voice from the... strata-SPHERE®

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ALTERATION and INDEMNITY AGREEMENTS

Cora D. Wilson, Strata Lawyer
C.D. WILSON LAW CORPORATION

Alterations are becoming more complex and fraught with liability concerns resulting in many strata corporations opting to amend their bylaws to adopt a system for addressing these important issues.

Cora D. Wilson, Lawyer for over 20 years and President of C.D. WILSON LAW CORPORATION. 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 co-author of the Strata Property Act – Practical Guide to Bylaws. She is the owner and editor of Strata-sphere Condominium Services Inc.

A simple example highlights the importance of having properly drafted alteration bylaws. An owner may wish to enclose his or her balcony to increase their habitable living area. This may seem like a reasonable and straightforward request. However, none of us need to be reminded of the severe impact the "Leaky Condo" crisis has had on owners. If the building envelope balcony enclosure is not done properly, water penetration into the building substrate could result in severe rot and damage to the common property and contribute to a premature building envelope failure. The remedial costs are gigantic. Such costs would be typically paid by all owners, unless the strata corporation has a properly worded alteration and indemnity agreement that requires costs to be paid by the owner performing the alteration.

The basic rule of thumb is that an alteration by an owner requires the prior written approval of the strata council (See Standard Bylaws 5 and 6). However, there are some alterations that may not be caught by these bylaws, such as flooring replacements (other than flooring installed by the owner developer), hot tub installations and the installation of window air conditioners, to name a few. Specific bylaws may be required to ensure that alterations may be governed by the strata corporation.

The strata corporation should review its bylaws to ensure that its concerns are adequately addressed to cover matters such as noise, vibration, nuisance, interference with views and privacy, fire and other hazards and building envelope alterations.

The following is a checklist of issues and conditions that a strata corporation may wish to impose on an owner by way of an alteration agreement:

1. determine the types of alterations that require approval given the unique character of the particular strata corporation;

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2. require written approval from the council to ensure that the proposed alteration complies with the aesthetic needs of the complex including the location, color, size and appearance;
3. require the owner to provide valid permits from the authority having jurisdiction before commencing work on the alteration;
4. require the owner to employ proper professionals and contractors to design, inspect and certify that the work complies with applicable building codes and other laws (this is particularly important if there are water penetration concerns);
5. require the owner to provide evidence that the contractors and others are covered by WCB and are licensed to perform the work;
6. impose appropriate standards on the quality of the work as a condition to the grant of approval;
7. require the owner to perform the work within a certain period of time and to rectify deficiencies, if any;
8. authorize the strata corporation to perform the outstanding work or correct the deficiencies if the owner fails to do so after notice to that effect;
9. require compliance with bylaws dealing with noise, nuisance, access, permitted hours for the work, etc.;
10. require compliance section 70(4) of the *Strata Property Act* dealing with changes in habitable area and section 71 of the *Strata Property Act* dealing with significant changes in the use or appearance of common property – (both of these provisions are often overlooked and both require owner approval at a general meeting before proceeding with the alterations);
11. obtain a satisfactory indemnity agreement for the benefit of the strata corporation and its council members, authorized agents and employees against any claims, losses, damages or actions related to the alteration, including payment of any legal costs of the strata corporation on a full indemnity basis;
12. require the owner to pay all of the expenses related to the alteration – including past present and future expenses for repair, maintenance, replacement, insurance, professionals, contractors and legal costs;
13. require the owner to inform a subsequent purchaser of the strata lot of the terms of the alteration agreement and to obtain the subsequent purchaser's agreement to be bound by the alteration agreement, failing which, the alteration would have to be removed by the owner before closing;
14. require the owner to remove any Builder's Lien claims which may be filed against the common property as a result of the alteration;
15. address the increased costs of fire and liability insurance payable by the strata corporation, if applicable;
16. address what happens in the event of a claim against the strata corporation related to the alteration;
17. address whether or not to require an owner to obtain an homeowner's insurance policy; and,
18. consider incorporating the alteration agreement into a bylaw amendment to provide notice to the public when the bylaw is registered in the applicable land title office.

These agreements are complex. Strata corporations are advised to seek legal advice when preparing these agreements to ensure that all relevant issues are properly addressed.

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630 Terminal Avenue North,
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Tel: 1-888-298-7999
(250) 753-0353
Fax: (250) 741-1441

Email: info@stratasphere.com
Web Site: www.stratasphere.com

Editor: Cora D. Wilson
Assistant Editor: Katherine Suna

What is NEW on the Leaky Condo front?

Cora D. Wilson, LL.B., Strata Lawyer
EDITOR OF "VOICE FROM THE STRATA-SPHERE"

The following June 20, 2009 Vancouver Sun headline sent shock waves through the Strata Community: "Leaky-Condo Repair Loans halted – The provincial government said Friday it has put the brakes on the leaky condo repair loans because the revenue stream from new construction used to finance the loans has dried up."

