting rests with your engineering consultant. There are, though, certain aspects of the construction process that can be expedited with the help of the Property Manager.

Some of the areas where the Property Managers play an important role in a construction retrofit are outlined as follows:

1. LIAISON WITH STRATA COUNCIL AND STRATA MEMBERS

There is a lot of anxiety and concern amongst strata members during all aspects of a construction retrofit program. The Property Manager can play a big role in allaying fears and communicating relevant information to the members and to council.

2. OVERSEEING THE ACTIVITIES AS THE ENGINEERING CONSULTANT

In the construction pyramid, your consultants will be overseeing the activities of the contractor on the project. The strata council should use the Property Manager to ensure that the engineering consultant is providing all of the relevant information and documentation necessary for a successful project. The Property Manager could be the strata council's direct liaison with the engineering consultant.

3. COORDINATION OF APPROVALS

Often times it is politically palatable to have a Property Manager assist with acquiring approvals from regulatory authorities. Property Managers may be able to negotiate such items as fee reductions, etc. with municipalities on the basis that there could be potential liability on their part related to the cause of the retrofit problem.

4. ORGANIZATION OF PAYMENT

The Property Manager can play an important role in ensuring that there is an overall coordination of cashflow both coming into the project and going out in an orderly manner. This is an area that can often bog down a construction project. If this fails, then it could impede the progress of the project and may increase the liability of the owners.

The retrofit is a complicated process involving approvals, payments, and sequencing of construction. A good Property Manager can greatly assist the strata councils in achieving their objectives in developing an overall construction project that has minimum disruption to all concerned.

DAVID J. CLARK, AACI, PApp, RI(BC)



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Is the Code Really to Blame?

*Pierre-Michel Busque, P. Eng., Building Envelope Professional, President,
BUSQUE, PERREault & ASSOCIATES LTD.*

Property managers responsible for administrating leaky buildings are often faced with this question from the strata councils. How could a building, constructed relatively recently, experience large-scale performance problems while other buildings, that are older and face similar exposure to the elements apparently perform adequately? The answer will vary depending on the building envelope professional consulted. Some experts are adamant that the Code requirements have played a part in this disaster while others argue that the Code did not.

Multitudes of contributing factors are usually evoked to explain the Condo crisis. The following list is by no means exhaustive:

POOR DETAILING: It is a fact that on most of the leaky buildings, poorly executed construction details are present which may allow water to penetrate the cladding. In most instances, poorly executed construction details denote a lack of awareness or knowledge on the part of the design professional or on the part of the trade. Water ingress through improperly detailed joints is, without question, the largest contributor to this current Condo Crisis.

CONSTRUCTION MOISTURE: It is very difficult to protect wood framed wall during the construction of new buildings. Wood framed walls typically incorporate layers of low vapour permeance (polyethylene vapour barriers) on the inside of the wall assembly. A layer of low vapour permeance is typically also present on the outside of the wood framed assembly in the form of 1/2" OSB sheathing. Water present in the building materials at the time of construction may not be able to escape from the wall after its construction, thus leading to deterioration of the wood frame.

THE LARGE VOLUME OF CONSTRUCTION IN THE LAST DECADE: It is also a fact that the construction boom has affected the quality of design and construction of buildings. There are other examples in Canada to show that a construction boom can be followed by a multitude of building failures.

CALIFORNIA TYPE ARCHITECTURE: Though more complicated types of architecture certainly contribute to the difficulty of design and construction of a building, it should be noted that many of the buildings that have been successfully restored incorporate the same architectural styles than the failed buildings. The principal factors in the successful restoration have been the greater attention paid to construction detailing and the incorporation of a drainage cavity behind the cladding of a building.

LEAKY WINDOWS: Windows, which have been improperly, sealed to the wall assembly or that leak into the wall assembly through the mitered joints of their aluminum frames. The moisture contribution of the leaky window to the wall assembly, is a likely contributor to the deterioration of the wood framed wall.

ACRYLIC COATINGS ON STUCCO: Evidence is not conclusive regarding the contribution of this type of coating to the current crisis. Building envelope failures have been reported on stucco walls with conventional finishes as well as acrylic finishes.

SYNTHETIC BUILDING PAPERS: Again the evidence is not conclusive as many failures have been reported on walls incorporating both organic and synthetic building papers.

POLYETHYLENE VAPOUR BARRIERS: Again this is a contentious issue. Computer simulations indicate that increasing the vapour tightness of the wall will reduce its capacity to dry to the interior of the dwelling if the relative humidity in the building is relatively low (about 40%). However, the polyethylene vapour barrier will reduce the amount of condensation expected within the wall assembly in winter if the interior relative humidity is 60% and above. More research must be conducted on this topic before this theory can be viewed as credible.

Mr. Busque has a building envelope research background with Canada Mortgage and Housing Corporation (CMHC) and is a frequent lecturer for the Building Envelope Education Program presented by the Architectural Institute of British Columbia.

