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## **Strata Management after SPA Office Administration Nightmare**

*Kevin Thom, President*

TEAMWORK PROPERTY MANAGEMENT LTD.

The word "nightmare" brings visions of horrible beings and chaos. The new *Strata Property Act* is technically neither; however, it has produced a form of chaos to the professional strata management industry. The majority of management companies are very well organized in their production of financial statements and administration of files and records. With the introduction of the new act management companies have had to significantly alter their administration procedures to comply with the provisions of the act.

This fact combined with a huge increase in the disclosure requirements for the real estate industry has forced management companies to increase staff levels just to keep up with files, administration and information retrieval requests. These increased costs to the management companies are generally at present being absorbed because our clients feel that they are already paying us too much. A common response is "We are paying more for less service!"

Many of the changes brought about by the Act are in essence "hidden" from what our clients see through their day-to-day association with the property agent. Here are just a few examples

- 26 various prescribed forms – 7 previously
- format changes to general meeting notices (more material)
- format changes to financial statements
- separate accounting for contingency reserve funds and budget
- many new file categories for Strata Corporation records

**Kevin P. Thom, F.R.I., R.I. BC:** President of Teamwork Property Management Ltd. Mr. Thom has been involved in the Strata Management industry since 1975. He currently manages over 100 strata corporations in the lower mainland.

- applications for small claims court actions and attendance
- new bylaw creations, reproduction and registration
- legal liability/fines associated with failure to keep all records of the Strata Corporation accounted for
- storage/retention of all these files for six (6) years or more
- all the additional notices triggered by requirements for resolution approvals, hearings and petitions of owners
- the much expanded application of fines procedures and hearing process for bylaw/rule infractions.

The whole new emphasis of "access to information" and "disclosure" place management companies under huge stress for quick and accurate retrieval of information. Who pays for a staff member to effect security over Strata Corporation records while a disgruntled owner pours through years of records over several days in a vain search for some misdeed or wrong doing?

The Real Estate Sales industry has been under increased pressure to have vendors properly disclose property conditions, which has also been under extreme scrutiny due to the "leaky condo crisis." The SPA BC and the Vancouver

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Real Estate Board specifically established a joint task force to produce an information request form to assist both sales people and management companies in producing the requested information. The costs of the information retrieval in most cases is paid by the Realtor requesting the information. Consequently 90% of the requests are held until all other subjects are removed so that monies are not wasted and the management companies end up with rush requests for a deal to complete in 24 hours. The responsibility then rests with the management company to pull out all stops to complete these requests which could average 10 – 20 per day. This is all done on behalf of clients who do not see what we do on their behalf and are "paying our wages!!"

The Act itself is a tremendous improvement over the old act but has significantly expanded that unseen area of administration. The challenge is to educate our clients of the dramatic increase of our work load and its value to them.

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## Strata Managers – Are They in Crisis?

Cora D. Wilson, Editor

STRATA-SPHERE CONDOMINIUM SERVICES INC.

Many strata corporations are witnessing the value of high quality professional management particularly since the *Strata Property Act* came into force. Strata managers have struggled to cope with the monstrous additional administrative requirements, while feeling the financial noose tighten around their neck as clients demand more service for the same money. The strata managers are sinking into a quagmire of discontent.

Burnout is inevitable as strata managers find themselves working extraordinarily long hours, including evenings and weekends. Strata

corporations demand that strata managers deal with the major overhaul of the bylaws and micro manage major repairs. The managers are expected to be experts on the interpretation of the new Act. Lawyers, accountants, engineers and any other necessary professional in the field typically become the strata enemy as they demand reasonable payment for service. Typically there is little or no money in the budget for legal expenses. If the strata corporation is unable or refuses to engage the professionals, the burden of those tasks falls on the unwitting strata manager, together with all the inherent liability.

The risk of poor management is great. Funds may be improperly invested or the accounting methods may be found lacking. Unenforceable bylaws are adopted. The rights of individual owners are run rough shod as aggressive managers attempt to foreclose on the alleged “nay” sayers. Harmony is jeopardized and life becomes more miserable to all concerned.

What is the solution? Strata management prices must rise to provide a level playing field to the managers. As competition is already stiff, strata corporations may elect to retain strata managers with less experience who are prepared to work for less money. The quality of management services may fall in the short term. However, when licencing becomes a reality, education will become a focus and those who are unable to meet the standard will fall by the way side.

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## Paying Council Members

Gerry Fanaken, President

VANCOUVER CONDOMINIUM SERVICES INC.

It was in the early 1970's when I first got involved in strata corporation administration. I was the chairman of my strata council in a 115 unit high-rise building in downtown Vancouver. There were few management firms to choose from so we decided to "self-manage" – quite a task for the size of the property. It involved everything from collecting cheques to doing the landscaping.

Self-management is a very commendable concept. I often wonder why more strata corporations do not opt for this approach because it does save money. The problem is that few condo owners are really prepared to give time to be on council let alone provide free management services. Indeed, I have witnessed great dissention and resentment by non-participants about those owners who do give generously of their time, talent and effort to be on council at no cost to the strata corporation. Should council members be paid?

I was very fortunate in my strata. At the end of each fiscal year for the first three years, we (the council) had saved our corporation great gobs of money and the owners were most grateful. So grateful in fact that they voted an honourarium to us at each annual meeting. I recall the total being about \$3,000 each year – a handsome thank you.

**Gerry Fanaken**, President, 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 over 200 residential strata corporations which represents approximately 13,000 individual condominium units.

Today I rarely see such tangible expressions of gratitude even though I manage about 200 strata corporations. Even the concept of picking up the tab for a council dinner seems to be a thing of the past. What with higher insurance premiums, gas costs, CRF allocations and so on, it is clear that finding a few bucks to say thanks to the council is no longer a consideration. Now a round of applause at the AGM is about it for appreciation.

The governing law has changed and it is very important to be aware of the new requirements of the Strata Property Act. The old Condominium Act was silent on the matter and payments, such as the ones I used to get, could be simply generated as I have outlined. Section 34 of the *Strata Property Act* says:

### **Approval of council member remuneration**

*Any remuneration paid to a member of council for the member's exercise of council powers or performance of council duties must be approved in advance of payment*

- (a) in the budget,
- (b) in the bylaws, or
- (c) by a resolution passed by a 3/4 vote at an annual or special general meeting.

