voice from the... strata-SPHERE®
www.stratasphere.com Winter 2015/2016

Inside This Edition

Cora D. Wilson, J.D.
cora@wmlg.ca

Legislative Amendments Make It Easier to Terminate a Strata Plan & Winding up a Strata Corporation

Elaine T. McCormack, J.D.
elaine@wmlg

Cora D. Wilson, J.D. and Elaine T. McCormack, J.D.
STRATA LAWYERS
WILSON MCCORMACK LAW GROUP

We are pleased to advise that significant legislative amendments to the *Strata Property Act* (the "Act") relating to termination of a strata plan and winding up a strata corporation were approved on November 16, 2015. These changes will not be effective until supporting regulations are put in place. This is expected to occur sometime in 2016.

These amendments are viewed as a "game changer" since they will allow owners to dissolve the strata plan and terminate the strata corporation without a unanimous vote. Since a unanimous vote was generally impossible to obtain, owners of many strata corporations simply could not meet the requirements for dissolution, except perhaps with a costly court application. The recent amendment reduced the voting threshold to an 80% vote of eligible owners.

Sections 272 – 289 of the Act address the scheme to cancel a strata plan and wind up a strata corporation. These provisions have been in existence since the adoption of the Act in 2000; however, they have rarely been used due to a combination of anticipated

continued on page 2...

Cora D. Wilson, J.D., Strata Lawyer, Author & Educator, Wilson McCormack Law Group. Cora has 30 years of legal experience with a focus on strata law. She deals with development and construction matters, remediation, strata governance, contracts, bylaws, collections, litigation and other strata related matters. She has appeared in all BC Courts and many tribunals. She has been appointed as an adjudicator for the Civil Resolution Tribunal. *cora@wmlg.ca*

Elaine T. McCormack, J.D. Strata Lawyer, Mediator & Arbitrator, Wilson McCormack Law Group. Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts. She has been appointed as an adjudicator for the Civil Resolution Tribunal. *elaine@wmlg*

Voice from the Strata-sphere

Voice from the Strata-sphere
is published annually by

Strata-sphere Condominium Services Inc.

630 Terminal Avenue North,
Nanaimo, BC V9S 4K2

Tel: 1.888.298.7999
250.753.0353
Fax: 250.741.1441

Email: info@stratasphere.com
Website: www.stratasphere.com

Editor: Cora D. Wilson

Assistant Editor: Lesley White

Legislative Amendments... *continued from page 1*

failure of the unanimous vote resolution and costs. In our experience, dissolution of a strata plan without a liquidator is relatively straight forward, particularly for small strata corporations. However, this is not the case when dealing with dissolution of a strata plan with a liquidator.

A liquidator is required to terminate a strata plan when the strata corporation is unable to certify that it has no debts, excluding registered charges. Liquidation is the process by which a strata corporation with assets and liabilities is "wound up" in that its debts and liabilities are satisfied (or adequate provision is made for their satisfaction) and the remaining assets are distributed to the owners.

The liquidator steps into the shoes of the council and manages the strata corporation during dissolution with the objective of bringing operations to an end. It is not managed as a going concern. Assets are called in and converted into money, liabilities are paid and disputes are settled. The liquidator is not just an interim manager, he or she is also an officer of the court with special powers to meet the objectives.

The strata plan may be cancelled and the corporation wound up with or without a liquidator. (s. 277, Act). A liquidator is responsible to administer the debts and assets of the strata corporation and to wind up the estate. The liquidator's role can be compared to that of a trustee in bankruptcy.

The voluntary winding up of a strata corporation with a liquidator can be a complex and time consuming process involving the following:

1) appointment of a liquidator;
2) resolution to terminate;
3) preparation of an interest schedule (conversion schedule);
4) obtain a vesting order from the Supreme Court;
5) file the vesting order with the Registrar of the land title office;
6) approve disposition of the property; and,
7) apply for other Supreme Court orders related to the dissolution.

Thereafter, an application is made to the Registrar of the Land Title Office for dissolution of the strata plan.

Upon cancellation of the strata plan, the owners will hold the property as tenants in common. At this point, the strata corporation vehicle is gone and the owners may choose to sell the property to a developer or subject to appropriate approvals from the authority having jurisdiction, redevelop the lands using a conventional subdivision, a replacement building strata plan or a bare land strata plan.