Invariably, after discussing some of the above possible contributing factors to the Condo Crisis, the Code requirements are brought up.

Without discussing in a drawn out way the pros and cons of past and present building codes, the following can be stated as facts:

Past Codes have, in Part 9, allowed construction of walls which do not dry well in this climate. The drying capacity of walls pre-dating the condo crisis is widely believed to be a factor explaining the success of their performance. However, it is widely accepted that if a modern wood framed wall was dry at the time of the construction, and if the building was reasonably well detailed to prevent water ingress, the prospects of achieving a durable building envelope are good.

FACE-SEALED WALLS: This type of water management approach has generally been regarded as not likely to provide durable performance by Canadian research agencies. In fact, providing a drainage cavity behind the cladding (allowing the cladding to serve as a rain screen) has been recommended by the National Research Council of Canada since the early 1960s. The question must therefore be asked: If face sealed walls were thought unlikely to provide durable performance, why were they allowed to be constructed under the requirement of the Building Code? The answer is simple! Design professionals were expected to know better than to design face sealed walls if there was a likelihood that water would penetrate the cladding. Judging by the quantity of face sealed buildings that exist in this region, one could infer that designers generally did not believe that there was any likelihood of water penetration through face-sealed cladding. Municipalities which issued building permits must have either concurred with this point of view or it was not within their mandate to intervene.

The role of the Code is to set minimum standards in order to protect the safety and the health of the occupants of buildings. It is probably fair to assume that victims of the leaky Condo crisis feel that the Code did not fulfill its objectives with regards to building envelope issues.

At issue for future Code is the question of whether or not it is reasonable to limit the freedom of design professionals by limiting the use of face sealed walls. Regardless of the diverse opinion being expressed on the possible contribution of Codes to the current Condo Crisis, a debate is looming within the design community, among legislators and members of the public on this topic. Ultimately, the answer to this question may well be determined in a court of law.



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Homeowner Protection Office continues its Efforts to Assist Homeowners and Improve the Quality of Residential Construction

Shayne Ramsay, CEO

HOMEOWNER PROTECTION OFFICE

The Homeowner Protection Office (HPO) is now in its second year of operation. The HPO continues to assist owners of leaky homes, administer the licensing and mandatory home warranty insurance system now in place as well as move forward on research and education initiatives to improve the quality of residential construction.

HPO HELPS 2,000 CONDO OWNERS KEEP THEIR HOMES

As of mid February, the Homeowner Protection Office has approved 2,000 no-interest repair loans totaling \$40 million to owners of leaky homes who are not otherwise able to pay for necessary repairs. The HPO would like to remind leaky condo owners that they do not need to be destitute to qualify for a repair loan. Owners do not need to cash in RRSPs, pension assets or the first \$10,000 in liquid assets. Seniors can have up to \$250,000 in liquid assets and still qualify.

For strata councils that have completed repairs to their entire buildings, or completed a major phase of repairs, the PST Relief Grant is available. Repairs completed on or after July 28, 1998, the date the *Homeowner Protection Act* was passed, are eligible for this grant. So far, 29 applications representing 1,370 units have been approved for the grant totaling \$527,000 in financial assistance.

Applications for the Homeowner's Reconstruction Loan and the PST Relief Grant are available on the HPO web site at www.hpo.bc.ca or by calling the toll-free information line at 1-800-407-7757.

IMPROVING THE QUALITY OF RESIDENTIAL CONSTRUCTION

As many of you know, the *Homeowner Protection Act* regulations on licensing and

Shayne Ramsay, CEO, Homeowner Protection Office. Mr. Ramsay's experience in the housing and Construction field goes back to 1986. He is the former Director of Development Services for the B.C. Housing Management Commission (1996-1998) & Housing Policy and Program Development with the B.C. Ministry of Municipal Affairs & Housing (1995-1996).

mandatory home warranties were implemented on July 1, 1999. Currently, the Homeowner Protection Office has licensed over 1,400 builders in the province. Homes built with building permits applied for on or after July 1, 1999 also have the stronger 2-5-10 home warranty insurance required by the *Homeowner Protection Act*.

As the next step in improving the quality of residential construction and consumer protection, regulations for licensing and warranty for major wall repairs is planned for this spring. Similar to the existing regulations for new home construction, these regulations on building envelope repairs will require repair contractors to meet minimum standards and provide for mandatory third-party warranties on repairs. A warranty of two years on labour and materials will apply to all repairs. Where the repairs involve more than 60% of the face of a wall, a five-year water penetration warranty would be required.