Note first that the money has to be allocated in the budget. It is not sufficient to say that the council saved money and, since there is a surplus at the end of the year, a portion of it can be given to the council. (That's what we did back in the 70's). If payment is to be made, it must be either a line item in the budget or specifically included in one of the budget categories which is voted on by the owners as part of the AGM process.

Secondly, presuming that there is money in the budget, the owners have to approve the payment either by having a bylaw in place or by passing a 3/4 vote resolution. It is highly unlikely that any strata corporation will ever create and pass such a bylaw so that means in virtually all cases, payments will be generated on a one-time basis by a vote at an AGM or SGM.

Both these statutory requirements must be met although I predict that many owners will ignore the requirement (much less be aware of it) if they feel passionately about rewarding their council for a job well done in a given year. Technically, a token payment of \$100 would violate the *Act* but is it likely a dissenting owner would litigate to correct such a minor wrongful act? No, but he/she could badger the council about it to the point that council members regret accepting payment.

It's one thing for the owners at an AGM or SGM to award payment without compliance with the statute. It is completely another thing for a council to award itself or a member of council a payment by merely passing a resolution at a council meeting. Don't do it.

As a closing thought, legal procedures aside: should council members be paid to carry out their duties?

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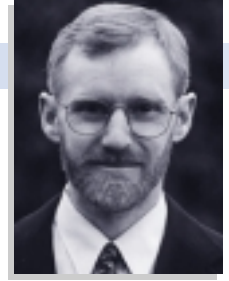
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## Maintenance Planning and Your Strata Manager

Ian Stuart, Property Manager

NEWPORT REALTY PROPERTY MANAGEMENT



The importance of properly planned and completed maintenance of the assets and structures of the Strata Corporation cannot be overlooked. This statement applies equally to both strata councils and strata managers. Unfortunately all too often maintenance takes on a reactive nature rather than a preventive one. Planning for the needs of strata is often as individual as the strata. The purpose of this article isn't to provide so much of a "how to" guide, as it is to stimulate the thought process of how your Strata Corporation plans for maintenance.

Long term planning by using depreciation reports and predictive maintenance schedules can help keep a strata "on-track" both financially and operationally. For readers not familiar with the depreciation reports this is a worthwhile optional item in the *Strata Property Act*, (Section 94) It is interesting to note that, while not mandatory in British Columbia, other provinces and many states make the producing and maintaining of this type of report a mandatory requirement of Strata Corporation budgeting process.

Strata Corporations that have undergone building envelope remediation should have a comprehensive maintenance manual associated with that work. In addition a plan should be in place to ensure that the recommended schedule of inspections are being followed. In cases where warranties are in place this inspection and maintenance work is required to preserve the warranty. Strata council should consult with both the engineers and legal counsel about incorporating the required warranty maintenance in the bylaws of the strata.

Often the adherence to a good and comprehensive maintenance plan relies on the make-up and dedication of the Strata Corporation's council. The strata manager can't and should not replace the strata council in arriving at the maintenance priorities of the Strata Corporation. Beyond the basics (janitorial, roof, elevator, etc.) councils should set priorities that reflect the owners needs and wants. This should not mean that items are neglected because owners can't agree on how to deal with them, but it should mean the maintenance takes into account the age and nature of the strata, The strata manager's role in the planning for maintenance should be to assist the council in the development and budgeting of the maintenance needs. Once given direction by council however the strata manager should be left to arrange the quotes and work required.

When deciding who should perform a maintenance task the strata manager (and council) needs to consider several factors: Is the person qualified? Do

**Ian A. Stuart:** A property manager for over 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.

they have enough insurance? Are they able to perform the work in a timely fashion? Is the price competitive?

Allowing price to be the deciding factor is often a mistake. The use of properly qualified personnel will often result in a more satisfactory job. Both routine and major maintenance work should be entered into a maintenance log maintained by or for the council. This log will greatly assist the future councils and the strata manager with their planning.

All strata managers and councils must be able to provide both current owners and buyers with evidence that due diligence is being done. Nothing helps do this better than an up-to-date depreciation report and maintenance planning log.

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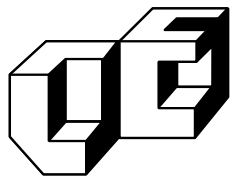


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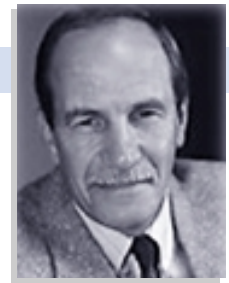
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# Contingency Reserve Fund

Dale Harder, Senior Property Manager  
DIVERSIFIED PROPERTIES LTD..

The contingency reserve fund is one of the most important assets of a Strata Corporation, and yet one of the least understood or appreciated. The word contingency, according to Webster's Dictionary, means "a chance or possible event." Hence the *Strata Property Act* ("SPA"), Section 92 (b), defines the contingency reserve fund as "a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur."

Common questions that arise regarding the contingency reserve fund are as follows:

## 1. How is the amount of a contingency reserve fund determined?

Section 93 (3) of SPA states that "If, at the end of any fiscal year after the first annual general meeting, the amount of money in the contingency reserve fund is less than 25% of the average yearly expenditure, the annual contribution to the contingency reserve fund must be at least 10% of the total contribution to the operating fund for the current year". For example, if the annual operating budget were set at \$40,000.00, the minimum amount required for the fund would be \$4,000.00. However, if the contingency reserve fund has reached a level of \$10,000.00 or more (ie. 25% of \$40,000.00), it would not be necessary to continue to contribute to this fund.

## 2. Is there a maximum amount for a contingency reserve fund?

No. Once a Strata Corporation's contingency reserve fund reaches the 25% as required by law, it is not necessary to continue to contribute to this fund unless an expenditure is made that would deplete the fund to an amount less than the 25%.

**Dale Harder** began his career in property management with Diversified Properties Ltd. in 1986. He is licenced with the Real Estate Board Council of British Columbia and has a broad range of experience in managing both residential and commercial properties.