This restructuring opens the door to the redevelopment of projects which have lived out their useful life, which will be important as the first strata corporations created in the late 1960's and early 1970's age. Instead of paying for costly renewals to buildings which may not make sense financially, the owners now have the option of terminating the strata plan, winding up the strata corporation, and selling the lands as a redevelopment site or developing it themselves.

Some homeowners may resist giving up their home. However, dated properties may constitute a financial burden to all owners or a health and safety hazard due to, for example, wet building syndrome, fire safety deficiencies, lack of a fire sprinkler

Legislative Amendments... *continued from page 2*

system or woefully inadequate seismic installations which fail to meet minimum standards. Due to timely legislative amendments, owners will now have options regarding how to address such matters.

For example, upon dissolution and subject to appropriate approvals, an old, tired townhouse complex with 50 units could be torn down and replaced with a new 100 unit apartment building. If restructuring a dated project using a development plan which utilizes the highest and best use of the lands adds significant value to the land, then after a detailed cost benefit analysis, owners may find dissolution of the strata plan financially beneficial.

Redevelopment of the lands with a higher density could add value for the benefit of the owners which might not otherwise exist. There are many other available options. The shackles associated with the restructuring of an existing strata corporation are removed upon dissolution.

The amendments to the termination provisions apply to both a conventional strata corporation and to a bare land strata.

Summary of Legislative Changes:

The legislative changes may be summarized as follows:

1. A new voting threshold of 80% has been created in place of the unanimous vote to authorize termination of a strata defined as follows (s. 1(1), Act):

"**80 percent vote**" means a vote in favour of a resolution by at least 80 percent of the eligible voters"

2. An "eligible vote" is defined by reference to the strata's Schedule of Voting Rights or by the statutory default standard of one vote per strata lot. The vast majority of strata corporations will rely upon the statutory standard of one vote per strata lot. However, mixed-use or non-residential strata corporations may have a different voting power in the Schedule of Voting Rights. The resolution authorizing the termination of a strata plan will be approved on a "total-votes" basis, rather than on a "votes-cast" basis.

3. A resolution to cancel the strata plan requiring an 80% threshold vote must be prepared and then presented to the owners at a general meeting (s. 45, Act). The same threshold vote is required for the voluntary winding up of a strata plan with a liquidator or without a liquidator.

Legislative Amendments... *continued from page 3*

4.An extended notice period of at least 4 weeks' written notice is required in order to address the termination resolution at a general meeting of owners. We recommend that 37 days' notice be provided to ensure that the strata corporation is on solid legal ground.

5.The notice must be provided to:

a.owners,
b.tenants who have been assigned a landlord's right to vote and have notified the Strata Corporation of that assignment, and,
c.registered chargeholders, including mortgagees who have given the strata corporation a Mortgagee's Request for Notification.

6.We recommend that title searches be conducted of every strata lot to ensure that all of the chargeholders are properly identified and provided with notice. As noted below,the chargeholders will be provided with notice;however, the owner has the right to vote at the general meeting.

7.The text of the proposed resolution authorizing the termination of a strata plan must be included in the notice of the general meeting in the ordinary course (s. 45(3), Act).

8.Given the importance of a dissolution resolution, an owner will have the right to vote on this resolution even if the bylaws state that his or her vote cannot be exercised if the strata corporation is "entitled to register a lien against that strata lot" due to non-payment of strata fees or special levies (s. 53(2), Act).

Mortgagee's right to vote:

9.The legislation clarifies that although a mortgagee may be entitled to notice of the termination resolution, it does not have the right to "exercise a strata lot's right to vote" on this resolution. The amendments clarify that the owner has the right to vote on the dissolution resolution at a general meeting called for this purpose (s. 54.1, Act). The mortgagee's interests are protected by other provisions of the legislation.

Court appointed Voter:

10.If a person is not available to vote in respect of a strata lot, then the Supreme Court of British Columbia ("Supreme Court"), may appoint someone to vote on behalf of that strata lot (s. 58(3), Act).

Termination Resolution:

11.The termination resolution will:
a.authorize termination of the strata plan;
b.authorize the strata corporation to apply to the Supreme Court for termination orders and a vesting order authorizing the cancellation of the strata plan and winding up of the strata corporation (ss. 177(4) and 278.1, Act);
c.approve expenditures; and,
d.address miscellaneous matters.

Role of the Supreme Court:

12.Subject to exemptions for small strata corporations, a strata corporation will be required to obtain orders from the Supreme Court authorizing the cancellation of the strata plan and the winding up of the Strata Corporation. Thereafter, the strata corporation will apply to the Registrar of the Land Title Office to cancel the strata plan (s. 273.1, Act).