Without warning, the Provincial Ministry of Housing and Social Development recently announced that it has scrapped the Reconstruction Loan Program, which provided interest free loans to qualifying affected owners, effective July 31, 2009.

Where does this leave desperate owners who have not yet remediated? Will they lose their homes? Where will they get the money to repair their buildings? Many people are asking these serious questions.

We recall the results of the Barrett Commission and the establishment of the Homeowner Protection Office ("HPO") in 1998. Since that date, great forward strides have been made in the construction industry including, licensing residential builders, licensing building inspectors (March, 2009), building code amendments mandating rainscreen (2008), research and education and - until recently, interest free loans to finance building envelope failures.

The funding source of the interest free loans was derived from the $750.00 reconstruction fee on new multi-family construction. The slow down in the real estate market resulted in a reduction of these fees. As a result, a temporary freeze was initially imposed on HPO interest free loans.

The program was initially designed as a 10-year, $250 million dollar program. The HPO record indicates that the program has approved more than $670 million in interest free loans to more than 16,000 households.

The number of remaining buildings to be remediated is not known. The question remains as to how they will be able to obtain funding for the necessary repairs. The Homeowner Protection Office statistics indicate an average loan was $24,144.00 in 2000. It soared to $63,511.00 in 2007. It is expected that construction cost increases and delay costs (rot is progressive) will result in even higher numbers today.

Where does this leave in-stream applicants? In-stream applicants will still be funded as long as certain requirements are met including the receipt of an eligible application by the Homeowner Protection Office before July 31, 2009. Other requirements will undoubtedly apply and recipients are advised to ensure that any conditions associated with funding are met and satisfied.

If applicants lose out on this final opportunity to receive an interest free loan through the Homeowner Protection Office, the results could be devastating. Therefore, what constitutes an eligible application becomes a very important question. For further information contact the Homeowner Protection Office at www.hpo.bc.ca. If there is any doubt regarding how to proceed, council members should seek legal assistance and other appropriate advice.

Although the crisis is not yet over, what is clear is that financial assistance to homeowners by way of the interest free loan program is gone. Everyone knew that funding would not last forever. However, no-one expected that the program would be shut down overnight. It remains to be seen whether or not the government will revisit this decision.

In the meantime, the effect of this decision on owners who have not yet addressed remediation of their building will undoubtedly be catastrophic.

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1614 Morey Road,
Nanaimo, BC V9S 1J7
250-753-9171
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250-370-9171
victoria@chatwinengineering.com

Alteration Agreements - Record Keeping and Disclosure

Tony Gioventu, Executive Director
CONDOMINIUM HOME OWNERS ASSOCIATION OF BC

Each week Choa receives well over 1,000 emails for requests relating to the *Strata Property Act* and related legislation. Many of those requests involve alterations and alteration agreements. A significant over riding problem with both self managed strata corporations and those with a strata manager is the limitation on record keeping. In most circumstances the previous councils or prior management companies did not retain records relating to alteration agreements. Those alteration agreements could have a significant financial impact on the strata corporation and may run for the life of the strata corporation, some of which are over 40 years in age. The best possible way to illustrate the conflict is in a recent Condo Smarts article that ran in the Times Colonist. The result of the lack of records and formal written agreements has now put the strata and the owner into a dispute over obligations of maintenance and repair, and who is going to pay.

To alleviate the concerns over filing, strata corporations may want to consider as a condition of the approval for the alteration that the agreement will with a 3/4 vote at the next general meeting be filed as a bylaw amendment. While it's not a complete solution, it does provide a permanent filing for the agreement on a separate schedule within the bylaws, and provides some notice and access to future buyers and owners.

June 24th.
Dear Condo Smarts:
We bought a townhouse in the fall of 2007 in Langley. There are 48 units in the complex and they are all slightly different in design and layout. Similar to several other units, our unit has 2 skylights, one over the living room and one over the kitchen. The one over the kitchen has failed and needs to be replaced, but the strata council have told us that we have to change it ourselves because it wasn't part of the original construction. We went back to all of our documents and double checked everything and there is no indication in the sale documents, the Form B, or the strata information that this is an alteration. Does council have the authority to make us responsible for this alleged alteration, even though it was never disclosed or included in any of the documents we requested in the sale? Karen and Dave