## 3. Is there a recommended amount for a contingency reserve fund?

No. Each Strata Corporation must decide what it would consider to be a sufficient amount. However, some Strata Corporations set an amount of 1% of the total insured value of the building(s) as a goal to reach for the contingency reserve fund. For example, if the buildings were worth \$20,000,000.00, the contingency reserve fund would be \$200,000.00. The reasoning behind this calculation is that it allows the Strata Corporation, in the event of a major catastrophe such as an earthquake, access to sufficient funds to cover the insurance deductible without the need of a special levy.

## 4. Can the contingency reserve fund be invested?

Yes. However, caution must be exercised to ensure that the investment is legal and in no way compromises the fund. Section 95 (2) of SPA states that "The Strata Corporation must invest all of the money in the contingency reserve fund in one or the other or a combination of the following:"

- a) those investments permitted to a trustee under section 15 of the Trustee Act;
- b) insured accounts with savings institutions of British Columbia.

Such investments could include Federal or Provincial Bonds or GICs.

If the contingency reserve fund is deposited in a single account with a chartered bank or trust company, the Strata Corporation should be aware that any single account is insured by the Canada Deposit Insurance Corporation to a maximum of \$60,000.00. If the account is deposited in a credit union, the insured amount is \$100,000.00.

It is recommended that a portion of the contingency reserve fund be kept liquid so that it is easily accessible to the Strata Corporation in the event of an emergency.

## 5. When can the contingency fund be used?

A Strata Corporation must not spend money from the contingency reserve fund unless the expenditure is consistent with Section 92 (b) of SPA (see introduction) and has first been approved by a resolution passed by 3/4 vote at a general meeting. However, an unapproved expenditure is allowed if there are reasonable grounds to believe that it is necessary in order to ensure safety or prevent significant loss or damage. For example, if a building's roof were to collapse, it would be imperative that the Strata Corporation initiate repairs immediately in order to minimize damage from the elements. The contingency reserve fund could be used in such a situation. The expenditure, however, must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage. The Strata Corporation must inform all owners as soon as possible concerning such expenditure.

As noted from the above, the proper management of the contingency reserve fund is a responsibility that any Strata Corporation should take seriously. By doing so the Strata Corporation will provide a measure of financial stability to individual Strata Lot owners, and will enhance the overall viability of the Corporation.



**DALE HARDER**  
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## Containment Of Unbudgeted Expenditures

Ron Reynolds, Property Manager  
MGL REALTY SERVICES LTD.

Why is it that unexpected bills and expenses always appear at exactly the wrong time? As managers diligently endeavour to maintain the budget and keep the corporation expenditures on track the unforeseen expenses inevitable arrive to keep you on your toes.

Prudent strata corporations will usually allow for minor unbudgeted expenses by including non-specific expense categories for miscellaneous items and factor small allowances in their remaining expense categories for inflation. Unfortunately, the issues become more complex when considering larger unbudgeted expenses and many corporations may have to make significant changes to their operating budget or seek the advice of professionals with an intimate knowledge of the act to ensure compliance with all the terms and conditions within it.

There are many sections of the *Strata Property Act* that must be considered before you can accurately determine what course of action to take with larger unbudgeted expenses. Sections 96 and 97 and associated references, clearly identify the expenditures that can be accurately and legitimately assessed to either the operating budget or contingency fund. All expenditures that fall outside of the parameters of section 96 and section 97 must be consistent with the terms and conditions of section 98 of the Act.

**Ron Reynolds:** Has been a property Manager in Nanaimo for over 7 years and works exclusively with strata corporations for MGL Realty.

Section 98 of the *Strata Property Act* simply states that all unbudgeted expenses not necessary to ensure safety or prevent significant loss or damage cannot exceed \$2,000 or 5% of the operating budgets revenue for that year unless there is a bylaw that provides otherwise.

A majority of the large and unforeseen expenses you are likely to encounter such as repairing a leaking waterline or the emergency repairs to a problem roof would meet the criteria for being legitimate contingency fund expenditures and simply be expensed as such.

The real task of financial management begins when you encounter those large expenses that must be undertaken but fail to meet the criteria necessary to be considered a legitimate contingency fund expense.

Consider the strata corporation whose owners approved an annual budget that was identical to the previous year, which had shown a small operating surplus. Three months into the fiscal year, it encountered the first of three large unbudgeted expense items. A fire started by vandals on the outside of a townhouse results in an insurance claim with a \$1,000 deductible payable by the strata corporation. One month later the exterior parking lot lights went out and a bill to correct the problem is submitted for payment in the amount of \$1,275.00.

The last, and least anticipated unbudgeted expense item, was the renewal of the strata corporations' insurance policy. The Sept 11 tragedy combined with the earlier claim resulted in a 60% increase to this year's premium and an additional \$1,500 over and above what had been budgeted by the owners at the Annual General Meeting. The strata corporation had already exceeded their budget by over \$3,700 with 6 months remaining in their fiscal year.

Failing to compensate for the additional expenditures and ending the fiscal year with a \$3,700 deficit would be in contravention of the Act and leave council and managers susceptible to criticism and possible litigation from the other owners!

The direction taken by council was simple and straightforward. Council held a meeting and informed the owners of the unbudgeted expenditures to date with a proposal to address the problem added to the minutes and distributed to all owners.

Subsequent consultation with the corporation's legal counsel, who is well versed in the various sections of the *Strata Property Act*, revealed that section 158 (3) of the Act allows the \$1,000 insurance deductible to be paid as a legitimate contingency fund expense.

In the interim, sufficient funds were borrowed from the contingency reserve fund to cover the remaining \$2,800 of these expenses from the operating account.

An argument could have been made that the increased insurance premium represented an expense necessary to prevent significant loss or damage, but council decided to accept the expense as an unbudgeted item. They were successful in reducing or deferring various landscaping and other non-essential budget items to point that the remaining deficit fell within the limits of unapproved expenditures as set out in section 98 of the *Strata Property Act*.