13.A strata corporation with less than 5 strata lots is exempt from the requirement to apply to the Supreme Court for termination orders authorizing termination and winding up (ss. 273.1(1)(b)) and 278.1(1), Act). Those applicants may apply directly to the Registrar of the Land Title Office to wind up the strata corporation without a liquidator. This legislative amendment results in a significant cost saving for small strata corporations and streamlines the process.

14.Each owner and chargeholder must be served with a copy of the Petition to the Supreme Court by personal service (s. 273.2). This is consistent with current practice.

15.The Supreme Court will grant the termination order if it is satisfied that termination is in the "best interests of the strata corporation" (273.3, Act). The Supreme Court will play an oversight role to protect the interests of dissenting owners and chargeholders and to ensure that the process is fair and efficient.

Miscellaneous Amendments:

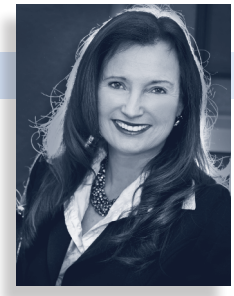
16.There are miscellaneous amendments such as, for example, the requirement to disclose the dissolution resolution in the Information Certificate (59(3), Act). These amendments are not referred to in detail.

Conclusion:

The new legislation opens up the door to many new and exciting possibilities. Please seek legal advice from a qualified strata lawyer if you would like to investigate your options.

The Guide Dog & Service Act

Cora D. Wilson, J.D
WILSON MCCORMACK LAW GROUP



Cora D. Wilson, J.D.,
Strata Lawyer

The Guide Dog and Service Dog Act (the "Act") became law on January 18, 2016 making British Columbia the most progressive Province in Canada for persons with disabilities. This new legislation modernizes guide dog and service dog guidelines by raising training standards, improving accessibility to the public, including strata corporations, and strengthening public safety.

The Act clarifies that discrimination is unacceptable. It gives certified guide or service dog handlers and their dogs (the "team") access rights equal to those enjoyed by the public without dogs.

The changes brought about by the Act address:

• certification for service dogs and guide dogs;

• rights of the team in a strata property and tenancy arrangement;

• rights of certified retired dogs to reside with their handlers;

• public access rights for certified dogs in training;

• a higher training standard;

• a more robust decision-making process for certification; and,

• strengthened compliance and enforcement structure.

What is the purpose of a guide and service dog?

Guide and service dogs help people who require assistance to avoid hazards or to perform certain tasks. Guide dogs assist people with visual impairment, while service dogs provide a variety of assistance to people with other kinds of disabilities such as hearing impairment or epilepsy. A guide or service dog can, for example, lead a person through public areas, alert a person to sounds and open doors.

Currently, only dogs can be certified under the Act. However, this does not prevent a person with a disability from making a request for a living assistance or companion pet in appropriate circumstances pursuant to the *Human Rights Code*. For greater certainty, the *Guide Dog and Service Dog Act* does not alter or remove any rights granted under the *Human Rights Code*.

How are guide dogs and service dogs certified in BC?

Both the dog and the handler must be certified. They are a team. There are two ways to become certified. The team must be trained at a school accredited by Assistance Dogs International or the International Guide Dog Federation. Alternatively, they must pass a certification test offered by the Justice Institute of BC ("JIBC"). In the latter event, additional supporting documentation from a BC veterinarian and a BC medical practitioner or nurse practitioner must be provided with the application.

Cora D. Wilson, J.D., Strata Lawyer, Author & Educator. Wilson McCormack Law Group. Cora has 30 years of legal experience with a focus on strata law. She deals with development and construction matters, remediation, strata governance, contracts, bylaws, collections, litigation and other strata related matters. She has appeared in all BC Courts and many tribunals. She has been appointed as an adjudicator for the Civil Resolution Tribunal. cora@wmlg.ca

The Registrar is authorized to issue and renew the following certificates:

• guide dog team consisting of a blind person and his or her trained guide dog;

• service dog team consisting of a person with a disability and his or her trained service dog;

• dog trainer;

• dog-in-training; and,

• retired guide or service dog team.

The Act raised the certification bar. Only dogs who behave appropriately with all kinds of people in different environments and who are trained to the highest standards will be granted unlimited access to public areas and permitted to maintain public safety.

What is a certification test with the JIBC?