Dear Karen & Dave:
Alterations and alteration records and documents are a complicated problem with many strata corporations. A strata corporation does have the ability to grant an owner permission to alter common property with an item like a skylight installation. Some types of alterations could be significant and require a 3/4 vote of the owners if they affect the use or appearance of common property, but normally the council grants the alteration request. At the time of the request the council does have the authority to require as a condition of the approval that the strata lot applying may be held to a number of conditions. Those may include supplying the strata council with engineering or consulting reports, building permits and inspection reports, environmental studies, plans and drawings, to cover the costs of related services and legal agreements, and to take responsibility for the future costs associated with the maintenance, repair and renewal of the common area alteration, but not the conduct of the maintenance and repairs. The reason for the difference between costs and actual repairs is to ensure the strata corporation still controls, maintains and repairs the common property in the interest in all owners. If the strata corporation did not require a written alteration agreement, and they did not disclose it with the Form B when it was requested, and there is no reference to the alteration in the bylaws, the alteration likely devolved back to the responsibility of the strata corporation to maintain and repair at their cost. Strata corporations are far too casual about alteration agreements. Many councils are simply trying to cooperate with owners and support their requests, forgetting that the future may spell costly repairs for the strata. In your case we found out that the alteration was actually done 3 owners ago in 1994. There was no way that the previous owner could disclose the change as she was unaware of it also. Buyers need to ask the vendor and the strata corporation about changes to strata lots if they are unsure about the alterations, and strata corporations and strata managers need to maintain suite files that include alteration agreements so that they may be included with a Form B on request. The records however, are only as accurate as the records provided from the previous council or to the strata manager. When in doubt, confirm in writing.

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 400-014

Keeping Strata Corporation Records: *Strata Property Act* regulation 4.1

Record	current	2 yrs	6 yrs	Permanent
• A list of strata council members, including either phone number or another method by which the council member may be contacted at short notice	✓			
• A list of owners, with their strata lot address, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements	✓			
• The names and addresses of mortgagees who have filed a "Mortgagee's Request for Notification" (Form C)	✓			
• The names of tenant, and any assignments of voting or other rights by landlords to tenants	✓			
• The Act, Regulations, bylaws and rules				
• Correspondence sent or received by the strata corporation and strata council		✓		
• Minutes of the AGM, an SGM and strata council meetings, including the results of any votes			✓	
• Books of account showing money received and spent and the reason for the receipt or expenditure			✓	
• Any waivers of general meetings and consents of resolutions			✓	
• The budget and financial statement for the current year and the previous years			✓	
• Income tax returns (if any)			✓	
• Bank statements, cancelled cheques and certificates of deposit			✓	
• Any Information Certificates (Form B) issued			✓	
• Financial records obtained from the Owner Developer			✓	
			✓	
• Any resolutions that deal with changes to common property, including the designation of LCP				✓
• Any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party				✓
• Any legal opinions obtained by the strata corporation				
• The registered strata plan and any strata plan amendments registered at the Land Titles Office				✓
				✓
• Plans required to obtain building permits and any amendments to the building permit plans				✓
• Disclosure Statements and amendments (if any)				✓
• The Rental Disclosure Statement (if any)				✓
• The names and addresses of all contractors, subcontractors and the persons who primarily supplied labour or material to major components of the project				✓
• The name and address of the project manager (if any)				
• The names and addresses of technical consultants, including any building envelope specialists (if any)				✓
				✓
• Any documents that indicate the actual location of a pipe, cable, chute, duct or other facility for the passage or provision of systems or services, if the Owner Developer believes they are not shown on the plan submitted to obtain the building permit				✓

For more information on CHOA resources and benefits visit www.choa.bc.ca

or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

Building Maintenance Tips for Condominium Owners and Strata Councils

available online

Ken Cameron, CEO
HOMEOWNER PROTECTION OFFICE

One good thing about moving to a condominium is that you can probably say goodbye to your lawn mower and hedge trimmer. The bad news is that you still need to think about maintenance. However, you will be able to share this responsibility with other owners, and perhaps a strata manager hired by the strata council. Also, you won't have to do it yourself.

As most homeowners are aware, regular maintenance not only enhances property values and curb appeal, it is cheaper in the long run than paying for emergency repairs. What many owners of new homes may not realize, however, is that failure to perform regular maintenance or improperly performed maintenance could negatively affect their home warranty insurance coverage.

Under B.C. law, residential builders/warranty providers have a responsibility to provide maintenance information to the original buyers of a new home, if they want to make home warranty insurance coverage conditional upon proper maintenance. If they don't provide a maintenance manual, the homeowner cannot be held responsible for not doing the maintenance.