Maintaining current financial records is essential to avoiding the problems and liability associated with excessive unbudgeted expenses. The assistance of professionals specializing in strata property matters will allow you to limit your exposure to unbudgeted expenses with tools such as depreciation reports that accurately foresee and prepare for the strata corporations maintenance needs. Strata corporations should always be in a position to immediately assess and respond to unbudgeted expenses in order to ensure compliance with section 98 of the Act.

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# Unauthorized Expenditures - What Do You Mean It's Not \$2000 Per Expenditure?

Tonya Cains, Property Manager  
CORNERSTONE PROPERTIES LTD.

So, the January 1, 2002 deadline has come and gone. You have now either passed and filed your new Bylaws at Land Title's or you are bound by the Standard Bylaws attached to the *Strata Property Act* ("SPA").

Gone are the days prior to SPA in which many strata councils had become accustomed to interpreting section 49 of the *Condominium Act* as allowing unbudgeted expenditures of \$500.00 per item, not including "emergency" situations. Most strata corporations had even increased that amount in their bylaws. As such, we would spend \$500.00 here and \$500.00 there and in case of emergencies the sky was the limit. Well, no more!

If you have chosen to adopt the Standard Bylaws attached to the Strata Property Act or for whatever reason you have not yet filed new Bylaws, pay careful attention to Section 98 of SPA. This section, dealing with unapproved expenditures, states that if an expenditure has not been approved in the budget or at a general meeting your strata council may only spend \$2000.00 or 5% of the total contribution to the Operating Fund for the current year, in total.

Strata Corporations have entrusted their Strata Councils to act honestly and in the best interests of the strata corporation. As such, the strata council should not have to call a general meeting in order to perform the duties of the Strata Corporation, as they have already been instructed to do.

Any one who has ever worked on a budget knows, and those who haven't can imagine, how difficult it is to foresee every possible expenditure. As such, Strata Councils require more flexibility than what is provided for in SPA.

Something unforeseen can always happen. Who can forget the hoops we, in Victoria, had to jump through last spring when the Capital Regional District imposed water restrictions? We either let our plants die, watered them ourselves with a hose for a few hours each day or spent a significant amount of money to upgrade our irrigation systems in accordance with the CRD watering restrictions.

In addition, there are many circumstances which, while, they do not fall under the category of "emergency" they may be of a time sensitive nature and as we know, there is a significant delay caused by the notice requirements of the SPA.

The sky is the limit still applies to "emergency" expenditures. The Strata Corporation must establish that there are reasonable grounds to believe that

**Tonya Cains.** Property Manager, Cornerstone Properties Ltd., Victoria. Ms. Cains has 8 years experience managing both residential rental units and Strata Corporations for Cornerstone Properties Ltd., Victoria.

an immediate expenditure was necessary to ensure safety or significant loss or damage. Once this is done, the expenditure may be made out of the Contingency Reserve Fund or the Operating Fund without the requirement for a 3/4 vote of owners at a general meeting.

It has been my observation that most strata corporations are adjusting the \$2000.00/5% amount by way of a Bylaw, according to the size of the operating budget.

Unless your strata corporation wants to call a general meeting every time something unforeseen happens, you may wish to provide your strata council with the flexibility it needs to effectively govern your building, by changing your bylaws to increase the monetary amount for unbudgeted expenditures.

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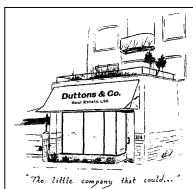
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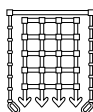
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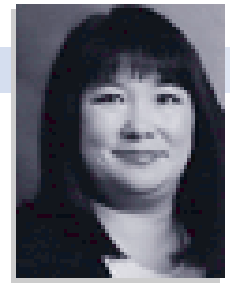
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## Preparing and Conducting a General Meeting

Malley Margetts, CPM  
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A general meeting, whether an Annual General Meeting or a Special General Meeting, is an opportunity for owners to meet and make decisions for their strata corporation. An Annual General Meeting must be held no later than two months after the fiscal year end [Section 40(2) of the *Strata Property Act* (SPA)]. A Special General Meeting can be called at any time by the Strata Council or the President or 25% of the owners petitioning in writing to bring forward a resolution or raise a matter.

Under the SPA there are two new methods for holding meetings. A general meeting can be waived if 100% of all eligible voters waive the requirement in writing and consent to resolutions that approve the budget for the coming fiscal year, elect strata council by acclamation, and deal with other business. [Sections 41 and 44]. Another method is electronic attendance at meetings, where the strata corporation, by bylaw, provides for participation by all persons through communicating with each other during the meeting by telephone or any other electronic method [Section 49].

The usual method of calling a meeting is delivery by mail, in person, under the door, or by fax. A minimum of two weeks notice must be given. The notice requirement is the same whether it is an Annual General Meeting or a Special General Meeting (exception is owners petitioning for a Special General Meeting, then the meeting is held within four weeks). The meeting can be held after eighteen clear days if mailed, i.e. on day 20 or later. If it is hand delivered, then the meeting can proceed on day 16 or later. Notice is sent to all strata lot owners, a mortgagee who has filed a "Mortgagee's Request for Notification (Form C)" or a tenant (assigned the right to vote, family member, or has a lease of three or more years). Failure to give proper notice of a general meeting does not invalidate a vote taken at the meeting as long as a reasonable attempt has been taken to give notice [Section 47].

The notice states the date, time, and place of the meeting. It must include an agenda, which the strata council sets, under Order of Business, Section 28 of the Schedule of Standard Bylaws or in the strata corporation bylaws. A description of matters to be voted on, including proposed wording of any resolutions requiring 3/4 or unanimous vote are also included [Section 45(3)]; as well as any matter that 25% of the owners demand in writing. A financial statement for the past fiscal year, proposed budget, and Schedule of Assessments must be included in the Annual General Meeting notice. A Proxy Appointment form is enclosed for any owner who cannot be at the meeting and wants to appoint a proxy to vote on his/her behalf.

**Malley Margetts, CPM**, is a Property Manager with Brown Brothers Agencies Ltd. in Victoria for 23 years. For the last 17 years specializing in the management of strata corporations. Mrs. Margetts received her Certified Property Manager designation through the Institute of Real Estate Management in 1988.