CONTINUED EDUCATION FOR CONDO OWNERS

During the last year the HPO has initiated education programs and materials to benefit both consumers and the residential construction industry. For owners of leaky homes, the HPO started free seminars on the process of managing major repairs. Seminars have been held in the Lower Mainland and southern Vancouver Island including: Victoria, Nanaimo, Colwood, Vancouver, Surrey, Coquitlam, North Vancouver and New Westminster. The HPO and local professionals provide information on responsibilities of a strata corporation, legal considerations, technical issues and financial assistance available through the Homeowner Protection Office. Condo owners, strata councils and property managers can call the HPO at 1-800-407-7757 for dates of future sessions.

In addition to providing assistance to groups in a seminar format, the HPO continues to offer one-on-one assistance to strata councils. HPO staff attends strata meetings to explain the loan program and PST Relief Grant to assist owners in their decisions to approve special assessments for necessary repairs. More than 100 stratas have received assistance through this program.

A 100-page guide called **Managing Major Repairs: A Condominium Owner's Manual** also provides useful information to owners of leaky homes facing repairs. This guide was produced by the HPO, the Ministry of Municipal Affairs and CMHC. One free copy is available for each strata council and is also available on the HPO Web site.

The newest publication available through the HPO is **Options for Resolving Residential Construction Disputes**. This guide provides plain language information on negotiation, mediation, arbitration and litigation for residential construction disputes and can be used by owners as well as other parties to the disputes. The guide outlines the details of the Notice to Mediate (Residential Construction) Regulation that was put in place in May 1999. This regulation was designed to provide a more cost effective and rapid solution to residential construction disputes for parties that have started legal action.

Under this regulation of the *Homeowner Protection Act*, any party to a residential construction dispute may deliver a Notice to Mediate to all other parties at any time up to 180 days before a scheduled Supreme Court trial date. A mutually acceptable mediator must be selected within 21 days of the Notice to Mediate being delivered to all parties. After a pre-mediation conference, the actual mediation session must be held within 150 days of the mediator being appointed.

The cost of the mediation session is shared by all parties and is concluded when the dispute has been resolved, the mediator determines the process will not be productive or the mediation session is complete and there has been no agreement to continue.

A copy of **Options for Resolving Residential Construction Disputes** available by calling the HPO or visiting the Web site.

Assistance to Condo Owners

The Homeowner Protection Office offers free, up-to-date information to assist homeowners and homebuyers. This information includes:

- **Managing Major Repairs—A Condominium Owner's Manual**
- **Options for Resolving Residential Construction Disputes—guide**
- **Application packages for no-interest repair loans and the PST Relief Grant for owners of leaky homes**
- **Buying a New Home: A Consumer Protection Guide**
- **Understanding Home Warranties—bulletin**
- **A registry of licensed residential builders**

For more information contact the Homeowner Protection Office:



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builder and nothing more. We keep our procedures short, to the point and user friendly. We help to resolve issues between a builder and his client with a minimum of fuss and paperwork and with a maximum of common sense.

The National has become the largest warranty company in the west because it offered a viable alternative to the status quo of the past 25 years, because it is recognized by the mortgage insurers such as CMHC and GE and backed up by great service, prompt turnarounds for information, and an easily approachable and knowledgeable team of dedicated personnel. We became the largest warranty company because we have earned the respect and trust of our builder members and the many other stakeholders that are part of the new home construction business – lenders, suppliers, government officials, etc..

The National is known for its leadership in the residential warranty business. Here are some examples:

- It was the first to offer builders a choice in warranty providers.
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- It was the first to offer a renovation warranty in western Canada and received recognition from the government of Alberta in its Regulations for this warranty.
- It helped to galvanize and focus the debate in British Columbia that led to the *Homeowner Protection Act*; many of the key points of the legislation were championed and advocated by the National.

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GERRY FANAKEN, *President*, VANCOUVER CONDOMINIUM SERVICES LTD.. Mr. Fanaken is an author, educator and businessman. He has been actively involved in the administration of strata corporations for over 25 years. His company currently manages some 225 residential strata corporations which represents approximately 13,000 individual strata units.

CORA D. WILSON, LLB, Condominium Lawyer with C.D. WILSON & ASSOCIATES. Cora was called to the Bar in 1986. Cora currently represents strata corporations from Victoria to Port Alice and the lower mainland.

SHARON KELLY, SHARON KELLY CONSULTING SERVICES INC., is an experienced mediator and arbitrator. She has an extensive background in property management and has taught courses at various colleges and private institutions. She is a member of the B.C. Arbitration and Mediation Institute and holds the designation "Chartered Arbitrator." Sharon has experience in mediating construction disputes and currently serves on the Board of Directors of The Mediation Development Association of B.C. She has met the qualification to be listed on the B.C. Mediator Roster Society.

ALLAN R. TRYON, *Partner*, CREASE HARMAN & COMPANY, Victoria, B.C.. Mr. Tryon was called to the B.C. Bar in 1978 and confines his practice to the area of civil litigation with emphasis on construction law, commercial law and insurance defence. Mr. Tryon represents several strata corporations involved in leaky condos.

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