To help homeowners and strata councils with maintenance issues, the Homeowner Protection Office (HPO) has developed, in conjunction with CMHC and Polygon Homes, a series of easy-to-understand bulletins on maintaining multi-unit housing. Topics include:

Ken Cameron joined the Homeowner Protection Office as the Chief Executive Officer in September 2004 after 26 years in senior planning and management positions in local government in the Greater Vancouver area, most recently as Manager of Policy and Planning with the Greater Vancouver Regional District. In addition to his role at the HPO, Ken is the Past Chair of the International Centre for Sustainable Cities, a member of the Board of the Residential Construction Industry Training Organization and Chair of Simon Fraser University's Urban Studies Program. With former Premier Mike Harcourt and local writer Sean Rossiter, Ken is the author of a book titled "City-Making in Paradise: Nine Decisions that Saved Vancouver," which was published by Douglas and McIntyre in September 2007.

Maintenance Matters #1: Paints, Stains and Coatings

This bulletin describes the different paints, stains and coatings that are commonly applied on the exterior of your building, the maintenance that is required, how often it must be performed, who should be called for service and the importance of preparation before painting.

Maintenance Matters #2: Maintaining Your Roof

This bulletin covers the different roof types, the importance of developing a roofing maintenance plan, how often roofs should be maintained and who should be called for service. Also included is a checklist of common roof inspection and maintenance items and suggested actions.

Maintenance Matters #3: Avoiding Condensation Problems

This bulletin provides information on condensation, sources of moisture in the home, how to avoid condensation problems, and how to deal with persistent condensation problems.

Maintenance Matters #4: Residential Windows and Exterior Doors

This bulletin provides information on inspection and maintenance to ensure good long-term performance of windows and exterior doors and aids in recognizing when professional assistance is required. Also included is a checklist of common window and door maintenance items and suggested actions.

Maintenance Matters #5: Sealants

This bulletin provides information on the use of sealants in a building envelope, type of sealants, maintenance and inspection of sealants and who should be called for service.

Maintenance Matters #6: Decks and Balconies

This bulletin provides information on maintenance and inspection to ensure durable performance of decks and balconies, and helps to identify when a qualified contractor or consultant is required for service. Also included is a checklist of common deck and balcony maintenance items and suggested actions.

Another *Maintenance Matters* bulletin will be available in May. This bulletin will look at the planning of building envelope maintenance and renewal. All *Maintenance Matters* bulletins are available in the *Publications* section of the HPO website.

Strata owners, councils and managers can now subscribe to the HPO's free online *Maintenance Matters* bulletins. As a subscriber, you'll be notified by email when a new *Maintenance Matters* bulletin is available. To subscribe to this service, go to "Email Subscriptions" in the *Publications* section of the HPO website. In an effort to be more kind to the environment, future HPO publications will only be available online.

For more information, contact the HPO at:
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Website: www.hpo.bc.ca

Why Engineered Reserve Funds?

Craig Labas, P. Eng.,
Associate and Senior Building Envelope Consultant
MORRISON HERSHFIELD LIMITED

A good title for this article could have been "Shouldn't There Be A Law?" Or perhaps there should be a law that says - first, you need a reserve fund study and second, hire an engineer to prepare the study. Unfortunately, in the words of one famous musician "You can't always get what you want". Presently, Reserve Fund Studies are not mandatory, but time and time again I see Strata Corporations incorporate some kind of plan for accumulating funds for their contingency reserve, but these same Corporations don't have any sort of long term maintenance / renewals plan in place. Typically some well intended person with a computer steps up and prepares a slick looking report with "sinking-fund analysis numbers" that may have left a Condo Corporation, well…sinking.

Let's back up just a little. Every Strata Corporation must maintain a pot of money (or reserve) to look after their building(s) over the long term. Like any complicated system, a building is made up of many assemblies constructed with different materials, having varying maintenance schedules, that all have to work together. Throw into the mix that these are peoples' homes, and the importance of maintaining adequate funds becomes clear. The preparation of a Reserve Fund Study is intended to help the Condo effectively allocate monies for future capital repairs and replacements at their building. The Strata wants to ensure that all of their building's needs are planned for appropriately while maintaining low maintenance fees, and protecting themselves from liability.

The tricky part of the study is that its success is primarily determined by how relevant the capital costs are, and whether all of the potential major expenses have been captured. Unfortunately, the appropriateness of the numbers is the most difficult aspect to assess.

So, some of you may think that asking an engineer to list the reasons why engineers should be conducting Reserve Fund Studies to be a bit self-serving. But the truth is there are excellent reasons to involve an engineer, and they have more to do with what the Common Property really requires. Professional consulting engineers with experience in this field are, by education, training and experience, the most knowledgeable authority on how a building works - and perhaps more importantly, when it doesn't work, than how to fix it and for how much. It is because of this that when an engineering firm prepares the study, there is more assurance that the numbers have meaning, and are appropriate for your building. Here are some of the benefits an engineer brings to the study:

- Knowing what elements to include. This might seem a simple task, and ultimately it is up to the Strata Council members to decide what is included and what is not. However upon closer inspection, it is not always so obvious. The point of the fund is to prepare for major capital repairs and replacements, you have to know what elements of your building and site services will need attention. Some of these are easy to foresee, such as roofs, fencing, etc. However many elements are hidden, or the need for future repair is not widely known.