This test examines the temperament and disposition of the dog in a public setting, such as a shopping mall or a restaurant. It generally assesses the following:

1. Is the dog calm, stable and reliable in public situations commonly encountered by a dog and its handler?
2. Does the handler have control over the dog at all times?
3. Is the dog safe to be in public?
4. Does the dog demonstrate the high standard of training expected of guide and service dogs?

In order to pass the assessment, the validator must be satisfied that:

1. The dog's nerves are steady.
2. The dog's temperament and disposition are sound.
3. The dog is well-mannered in public, in the presence of crowds, other dogs and traffic.

The Guide Dog & Service Act... *continued from page 5*

4. The dog is attentive to the handler and responds to commands without showing stress or avoidance.

In order to be certified, the dog/handler team must meet the minimum standard on 40 different tasks. The rigorous testing standards are designed to enhance public confidence in successful certified teams.

How does a person obtain a certificate for a guide dog or service dog?

A person seeking certification must submit an application and supporting documentation including evidence of accreditation from an accredited school and a picture to the Security Programs Division, Ministry of Public Safety and Solicitor General.

If the dog has not been trained by a school that is accredited by Assistance Dogs International or the International Guide Dog Federation, then an application must be submitted to the Security Programs Division together with a medical form, evidence that the dog has been spayed or neutered and a passport style photograph of the dog.

How does a person obtain a certificate for a dog in training or a dog trainer?

A dog trainer must obtain a dog trainer certificate and the dog in training must obtain a dog in training certificate from the Security Programs Division. An application with the proper documentation in support is required.

Can a person obtain a certificate for a retired guide dog or service dog?

A person may now apply for a retired guide dog or service dog certificate from the Security Programs Division. The application must include evidence of previous certification. A retirement certificate enables a retired certified dog to continue to reside with its handler regardless of any strata bylaws or rental provisions to the contrary.

There are limitations on a retired dog certificate. Retired dogs do not have access to restaurants, buses, hotels or other public places granted to working guide dogs and service dogs under the Act.

Does certification have to be updated and can it be revoked?

The certified dog and handler team must be reassessed every two years upon renewal of the certification. Dog and handler teams

The Guide Dog & Service Act... *continued from page 6*

will go through a reassessment at JIBC, excluding grandfathered teams and teams that graduated from accredited training schools. The dog and handler teams that graduated from accredited training schools will follow their own monitoring and evaluation process. However, the Registrar can at any time ask that a team be reassessed upon receipt of a complaint.

Dog and handler teams in existence on the date the Act came into force are "grandfathered" to ease the transition of teams to the new regime. Such teams still have to submit applications for certification under the Act, but they will not be required to undergo assessments by the JIBC unless the Registrar has concerns about the safety of the team and/or the public.

The handler of a certified team must inform the Registrar in writing within 30 days of:

- any changes in his or her contact information;
- the passing of the dog;
- if the handler or the dog or both no longer meet conditions, qualifications and requirements;
- if the handler no longer requires the assistance of a certified dog;
- if the dog no longer performs the functions of a guide or service dog;
- if the dog trainer no longer trains on behalf of the accredited training school; and,
- if the dog-in-training has been permanently removed from the training program.

The Registrar has the authority to cancel or refuse to renew a certificate if:

- the conditions, qualifications or requirements are no longer being met;
- the terms and conditions of certification are not being complied with; or,
- other prescribed circumstances arise.

The prescribed circumstances include:

- where the dog has threatened the safety of a person or other animal while exercising a public access right;
- the dog trainer no longer trains dogs on behalf of the accredited training school referred to in the application;
- the dog-in-training is permanently or indefinitely removed from the training program; and,
- false or misleading information was provided in support of the application.

If the Registrar cancels or refuses to renew a certificate, then the handler must be notified in writing and the handler must surrender the certificate to the Registrar. There is no requirement for the Registrar to provide notice in writing if the dog is found to constitute a risk to the safety of persons or other animals or if the handler has not provided the requisite change of contact information.

What effect does certification have on a person with a disability?

A certified team (dog and trainer) has the same rights and responsibilities as a person without a dog. As long as the dog is well behaved, the dog cannot be denied access to restaurants, buses, hotels or any other public area. Further, strata bylaws and rental provisions that prohibit or restrict pets do not apply to dogs certified under the Act. *The Human Rights Code* provides additional protection from discrimination for persons with disabilities.

A dog in training certificate grants a certified dog and trainer team access rights to public places for training purposes. However, strata bylaws and rental provisions that prohibit or restrict pets will continue to apply to certified dogs in training. In other words, dogs in training are not exempted from the application of a pet bylaw.