Upon arrival at the meeting eligible voters sign in and present their proxies, if any. A voting card is issued to each owner entitled to vote. Each strata lot has one vote. The strata corporation may by bylaw, prevent an owner in arrears from voting unless a unanimous vote is required, if the strata corporation is entitled to register a lien against that strata lot.

Section 26 allows tenants or occupants attendance at the meeting, whether they are eligible to vote or not. They can participate in discussions if permitted by the chair. However, ineligible voters can be asked to leave if a majority vote or 51% pass a resolution.

The secretary of the strata council usually records the minutes. The property manager or a recording secretary may record the minutes, if these services are contracted for. The secretary records the business of the strata corporation, in accordance with the agenda sent out to the owners. The number of votes are recorded, in favour, against, or abstained. Ratification of rules, budget, and election of the strata council require a majority vote to pass. A resolution requires 3/4 vote or unanimous vote to carry. Amendment(s) to a resolution requires 3/4 vote (used to be a majority vote) to pass.

Before the meeting can proceed a quorum must be established. A quorum is 1/3 of the owners (2/3 if fewer than 4 strata lots or owners) represented in person or by proxy, unless otherwise provided for in the strata corporation bylaws [Section 48(2)]. That may not seem a lot but there have been occasions where owners have gone knocking on doors to reach that quorum. If a quorum is not present within 1/2 hour from the appointed time, the meeting stands adjourned to the same day, same time, and same place the following week [Section 48(3)]. Then the meeting will proceed within 1/2 hour from the appointed time whether a quorum is reached or not, and the eligible voters present in person or by proxy constitute a quorum.

The meeting is conducted in accordance with the Order of Business on the agenda. The roll call is given: total represented – in person and by proxy, and voting cards issued. The meeting proceeds when a quorum is established. A person is elected to chair the meeting, if necessary – usually it is the President of the Strata Council. The property manager is there to assist the chair with the SPA, strata corporation bylaws, procedural matters, etc. It is the chair's job to maintain order during the meeting. Comments and questions are directed to the chair. The chair may have to establish time limits so that all owners are given the floor to have their say. The better informed owners are, the easier it is to vote in the best interest of the strata corporation.

Proof of notice of the meeting is filed stating date and method of delivery. The last set of general minutes is approved; any amendments, errors, or omissions are corrected. A motion is made, moved and seconded, vote taken, and passed by a majority vote. Any unfinished business is brought up. Decisions made by Strata Council of unapproved expenditures [Section 98] are ratified.

Committee reports are presented – President, maintenance, grounds,



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bylaws, - depending on the committees set up. There may not be separate reports if the activities and decisions of the Strata Council are covered in the Council minutes.

Rules must now be ratified at the Annual General Meeting [Section 125]. Any rules concerning the common property or common assets, put in place during the year by the strata council, must be ratified at the meeting by majority vote or they cease to have effect after the meeting. Copy of the rules is sent out with the notice.

Another new area is a report on insurance coverage [Part 9 – Insurance] at the Annual General Meeting. The strata corporation must review annually the adequacy of the insurance coverage on their strata. This is an opportunity for owners to discuss the coverage and decide on an insurance appraisal for full replacement value.

A financial statement must now be presented to the owners at the Annual General Meeting, separating the operating fund from the contingency reserve fund; presentation of opening and closing balances, revenue collected, and expenses paid out [Regulation 6.7]. A motion requires a majority vote to pass the financial statement. A year end financial statement must be sent to the owners within 8 weeks after the fiscal year end, if not presented at the meeting.

The proposed budget is presented at the Annual General Meeting [Section 103 and Regulation 6.6]. Any surplus or deficit operating funds must be dealt with. Revenue and expenses are reviewed. Amendments require a majority vote to pass. The Schedule of Assessments must show contributions to contingency and to operating. A motion requires a majority vote to pass the budget and any increases in assessment payments.

New business is presented next. Prior notice of any resolutions must be given with the notice of meeting, including exact wording of the resolution. Any amendment(s) must not alter the intent of the resolution and requires a 3/4 vote. Monies to be spent must specify an amount and where payment is to be made from. Any resolution passed by a 3/4 vote at an Annual or Special General meeting by less than 50% of the strata corporation's votes must wait one week before it is implemented, in case 25% of the owners petition for a Special General Meeting to reconsider the resolution [Section 51]. However, a resolution can be implemented immediately if it is to ensure safety or prevent significant loss or damage. During this part of the meeting, owners are given the opportunity to bring up concerns, questions, etc. so that they can be addressed now or referred to the incoming council.

Election of a strata council is the second to last order of business. The Standard Bylaws specifies 3 to 7 members unless otherwise stated in the strata corporation bylaws [Section 29]. A motion requires a majority vote to pass.

Termination of the meeting ends the business section of the meeting. Motion is made to terminate the meeting and voting cards are returned.

In summary, it is important to ensure that the preparation of the general meeting notice is as complete as possible. This helps owners make informed decisions, whether they are present at the meeting, or appoint a proxy. It is the property manager's job to assist the chair to run the meeting in accordance with the SPA, strata corporation bylaws, and the owners' wishes. After all the strata corporation is a business and the meeting should be conducted accordingly.



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# Strata Manager Licensing – What's the Status?

HOMEOWNER PROTECTION OFFICE

Support for potential strata manager licensing has increased over the last few years. This article reviews how this potential licensing scheme has evolved over the past few years and indicates the current status of the situation.

Currently, property managers must be licensed to manage rental units; however, a licence is not required to manage strata properties. Many stakeholders have expressed concern with respect to the potential vulnerability of strata corporations who hire unregulated firms to manage finances and hold strata funds.

The first Barrett Commission report on the Quality of Residential Construction in British Columbia was released in 1998. This report recommended the licensing of strata property managers by the Homeowner Protection Office.

Since the release of that report, the provincial government decided in 1998 that licensing would be undertaken by the Real Estate Council of B.C. through an amendment of the *Real Estate Act*. Realtors and rental property managers are currently required to be licensed by the Real Estate Council. The *Real Estate Act* is administered by the Ministry of Finance. The amendment to the *Real Estate Act* was never brought into force.

Recommendations from the second Barrett Commission on the Quality of Residential Construction in 2000 restated the Barrett I recommendation that the Homeowner Protection Office should take on the licensing function after proper consultation with industry.