  No one can know everything that will need repair, but by knowing the various systems, and through their continuing involvement in repairs, engineering firms remain current on what needs fixing. Parking garages and balconies are one area of repair that are fairly well known, but we still find condominium corporations that haven't allocated sufficient funds for domestic hot and cold water riser replacements, for example. And then there are construction systems that are not generally well known outside of engineering circles: pre-stressing tendons, basement level garage columns, firestopping systems, to name a few. Replacement of weather-stripping in operable windows is frequently overlooked, but regular replacement can yield significant reductions in air leakage, and hence, energy use.

  Not all building systems will need repair, nor need they all be incorporated into the fund, however the Strata Corporation needs to be made aware, and given the opportunity to make an educated decision on how to deal with them.
- Assign appropriate significance to defects or concerns. Our firm is often called upon to comment on cracks that a Property Manager or corporation member has noticed in a stairwell or parking garage. More often than not, these defects are of no concern, although sometimes they are significant. We have been able to advise some Corporations that repairs will not be required.
- Detect conditions or repairs not previously known. In conducting the site review, the engineer may find deterioration that requires repair soon, or that may affect estimates of the long-term performance of the element. For example, roof defects are often missed, even where there is a scheduled roof inspection program. Unfortunately, roofs are typically not looked at until they leak.

Craig E. Labas, P.Eng., is an Associate & Senior Project Manager in the Buildings & Facilities Division of Morrison Hershfield Limited. Mr. Labas manages both the Nanaimo and Victoria offices of Morrison Hershfield Ltd.

Widespread seam failure on an EPDM (rubber) roofing system may not be causing apparent leakage, but it does indicate the need for repair, or perhaps a shortened lifespan estimate so that funds can be allocated.

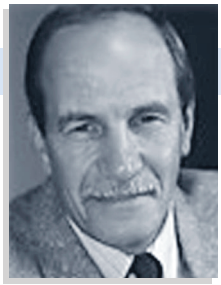
- Assign a proper timetable for repair, based not on textbook lifespan, but on present condition, exposure, use, original construction quality, history of the materials used, and other information known to an experienced engineer. The previous roofing discussion is one example - the anticipated lifespan is not just 15 or 20 years by dropdown menu, but should be based on the type of roof, membrane, the quality of drainage, and history of maintenance. Caulking replacement cycles depend on the type of sealant used, the exposure, the quality of application, and the type of joint.
- Assign more accurate repair or replacement costs, not necessarily what the textbook says, but what actual construction costs are, and for the performance standard that would be appropriate for your building. Roofing replacement is a good example of this. Roofing costs will vary significantly depending on factors that are not immediately apparent, including access to the site, height above grade, the type of roof, etc. A high-rise residential tower in downtown Vancouver will cost much more to re-roof than a 2-story building in the middle of a field in Comox. In addition, there has been tremendous variability in construction costs in recent years. Working directly with the constructors, engineers have direct access to the most recently tendered construction costs which is best indicator of the current market trends.
- Allocate repair costs based on the appropriate repair method, such as complete replacement versus refurbishing. Careful consideration of these options and how the corporation actually functions, can save money. Budgeting for complete replacement every 20-25 years of the waterproofing membrane underneath the landscaped terrace is one example of a textbook approach that may not represent a realistic projection of the way a building operates. In some circumstances, periodic repair of critical portions, such as expansion joints, has allowed the useful life of these systems to be substantially increased - whereas complete replacement below mature trees, plants and shrubs, can be exceedingly expensive.
- Awareness of changing code and regulatory requirements can help the condominium to plan in advance for otherwise unforeseen expenses, and possibly avoid scrambling for funds through special assessments. Past examples include retrofit fire and life safety requirements, retroactive enforcement of the balcony guard requirements, garage lighting, painting and exiting requirements, refrigerant restrictions, and designated substances restrictions.
- Understanding of existing engineering and technical reports can help the incorporation of existing information into the reserve fund study. Sometimes a Strata has completed a study on a particular system, such as make up air units, HVAC systems or a central chiller plant. An engineer is better equipped to thoroughly understand the contents of such reports, and be able to integrate the information into the building context.

This discussion assumes that the firm you hire is capable of making the above determinations, and does them as part of the reserve fund study process. This, of course, is not always the case. Choose carefully if you are going to spend money on an engineering firm to prepare your study, make sure you are going to get the value you are after. Past experience and on-going field of specialization of the consultant you select are two important factors in determining how current they are, and how successful the study is - even for the most basic study.