What are the offences, penalties and remedies are available under the Act?

The following constitute offences under the Act:

1. denial of public access rights to a certified dog and handler team;
2. charging additional fees to a certified dog and handler team;
3. denying a certified dog and handler team tenancy rights (residential and manufactured home park);
4. imposing discriminatory terms and conditions for a tenancy on a certified team;
5. falsely representing a dog as a certified guide or service dog under the Act; and,
6. failing to surrender a certificate after a request from the Registrar.

Further, the *Prevention of Cruelty to Animals Act* makes it an offence to interfere with, obstruct or harm a service animal.

The penalties for a violation may include a fine of up to $3,000.00 and the issuance of a violation ticket if a person makes a false claim regarding certification. This penalty is new.

If a certified guide or service dog is wrongfully denied access

The Guide Dog & Service Act... *continued from page 7*

to a public place, then the incident may be reported to the Security Programs Division. It will review complaints and if an investigation determines that access was wrongfully denied, then progressive enforcement powers are available ranging from providing information, education, a formal warning, a violation ticket, and/or a fine upon prosecution. Remedies may also be available under the *Human Rights Code*.

What bylaws should a strata corporation consider?

The Act could either trump or significantly impact pet restriction or pet prohibitions bylaws in a strata corporation. The strata corporation should consider a review of its pet bylaws to ensure compliance. It may consider bylaw amendments to:

- exempt certified teams which comply with the Act;
- allow a retired certified dog with a retirement certificate to reside with its handler;
- require certified training dogs to comply with the bylaws of the strata corporation;
- require residents to notify the strata corporation of any changes to a certificate under the Act;
- provide reasonable accommodation by permitting a living assistance pet or companion pet to a person suffering from a disability under the *Human Rights Code* with or without conditions;
- address offenses and enforcement provisions consistent with the Act; and,
- address other pet provisions to meet the requirements of a strata corporation.

The strata corporation should refrain from addressing rental provisions in the bylaws. Section 141 of the *Strata Property Act* prohibits the insertion of terms in tenancy agreements. It reads as follows:

141 (1) The strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided in subsection (2) (rental prohibition or rental limitation).

Conclusion

Every strata corporation should review the *Guide Dog and Service Dog Act*, regulations and policy guidelines. It should seek the assistance of a strata lawyer to assist with any related bylaw amendments or enforcement issues. For further information, you may visit the following website: http://www2.gov.bc.ca/gov/content/justice/human-rights/guide-and-service-dog.

Cancelling Sections

Elaine T. McCormack, J.D., Lawyer
WILSON MCCORMACK LAW GROUP

Elaine T. McCormack, J.D
Strata Lawyer

In the Fall of 2014, I received a call from a strata manager regarding sections. The owners in one of the strata corporations she manages no longer wanted to be divided into sections. The council and section executive members were finding that the extra administration time and costs of having sections wasn't worth it. They wanted to be one strata corporation, with one budget. I was asked what needed to be done in order for the sections to be cancelled. With legal assistance, the strata took the steps necessary to cancel its sections.

Cancelling sections is becoming a common topic in the strata community. This article provides basic information about sections and outline matters that need to be addressed in order to properly cancel sections.

Sections are separate legal entities created by strata bylaw. Bylaws creating sections may be filed in the land title office by the developer at the inception of the strata corporation or passed by the owners and filed by council.

Different sections can be created to recognize different structures and uses of the strata lots in the complex. For instance, owners of residential and nonresidential strata lots can each create sections, as well as owners of nonresidential strata lots used for significantly different purposes. Different types of residential strata lots, such as apartment style, townhouse style and detached houses can each form their own sections.

Having sections allows for a certain amount of independent decision making and financial separation. For instance, owners within a section have their own section executive and can vote on and file bylaws for matters that relate solely to the section. Sections also have annual and special general meetings and vote on their own yearly budget. Sections establish their own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all strata lots in the section. None of this changes the obligations to properly govern the strata corporation.

For some strata complexes, the added time and expense involved in running sections outweighs the benefits. Having sections means extended administrative time, extra expenses, and more complicated governance. For instance, if the complex is professionally managed, each section enters into a separate management agreement. It can be difficult for those individuals that serve as both council and section executive members to ensure that they are separating out the financial and legal obligations of each entity correctly. For example, sometimes matters that should be dealt with at a section executive meeting are dealt with at a council meeting.