The purpose of licensing and regulating strata managers would be to:

- ensure that strata managers have minimum appropriate skills and knowledge to provide strata management services to strata corporations
- ensure that strata managers are more accountable for their management of the common property, assets and affairs of strata corporations, and
- exempt self-managed stratas from the requirements of licensing.

On October 16, 2000 a white paper was released by both the former Ministry of Social Development and Economic Security and the Ministry of Finance proposing regulatory options administered by either the Homeowner Protection Office under the *Homeowner Protection Act* or the Real Estate Council of B.C. under the *Real Estate Act*.

Following the white paper and a month-long consultation process, the Province announced in April 2001 that it had selected the Homeowner Protection Office to administer strata manager licensing. Enabling legislation to allow the Homeowner Protection Office to license strata managers under the *Homeowner Protection Act* was also introduced at that time.

What's happening now? The Homeowner Protection Office, like all Crown corporations, agencies, boards and commissions is participating in the provincial core services review process. All entities subject to the core services review process must address three key questions for each mandate area:

- Is there a compelling public interest to continue?
- Is it affordable?, and
- Must the provincial government deliver the program?

The HPO anticipates it will make its presentation to the Core Review and

**The Homeowner Protection Office** is a provincial Crown corporation established to increase consumer protection for homeowners and bring about an improvement in the quality of residential construction. The HPO's program areas include: licensing of residential builders and building envelope renovators, setting the standards for and monitoring the third-party home warranty insurance system, a research and education function in the areas of consumer information and building science, and financial assistance for owners of leaky homes.

Deregulation Task Force, chaired by the Premier, in April 2002. A decision by the task force is expected shortly after the presentation which may, or may not, have an impact on the Homeowner Protection Office's future operations or delivery mechanisms. As a result, the development of the strata manager licensing regulations has been on hold pending the outcome of the Homeowner Protection Office Core Services Review.

In the meantime, all other program areas of the Homeowner Protection Office are continuing as usual. The end of 2001 marked a change in focus for the office. We will devote more of our efforts toward home warranty insurance and improved residential construction quality issues and less on issues involving building envelope failures.

Although leaky condos remain an important issue with an estimated 25,000 homes still to be repaired, declining participation at our previously well-attended public Condominium Repair Process Seminars indicates that the saturation point has been reached. Consequently, the office will now rely on evening, on-site strata meetings at individual leaky buildings as the means providing education on the repair process and financial assistance programs.

We continue to provide no-interest repair loans and PST Relief Grants to help owners of leaky homes avoid foreclosures due to the cost of building envelope repairs. Over time, the value of these repaired homes will increase.

The need for the Homeowner's Reconstruction Loan program continues to be strong. The decreasing number of applications received each month also signals that we likely have reached the peak of the repair work that must be performed. Currently, we have approved 6,751 homeowner loans and 30 co-operative housing loans, representing an additional 1,761 homes, totaling over \$206 million in financial assistance.

As of March 1, there were 2,591 licensed residential builders and 75 licensed building envelope renovators in the province. Building permits representing over 32,000 new homes have been applied for under the *Homeowner Protection Act* consumer protection regulations. The office continues to monitor the five private-sector home warranty insurance providers.

Research and education efforts in building science are also well underway. The results of several recently completed research projects were presented at an all-day symposium for the industry to ensure that the information is available to people who use it in the field. Consumers as well as homebuilders are the beneficiaries of the research and education activities of the office, which are improving the quality of residential building design and construction.

Information about the Homeowner Protection Office and its programs can be obtained by contacting the toll-free information line at 1-800-407-7757 or by visiting the Web site at [www.hpo.bc.ca](http://www.hpo.bc.ca).



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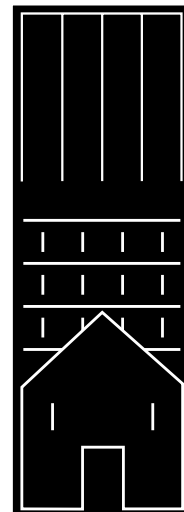
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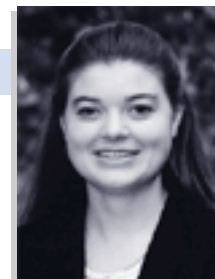
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## Terminating a Strata Management Contract

Sharla M. Haney, Condominium Lawyer and Litigator  
C.D. WILSON & ASSOCIATES

Strata Corporations that are unhappy with their strata management services often seek legal advice on terminating strata management contracts. There are many reasons why a Strata Corporation may consider terminating a strata management contract, including, dissatisfaction with strata management services, or a strata manager's mismanagement of funds or failure to carry out contractual duties and obligations.

There are several ways to terminate a strata management contract, including:

- Do not renew the contract upon its expiry;
- Terminate the contract pursuant to the contractual terms; or,
- Terminate the contract pursuant to section 39(1) of the *Strata Property Act*.

The simplest and least controversial method of terminating a strata management contract is to simply permit the contract to expire and fail to renew the contract. Most strata management contracts will have a specific term with a right for the Strata Corporation to renew the contract for longer periods of time. However, some strata management contracts will have a specific term, but the contract will automatically be renewed from year to year thereafter unless the Strata Corporation provides notice of termination. Strata Corporations should read their strata management contracts carefully and seek legal advice, if necessary, to ascertain the contractual term and examine any renewal provisions to determine the appropriate course of action.

Another option available to strata corporations is to terminate their strata management contract in accordance with its terms. Most strata management contracts will have a provision permitting early termination of the contract. For example, a typical provision might provide for termination of the contract by either party upon notice. The notice periods are typically between one and six months. Cause may be a precondition to termination on this basis. Alternatively, the contract may simply permit either party to terminate upon notice and for any reason. A strata corporation electing to terminate a contract should consult with legal advice to ensure that members are not exposed to any liability or damages as a result of improper action.