Some properties may be extremely simple, and the need for a detailed review by an engineering professional may seem hard to justify. There are townhomes where landscaping is the only common element. In these cases, a competent and qualified person could prepare an appropriate Reserve Fund Study. As the number of elements increases, the building becomes more complex, or the sheer size of the fund increases, the need for the involvement of an engineer becomes more critical.

History dictates that a Reserve Fund Study include a full building review every six years, supplemented by an update of the capital costs tables every three years in between. What an excellent opportunity to introduce your building to a professional engineer - someone that fully understands the complexities of how it functions within its environment, and what it takes to keep it running properly.

We expect an incredible amount from our buildings, particularly in northern climates – huge temperature swings (sometimes 60°C!), driving moisture, and lowest price construction bids. These buildings are our homes, our investments, and use up a tremendous proportion of our material resources and energy in their construction, operation, and maintenance. They deserve to be treated by engineers that understand.



Strata Corporation Repairs and Maintenance

Dale Harder, Property Manager
FIRM MANAGEMENT CORP.

When it comes to repairs and maintenance of the buildings of a strata corporation it is imperative that the corporation be aware of what their responsibilities are. These responsibilities can be grouped into two main categories, namely common property and limited common property. As these two categories can have similarities and differences when repairs and maintenance are involved, it is important that the strata corporation and, especially the strata council, be aware of what these are.

Dale Harder 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.

1. Common Property Repairs

The *Strata Property Act* Section 72.1 states: "Subject to subsection 2, the strata corporation must repair and maintain common property and common assets."

Generally speaking common property refers to areas such as a roof, exterior walls and windows, lobbies, elevators, stairways, hallways, parking areas (at times parking spots can be designated limited common property) and landscaped areas, in other words any portion of a building that is shared in common by strata lot owners.

The goal of any strata corporation should be to keep common property in good repair. In every building there will always be deterioration either from age or neglect and there will always be repairs necessary due to normal wear and tear, breakage or vandalism. Such building maintenance can be organized into three main categories:

1. Preventative maintenance,
2. Corrective maintenance and,
3. Routine maintenance.

Preventative Maintenance

Preventative maintenance is a planned and controlled program of inspections, adjustments, repairs and performance analysis designed to keep building systems operating at peak efficiency. Preventative maintenance programs consist of both structural and mechanical components.

The structural component covers all repairs and maintenance to non-mechanical elements of the building including the structure, roof, common lighting and fixtures, landscaping, and parking areas. As each building is different depending on age, type of construction, type of finishes or type of use, the frequency of repairs and maintenance will vary. Therefore it is important to establish the elements to be included in the repairs and maintenance program, to develop a time frame for each and from this, plan the overall program of structural maintenance.

The mechanical component covers all repairs and maintenance to common area HVAC systems, elevators, fire alarm and fire prevention systems, emergency generators, under ground parkade doors, enterphone systems, swimming pools and spas etc. The size of a building will usually determine the complexity of the mechanical equipment in it. The very nature of mechanical equipment demands more frequent and detailed maintenance than structural elements. Therefore no effort should be spared to prevent breakdowns or malfunctioning of vital systems such as elevators, HVAC systems, enterphone systems, fire emergency systems etc.

If a mechanical preventative maintenance program is to be effective the overall program must be carefully planned and documented. This requires the development of various maintenance logs which can include daily, bi-weekly, weekly and monthly checks. In most instances the hiring of qualified contractors is recommended for the maintenance of complex

mechanical systems. As a part of the overall control of the program, a contract service log should also be maintained.

Corrective Repairs and Maintenance

Despite effective preventative maintenance programs, it is inevitable that breakage, malfunction or damage in various forms will occur. Typical items in the corrective maintenance category are broken windows, malfunction of entrance doors, blocked sewers and drains, malfunction of an elevator, broken water lines, burned out common area light ballasts, roof leaks, broken fan belts, broken lawn sprinklers etc. Whatever the need, immediate remedial action must be taken in order to prevent further damage or discomfort to residents.

Routine Maintenance

Routine maintenance relates specifically to the areas of common property that require daily attention. These can include garbage and litter pick up, changing light bulbs and tubes, cleaning and vacuuming of common hallways and stairs, glass cleaning at entrance areas, landscape maintenance, parking lot cleaning, cleaning of elevator cabs, swimming pool maintenance etc. Whether onsite staff or contract services are used, it is important that the strata corporation have a routine maintenance schedule so that the various daily tasks are not neglected or missed. This will greatly enhance the overall appearance of the building and be appreciated by all who live there.

2. Limited Common Property

Limited common property refers to common property that has been limited to the exclusive use of owners of strata lots. These can include areas such as balconies, patios, parking spots, garages or storage areas etc. In most cases the responsibility for the repair and maintenance of limited common property lays with the strata lot owner (s).