Elaine T. McCormack, J.D., Strata Lawyer, Mediator & Arbitrator, Wilson McCormack Law Group. Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts. She has been appointed as an adjudicator for the Civil Resolution Tribunal. elaine@wmlg.ca

In developing a process to cancel sections, my first consideration was section 193 of the *Strata Property Act*, which provides as follows:

Creation or cancellation of sections by strata corporation

193 (1) To create or cancel sections, the strata corporation must hold an annual or special general meeting to consider the creation or cancellation.

(2) The notice of meeting must include

(a) a resolution to amend the bylaws to provide for either the creation and administration of each section or the cancellation of the sections, and

(b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section or to remove a designation in accordance with section 75.

(3) The resolution referred to in subsection (2) (a) must be passed

(a) by a 3/4 vote by the eligible voters in the proposed or existing section, and

(b) by a 3/4 vote by all the eligible voters in the strata corporation.

(4) On the filing in the land title office of a bylaw amendment creating a section,section is created bearing the name "Section [*number of section*] of [*name of strata corporation*]".

(5) On the creation of a section the registrar may establish a general index for the section.

As a result, the guidance given in the *Strata Property Act*

Cancelling Sections... *continued from page 9*

regarding cancelling sections is limited to passing a bylaw and potentially removing certain designations of limited common property for all strata lots in a section. Drafting the appropriate resolutions, however, is only one of many tasks that need to be accomplished in order to properly cancel sections.

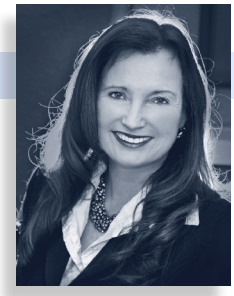
The cancellation of sections involves transferring the assets and liabilities of each section to the strata corporation. As a result, each section should enter into an agreement (referred to as a "Succession Agreement") with the strata corporation. The Succession Agreement carefully sets out the process and timing for transferring the assets and liabilities of the section to the strata corporation. Examples of assets that need to be transferred are the operating fund, contingency reserve fund and monies owing to the section, such as strata fees and special levies. An example of a liability that needs to be paid prior to the cancellation of the section or transferred to the strata corporation is a repair expense incurred by the section. A section may have other legal responsibilities, such as an obligation to pay a service provider under an agreement. Those obligations need to be transferred to the strata corporation or terminated.

Strata corporations that have sections as per the bylaws but do not actually run separate sections will require simplified documentation when they the cancel sections. The reason for this is that they may not have an operating account, contingency reserve fund account, or have incurred liabilities.

Council and section executive members who find that having sections no longer suits their strata community should consider retaining legal counsel to advise on the pros and cons of continuing with sections. Incurring the one-time cost of cancelling sections may be more attractive than incurring the long term increased administrative time and costs of having them.

The Anatomy of a Hearing

Cora D. Wilson, J.D.
WILSON MCCORMACK LAW GROUP



Cora D. Wilson, J.D.,
Strata Lawyer

A written request by an owner to the strata corporation for a hearing can be an effective tool to address grievances. Holding a hearing can resolve issues that may otherwise result in legal proceedings.

Both councils and owners often have questions regarding these hearings. This article is a non-exhaustive review of many of these questions. For instance, how should the council conduct the hearing from a procedural and substantive perspective? What subject matter may be addressed during a hearing? Who can be present at the hearing? Are there any limitations on the hearing process? When is a decision required? What are the mechanics of making a decision?

What is the procedure for holding a hearing?

Section 34.1 of the *Strata Property Act* (the "Act") addresses hearings, as follows:

> 34.1(1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
>
> (2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.
>
> (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

The requirement to hold a hearing is mandatory. The hearing process has an important purpose, in that it creates a due process forum for owners and tenants. However, it should not be abused or used for an improper purpose.

There are procedural and substantive differences between a hearing held pursuant to 34.1 of the Act and a hearing held to address alleged bylaw or rule contraventions pursuant to section 135 of the Act. Legal advice should be sought from a qualified strata lawyer if there is any doubt regarding how to address these provisions.

There are no statutory limitations on the subject matter which may be addressed during a hearing or how often a hearing on the same subject matter may be held. This leaves the door open for potential abuses, such as multiple requests for a hearing to address the same subject matter or to address issues which cannot properly be addressed as part of a hearing. For example, the hearing process should not be used to address matters cloaked by legal privilege or to circumvent privacy. Owners and tenants should be alive to the fact that the council is generally made up of volunteer owners.