Finally, a strata corporation may terminate a strata management contract by complying with section 39(1) of the *Strata Property Act* which states that "a contract entered into by or on behalf of the strata corporation for the

**Ms. Haney** graduated from UBC Law School in 1999 and was called to the Bar in 2000. She is not only a lawyer, but an award winning former franchise owner and scholastic achiever.

provision of strata management services to the strata corporation may be cancelled, without liability or penalty, despite any provision of the contract to the contrary,

- (a) by the strata corporation on 2 months' notice if the cancellation is first approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
- (b) by the other party to the contract on 2 months' notice."

As long as the strata corporation obtains a 3/4 vote of the owners and provides the strata manager with at least 2 months' written notice of termination, this provision of the *Strata Property Act* permits a strata corporation to terminate a strata management contract without any liability for termination.

It is important to note that strata managers can no longer protect their contracts by soliciting proxies to vote against a termination resolution. Section 56(3) of the *Strata Property Act* states that property managers may only be proxies if permitted by regulation and subject to prescribed restrictions. To date, no regulations are in force that would permit a strata manager to hold proxies.

Section 39 of the *Strata Property Act* also provides a remedy for a strata manager who wishes to terminate a strata management contract. A strata manager may terminate a management contract without liability or penalty despite any provision in the strata management contract, also upon two months' notice.

The *Strata Property Act* also deals with strata corporation records upon termination of a strata management contract. A strata manager must give to the strata corporation all records referred to in section 35 of the *Strata Property Act* that are within their possession or control within 4 weeks of the end of the strata management contract. Some examples of the records referred to in section 35 of the *Strata Property Act* include minutes of annual and special general meetings, minutes of council meetings, books of account, any resolutions that deal with changes to common property, written contracts to which the strata corporation is a party, budgets and financial statements, income tax returns, bank statements and other records.

The *Strata Property Regulation* provides that a strata manager who fails to return strata corporation records within the 4 week period must pay \$1,000.00 to the strata corporation. The requirement to return strata corporation records is a mandatory statutory provision. If a strata corporation is asked by a strata manager to sign a waiver of liability as a condition to the return of the strata corporation's documents, don't sign it. If you are in doubt, seek legal advice.

Strata Corporations should remember that, although termination of a strata management contract is an available option, it may not be an appropriate solution in every situation. Many differences between strata corporations and their strata managers can be resolved through communication, renegotiation of the strata management contract or other dispute resolution mechanisms such as mediation or arbitration. Therefore, termination is only one of the options available to a strata corporation that is unhappy with their strata management services.

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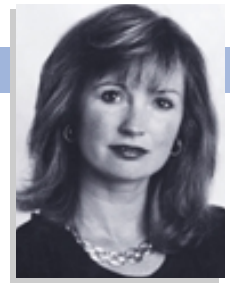
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## “Hardship” - What Does it Really Mean?

Cora D. Wilson, Lawyer and President  
C.D. WILSON & ASSOCIATES

The question is frequently posed, “When should a strata corporation grant the owner the right to rent a strata lot on grounds of hardship? A battle typically rages between the strata council which desires to exclude rentals and the owner who believes that he or she is suffering in some way and should have the right to rent. The strata council refusing to permit an owner to rent on grounds of hardship may face an application in the Supreme Court for an order granting the exemption in any event.

By way of background, an owner may apply to the strata corporation for an exemption from a rental bylaw on the grounds of hardship pursuant to Section 144 of the *Strata Property Act* (“SPA”). The owner must apply, in writing, and state the reason why he or she thinks the exemption should be granted and whether or not the owner requires a hearing. This provision appears to require a subjective test of hardship (ie. What does the owner think?) as opposed to an objective test (ie. What would a reasonable person think?). Clear cut direction on what documents a strata council may require to support the application is glaringly absent.

Section 144(6) of SPA provides that the strata corporation must not unreasonably refuse to grant the hardship exemption. So what does this mean?

Strata Councils frequently ask the question, “Can we ask an owner to provide us with evidence of financial hardship ie. financial statements and other documents to support the allegations. Many believe that an owner’s financial documents are personal and extremely sensitive. A recent case appears to point towards a solution.

In *Als v. Strata Corp.* NW1067 [2002] B.C.J. No. 145, 2002 BCSC 134, Vancouver Registry No. L013649 (B.C.S.C.), J. Burnyeat addressed the issue of hardship. The owner argued that the grounds to establish hardship were as follows:

- the assessed value of the strata lot was lower than the amount of the mortgage by approximately 33%
- the owner’s employer transferred him to another city so accommodation costs were duplicated
- the owner would suffer a substantial loss if he sold at this time
- the insurance of the strata lot may be at risk due to prolonged vacancy

The strata council refused the request on grounds that there was insufficient evidence to establish that the inability to rent the strata lot was a financial hardship. The court agreed.

**Cora D. Wilson**, Lawyer and President of C.D. WILSON & ASSOCIATES. Ms. Wilson is a condominium lawyer, educator and author. She currently represents numerous strata corporations wherever they are located in British Columbia. She is the author of the Do-it-Yourself Bylaw Package. She is the editor of Strata-sphere Condominium Services Inc..

There was no mention of financial loss or figures given to suggest or prove hardship would be suffered as a result of the move. The strata lot owner refused to provide a financial statement on grounds that it was “very intrusive”. The financial information provided indicated that the strata lot owner received an incentive ie. his base rent was paid by the employer.

It is worthy of note that legal counsel requested evidence of other hardship applications from the strata council. The strata council refused this request on grounds of confidentiality. This is a common occurrence. The Court did not disagree.

If the strata council is not required to disclose confidential information of owners to other owners, then this gives the owner producing this information some comfort. However, the question of whether or not this information is compellable by another owner still remains unanswered. A specific ruling is required from the Court before one may conclude that confidentiality applies.