The *Strata Property Act* states at Section 72.2 "The strata corporation may, by bylaw, make an owner responsible for the repairs and maintenance of

a. Limited common property that the owner has a right to use"

However, if strata lot owners fail to repair or maintain their section of limited common property, the strata corporation must take on this responsibility. The corporation may however, charge back to the owners the cost of such maintenance or repairs.

Summary

The strata corporation must take seriously their responsibility to repair and maintain all areas of common property. If this is done diligently, these efforts will be rewarded as strata lot owners appreciate a well-maintained place of dwelling.

When is an Alteration NOT an Alteration?

Jamie Bleay, B.A. LL.B
ACCESS LAW GROUP

Section 5 of the Schedule of Standard Bylaws states:

(1) An owner must obtain the written approval of the strata corporation before making an alteration to a strata lot that involves any of the following:
  (a) the structure of a building;
  (b) the exterior of a building;
  (c) chimneys, stairs, balconies or other things attached to the exterior of a building;
  (d) doors, windows or skylights on the exterior of a building, or that front on the common property;
  (e) fences, railings or similar structures that enclose a patio, balcony or yard;
  (f) common property located within the boundaries of a strata lot;
  (g) those parts of the strata lot which the strata corporation must insure under section 149 of the Act.

(2) The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration."

Section 6 of the Schedule of Standard Bylaws states:

(1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.
(2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration."

Many strata corporations in B.C. have adopted both of these bylaws while many more have incorporated further terms and conditions into their "alteration" bylaws including:

1. The requirement to obtain and provide copies of Municipal building permits;
2. Written proof that the contractor has adequate liability insurance and Worksafe BC coverage;
3. The execution of an indemnity agreement whereby the owner undertaking the alteration agrees, in writing, to indemnify the strata corporation for costs and expenses that may arise if the alteration results in damage or injury to person or property.

While these terms and conditions appear to be relatively simple and straightforward and of assistance to strata corporations when confronted with alteration requests, things can go terribly wrong if owners and strata councils are not vigilant when it comes doing things "right" in the first instance when alteration requests are made and received.

Jamie A. Bleay Since being called to the bar in 1987, Jamie has practiced extensively in the area of condominium/strata law. He has worked with and acted for several hundred strata corporations in that time. He has worked closely with strata councils in dealing with a range of services from corporate governance matters, financial matters, property management matters and litigation matters.

Take the case of Linda Kearsley v. The Owners, Strata Plan KAS 1215 and Gary Robert Nevens, a 2008 decision of the B.C. Supreme Court. This case involved the construction of a solarium by Ms. Kearsley in 2000 on limited common property, being the patio in front of her unit which also enclosed the exterior window of the adjacent unit. Ms. Kearsley had asked for and obtained the permission of the former owner of the adjacent unit and Mr. Nevens who, at the time in question, was the tenant in the adjoining unit. Mr. Nevens purchased the unit in 2003. According to the evidence filed in court, each of Mr. Nevens and Mr. Jones, who had previously owned the adjoining unit, understood that the permission given to Ms. Kearsley on the basis that the enclosure would not obstruct the view or the light of the window that was enclosed. The evidence also confirmed that the strata corporation has given its consent for the construction of the solarium but not for the alteration to the adjacent unit. The evidence confirmed that Ms. Kearsley had not applied for or obtained a building permit from the City of Penticton for the construction of the solarium.

Unfortunately Mr. Nevens and Ms. Kearsley began having unhappy differences. In 2006 Ms. Kearsley was told by the City of Penticton that the solarium did not conform with the Municipal building code but eventually the City agreed to issue a retroactive building permit if she made certain changes to the enclosure, including replacing Mr. Nevens' exterior window with a fire retardant window. However, Mr. Nevens did not grant Ms. Kearsley permission to install the window and as a result, Ms. Kearsley proceeded to court seeking the following relief:

a. a declaration that the plaintiff has received approval for the construction of the solarium;
b. an order directing the defendant Strata, through its counsel, to approve the prior construction of the solarium on the property;

c. a temporary injunction preventing the defendant strata or its agents from removing the solarium on the property;
d. an order pursuant to Section 165 of the *Strata Property Act*, S.B.C. 1998 c. 43 directing the defendant, strata, to provide access to the plaintiff, or her agents and contractors, to unit 102 for the purposes of effecting replacement of the window; or, in the alternative,
e. an order directing the defendant Nevens to allow reasonable access to unit 102 for the purposes of the installation of the required window.

The parties acknowledged that in accordance with section 68(1) of the *Strata Property Act* (the "Act"), the window in question was partly common property and partly within Mr. Neven's strata lot.