Cora D. Wilson, J.D., Strata Lawyer, Author & Educator. Wilson McCormack Law Group. Cora has 30 years of legal experience with a focus on strata law. She deals with development and construction matters, remediation, strata governance, contracts, bylaws, collections, litigation and other strata related matters. She has appeared in all BC Courts and many tribunals. She has been appointed as an adjudicator for the Civil Resolution Tribunal. cora@wmlg.ca

There are limitations on who can apply for a hearing. Only an owner or tenant can request a hearing. Occupants, who are neither an owner nor a tenant, are not included in the class of applicants. Therefore, if a non-owning spouse makes an application, the council is not under a legal obligation to hold a hearing and provide a decision.

If a written application is received by the strata corporation, then who must hold the hearing? Regulation 4.01 of the *Strata Property Regulations* states that "hearing" means "an opportunity to be heard in person in a council meeting".

The simple statutory provisions regarding hearings raise numerous complex questions.

What is the procedure for calling and holding a hearing?

Since hearings must be held at a council meeting, it is important to consider what the correct procedure is to call one. The procedure for calling a duly convened council meeting may be summarized as follows:

1. Regulation 4.01 requires that the application be addressed at a "council meeting". Therefore, this business should be placed on the Agenda for the council meeting.

2. The bylaws should be reviewed to determine the requirements for calling and holding a council meeting.

3. The statutory Schedule of Standard Bylaws provide that any council member may call a council meeting by giving the other members at least one week's notice specifying the reason for the meeting.

4. When calculating the number of days required to call a council meeting, the day the notice is given and the last day of the notice period are added to the count. As a result, the council

The Anatomy of a Hearing... *continued from page 11*

meeting must be held 9 days or later after notice is given.

5. The hearing at a duly convened council meeting must take place *within* 4 weeks from the date of deliveryof the application or the deemed date of delivery.

6.A notice given to the strata corporation by an owner or tenant

is conclusively deemed to have been given when it is left with a council member or 4 days after it is mailed, faxed, emailed or put through the mail slot or in the mail box (s. 63(2), Act).

7.Therefore, the council meeting must be held within 4 weeks after the delivery of the request. When calculating the number of days *within* the four week period (28 days), the day the application is received or deemed to have been received is not counted as one of those days. The hearing cannot take place on the last day of the 4 week period (the 28th day) since this date would be out of time. Therefore, the hearing must take place prior to the 28th day after the date that the notice is delivered or deemed to be delivered.

8.For instance, if the notice was delivered personally on September 30th, then the meeting must be held on any date prior to October 28 - it cannot be held on or after October 29. If the notice was delivered by any other method, such as fax or email, then 4 days must be added to the notice period.

9.The calculation of notice periods can be complex. A person with an issue regarding delivery dates or deemed delivery dates should obtain legal advice.

10.In order for a council meeting to be duly convened, the quorum requirements must be met and the council members must meet the eligibility requirements to sit on council and not be subject to early removal during the term. The bylaws should be carefully reviewed to determine quorum and the requirements for a council member to serve or to continue to serve on council.

How should a council member address conflicts?

A council member should refrain from acting as a council member if his or her personal interests conflict directly or indirectly with those of the strata corporation (see s. 32, Act). It is the member's duty to disclose and otherwise address such conflicts. This is a complex issue and if a council member is concerned that he or she may have a conflict, then he or she should seek independent legal advice.

How should the council members conduct themselves during a hearing?

The purpose of a hearing is to hear from the applicant. Council members may ask questions. However, a hearing is not a forum for a debate. The council should act in a quasi-judicial manner during the hearing. In other words, council members should act in an objective, impartial and unbiased manner.

The hearing provides an owner or tenant with an opportunity to be heard at a council meeting and to provide information that council can consider when making a decision. There is no obligation on the council to respond to questions and the hearing is not intended to be a forum for an owner or tenant to grill the council, engage in abusive conduct or to otherwise use the hearing for another improper purpose.

Who can attend a hearing?

Standard Bylaw 17(3) indicates that owners may attend council meetings as observers. There is no reference to tenants attending council meetings. This provision does not grant an owner the right to participate in discussions or the decision-making process at a strata council meeting if he or she attends as an observer. Caution should be exercised regarding allowing an owner to observe a hearing. Generally privacy considerations would prevent owners from attending a hearing as an observer.