The following principles emerged out of J. Burnyeat’s review of the case law:

- the fact that the present sale value of a strata lot exceeded the purchase price of the strata lot was “not relevant”
- unsuccessful efforts to sell a strata lot at various prices and the devaluation of the Canadian dollar could not be relied upon to establish hardship
- economic hardship alone is insufficient to establish hardship; however, economic hardship combined with a “leaky condo” is probably “hardship”
- the question of hardship must be decided based upon the facts of each particular case
- loss of rental revenue as a result of a new ban on rentals combined with a decrease in resale value constituted financial hardship
- evidence showing that the strata lot owner may face financial ruin due to debt service constituted hardship
- inability to sell a strata lot alone is not a sufficient ground to find hardship

Other factors to consider may include:

- inability to obtain insurance because a unit is not occupied
- potential prohibitive cost of property management
- substantial decrease in sale value
- the strata lot value making up all or substantially all of an owner’s assets
- there must be hardship to the owner
- there must be proof that carrying two properties causes hardship to the owner
- a duplicated expense for a rich owner may not cause hardship; however, a duplicated expense for a poor owner may cause hardship

The *Als* case suggests that objective documentary evidence to establish financial hardship must be produced by an owner. The owner may not simply allege that a certain fact exists. He or she must prove it with adequate evidence. The statute suggests that the test for hardship may be subjective ie. that particular owner must suffer hardship. However, hard evidence is required to prove that the hardship exists. Strata Council members should not hesitate to demand access to documentary evidence, even if it is otherwise confidential or embarrassing to the owner.

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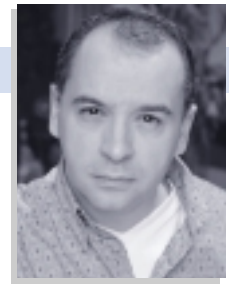
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# The Roles of Effective Management

Antonio Gioventu, Executive Director

CONDOMINIUM HOME OWNERS' ASSOCIATION OF B.C. (CHOA)

Identification of the roles of the parties is often overlooked when a strata corporation/council begin a new relationship with a property manager, renegotiate their contract, or if they are a new council. Each council or corporation should address their specific needs in the terms of a contract or role assignments. Often disputes are a result of misunderstanding with respect to the roles and responsibilities of the parties. The strata manager may have contracted with the strata corporation to undertake specific duties and responsibilities. Alternatively, your strata may be self managed. In either situation, your strata council must perform certain obligations and duties set out in the *Strata Property Act* and the bylaws of the corporation. If your strata council downloads more duties to the manager, there may be additional costs or other services may be affected. A contract outlining the terms, roles and responsibilities of the parties is important to assist in administering the routine business of your strata corporation.

In consideration of the level of services, authority, responsibility and extended period of many of the contracts, strata corporations and councils are encouraged to have a legal review of their management agreements before they complete their contract negotiations.

Here is a starting checklist of roles the corporation has to consider whether they are self managed or professionally managed:

## 1. Strata fees, Special Levies

- Who collects them?
- Who does the banking?
- Who issues the monthly financial reports?
- Is there a monthly bank reconciliation provided to the council?
- Who issues the demand notice if owners are in arrears?
- Is there a monthly arrears report?
- Who decides if a lien is in order?
- Who files the lien and at what expense?
- Are there additional costs for any of these services or roles?

## 2. Banking / Financial

- Who collects the strata fees and special levies?
- Who deposits fees?
- Who issues financial statements?
- How often are they issued?
- Who are the signing officers on the corporations accounts?
- Who holds the bank accounts?
- How is long term/contingency money handled?
- Where is interest deposited, and when is it reported for the contingency and operating accounts?
- Is there interest being accrued on your special levied accounts? Is the fund being invested until it is required?

## 3. Forms & Records

- Who issues and signs forms?
- Form F, Form B, Form I, Form D, Form G Lien Form H Acknowledgement of Payment (removal)?
- Does the contract specifically authorize the manager to sign the forms?
- Who is responsible to maintain records?
- Where are they maintained?
- Are there additional costs for the council to access/copy the records?
- Who issues information or copy of records on request, [Sections 35 & 36]?
- Is there a cost for storing/filing records?

**Antonio (Tony) Gioventu**, the Executive Director and Strata Property Advisor for the Condominium Home Owners' Association of B.C. (CHOA), brings 18 years' of experience in property management, development and strata property legislation to his position.

## 4. Meetings: Annual or Special General Meetings, Council Meetings

- Does the manager attend the meetings?
- Who takes minutes of the meetings and who decides?
- Is there an additional cost to attend meetings?
- How many meetings are included in the cost for the year?
- Who prepares the notice packages?
- Is the proposed agenda by council ratified in the council minutes?
- Who is the registrant of meetings and is there an additional cost?
- Who will chair the meetings?

## 5. Maintenance & Repairs

- Who is responsible for monthly inspections?
- Who coordinates maintenance contracts and is this included in the contract?
- Is a written inspection report to be issued of the property and grounds?
- Who coordinates special contracts, what is the cost per hour of additional services?
- Is there a policy of the strata for contracts and repairs?
- example: each contract requires a minimum of 3 written estimates

## 6. Legal & Disputes

- Does the strata have a lawyer on retainer?
- Are there any special instructions to the lawyer or property manager?
- example: legal services on behalf of the corporation may only be conducted at the direction of the council.
- How is official notice received by your strata corporation?
- Do you have an official mailing address as required by Section 62 of the Act?

## 7. Fees & Terms

- What does the table of fees specifically include?
- What are additional rates per hour?
- Who can contract additional work?
- How is it approved?
- What are the terms of: termination, dispute resolution, payment schedules, liability?
- Is there a list of disbursement costs: mileage, copying, faxing, correspondence, emails?

In the routine business of a strata corporation, many of the above items are never considered or negotiated. A significant number of the calls we receive originate from misunderstandings and lack of sound communication between the councils, the management companies and the owners of the strata corporations.

A meeting to establish the roles of council members and understand what services are being provided by your management company may be the tonic to avoid those future disputes. Even if a dispute arises, your council will be better equipped with an understanding of your strata corporation's business affairs, and easily identify the problems to quickly correct them.



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**Author, CORA D. WILSON, Condominium Lawyer**

**Cora D. Wilson, Condominium Lawyer & Educator**, C.D. WILSON and ASSOCIATES. Cora has been practicing law for 16 years and currently represents numerous strata corporations. She is a sought after lecturer on condominium issues at the Condominium Home Owners' Association (CHOA) of BC, Strata-sphere Condominium Services Inc., the Real Estate Board and numerous other organizations. Cora is the editor of the semi-annual condominium publication, 'Voice from the Strata-sphere', as well as the author and publisher of the first ever Vancouver Island Condominium Directory.

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