After the Judge dealt with the suitability of dealing with the dispute by way of a summary trial rather than having it remitted to the trial list, the narrow issue before the court was whether the strata corporation and Mr. Nevens had a legal duty stemming from the alleged acquiescence to the construction of a solarium on limited common property, to install the new window required by the City of Penticton.

Ms. Kearsley took the position that because the City required the window as a result of the construction of the solarium, which had been constructed with the consent of the defendants, the strata corporation had a duty pursuant to bylaw 14(iv), which stated:

14. The strata corporation must repair and maintain all of the following:
(iv) doors, windows and skylights on the exterior of a building or that front on the common property, …

to restore the window to a sound condition thereby complying with the City's requirement. Ms. Kearsley also took the position that the strata corporation had the right to enter Mr. Nevens' strata lot to undertake the necessary repairs pursuant to a bylaw that required a resident or visitor to allow the strata corporation to enter a strata lot to inspect, repair and maintain the common property, common assets or such parts of the strata lot that the strata corporation was required to insure under section 149 of the Act. Lastly, Ms. Kearsley took the position that if the strata corporation failed to undertake the window repair to "common property" pursuant to section 72(1) of the Act, she had a remedy pursuant to section 165 of the Act to compel the strata corporation to perform that duty.

Ms. Kearsley argued that she was entitled to rely on the past confirmation or approval given by Mr. Nevens, the previous owner and by the strata corporation and that the defendants were estopped from denying her the remedies sought.

The strata corporation opposed, in part, Ms. Kearsley's claims but did apply for its own remedies, including an order that Mr. Nevens give the strata corporation reasonable access to his strata lot to allow for the installation of the window or in the alternative, that the solarium be removed within 30 days.

The Judge did not buy Ms. Kearsley's argument against Mr. Nevens or against the strata corporation. At paragraph 39 of the decision, Mr. Justice Cullen stated that " The plaintiff's contention that the strata council's past approval of her structure operates as an estoppel creating an affirmative duty to take the necessary steps to permit her to comply with the City of Penticton building code cannot prevail. The Strata's approval did not contemplate any alteration to property partly owned by an adjacent strata lot owner. The difficulty that has arisen in this case did not arise from the Strata's approval of the structure, it arose from the plaintiff's failure to secure a building permit and address its requirements before she built the structure. There is nothing to implicate the Strata in the dilemma facing the plaintiff. It is occasioned by the municipality's building code and requirement of a permit, and Mr. Nevens' unwillingness to agree to an alteration to the window in his living room." He went on to say that "While the Strata Council's approval of Ms. Kearsley's structure no doubt constituted acquiescence or encouragement of

its being built, it could not be taken as acquiescence or encouragement that it be built without a necessary permit in a manner that infringed the building code, or contrary to the consent of an affected strata lot owner."

The Judge dismissed Ms. Kearsley's action against both defendants. He went on to rule that each party would have to bear their own costs. Mr. Justice Cullen suggested that the dispute could have been resolved by agreement and that antagonism between the parties "could have been avoided by the exercise of goodwill and neighbourly compromise has resulted in this law suit with a result that will adversely affect the plaintiff, both aesthetically and economically. While I am not in a position to assign ultimate responsibility for the antagonism that developed, there is evidence that both parties have contributed to it."

It is very likely that this lawsuit would have been easily avoided IF the strata corporation has required, as a condition of giving its permission, that Ms. Kearsley obtain all necessary building permits and approvals from the City of Penticton and provide proof of this to the strata council. Differences of opinion with the owner of the adjacent unit would not, after the fact, have impacted on the approval for the alteration.

Owners are always seeking approval from strata councils for alterations. However, it has been my experience that many strata corporations take somewhat of a casual attitude when granting approval for an alteration. It is important, even if the alteration is somewhat minor in nature, for strata councils to be vigilant and demand complete and strict compliance with its alteration bylaws. If the bylaws of The Owners, Strata Plan KAS 1215 had included a requirement that she obtain the necessary permits from the City of Penticton as a condition of approval for the alteration, she would have avoided the difficult and expensive mess she found herself in!

630 Terminal Ave. N.orth
Nanaimo, BC V9S 4K2
Email: nanaimo@cdwilson.bc.ca
www.cdwilson.bc.ca

Tel: (250) 741-1400
Fax: (250) 741-1441

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Cora D. Wilson, Lawyer and President, C.D. Wilson Law Corporation. Over 21 years of experience as a Condominium Lawyer. Ms. Wilson currently represents numerous strata corporations wherever they are located in British Columbia. She is co-author of the book "Strata Property Act - A Practical Guide to Bylaws." She is also president and editor of Strata-sphere Condominium Services Inc..

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The Guide provides a review of every provision of the Standard Bylaws to the Strata Property Act, including a recommendation on what to do with the bylaw. Also, the wording of typical proposed amendments is included.

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