Can an owner or tenant bring other people with them to the hearing, including witnesses, agents, lawyers or other persons to assist them with the hearing? Subject to the bylaws or a

The Anatomy of a Hearing... *continued from page 12*

decision by the council to the contrary, this is viewed as a reasonable course of action. Support people should not be unreasonably restricted or limited by the council. The council is at liberty to refuse to allow support people if the attendance is contrary to the Act or the bylaws, if there is an objection, a privacy concern, a safety concern, a violation of litigation privilege or if the attendance is viewed as an abuse of process or is otherwise improper.

The bylaws governing observer attendance at council meetings should be carefully reviewed. Some bylaws prohibit observers. Other bylaws require observers to leave a council meeting in certain circumstances, such as when there are privacy concerns or where the council wishes to go *in camera*.The bylaws may require an observer to leave a meeting if the council approves a resolution by majority vote to that effect. The bylaws will govern the conduct of the owners, tenants and others and, as such, they should be carefully reviewed.

Can the council place time limitations on a hearing?

The council may place a limit on the period of time available for an owner or tenant to state their case during the hearing. This time period should be reasonable given the subject matter of the hearing. What is reasonable depends on many factors including the complexity of the subject matter.

What is the scope of council's discretion when making a decision?

The strata corporation cannot interfere with the council's discretion regarding certain matters, including whether a person has contravened a bylaw or rule, whether a person should be fined and the amount of the fine, whether a person should be denied access to a recreational facility, whether a person should be required to pay the reasonable costs of remedying a contravention of the bylaws or rules and whether an owner should be exempted from a bylaw that prohibits or limits rentals (s. 27(2), Act).

Council decisions can be challenged on grounds, for example, that they are significantly unfair, contrary to law or otherwise improper.

What is the procedure for decisions?

The council must give the applicant a written decision within one week after the hearing if a decision is required. When calculating the number of days *within* the one week period (7 days), the day the hearing is held is not counted as one of those days and the decision must be delivered to the applicant before the 8th day.

A decision given to the applicant by the strata corporation is given when it is left with the applicant or is conclusively deemed to have been given 4 days after it is left with an adult occupant, put under the door, mailed, put through the mail slot or in the mail box, faxed or emailed (s. 61, Act).

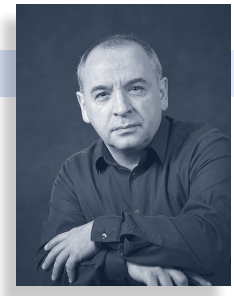
There are concerns regarding whether delivery of a strata corporation decision to an owner or tenant by email is valid if the owner or tenant did not specifically provide the email address for that purpose: *Azura Management (Kelowna) Corp. v. Strata Plan KAS2428* (2009), 95 B.C.L.R. (4th) 358 (B.C.S.C.). The strata corporation should not deliver a decision to an owner or tenant by email unless it has first obtained the written consent from the owner or tenant to provide delivery by email for purposes set out in s. 61 of the Act.

Conclusion:

The hearing can be a useful and powerful tool for owners and tenants to air certain matters and address disputes. It can also be a powerful tool to show a court that the council followed proper procedure in allowing the owner to state his or her case and that it made its' decision based on proper information. I envision that the hearing process will be used more and more frequently in the future.

The Movie Shoot in Strata

Antonio (Tony) Gioventu
EXECUTIVE DIRECTOR OF
CONDOMINIUM HOME OWNERS ASSOCIATION OF BC


Antonio (Tony) Gioventu

Is your strata a good location for a movie shoot?

A growing number of strata corporations and strata lot owners are being approached by production companies for access to their communities for movie shoots and television productions. In many ways strata corporations are ideal as they offer significant space for staging, parking, crew facilities, and a diversity of filming variations and opportunities without the need to relocate. A high-rise with sweeping views of the BC coast, accompanied by open plazas, public spaces or secluded gardens, recreational facilities and underground parking all within one site is a great find for a production company. Bare land and townhouse strata corporations with marinas, golf clubs, riding stables are frequently used for location shoots, but don't be lured by the fast cash until everyone affected agrees in writing and the strata council and owners have the authority of the owners to go ahead.

There are 3 principle parties to the contracting of a film shoot in a strata. The production company, the strata corporation and any owners affected by the production or who have filming in their strata lots. It is absolutely essential to negotiate written contracts between all of the parties before any production begins. Before an owner permits filming, and before the strata corporation agrees several conditions will have to be resolved.

• Clearly identify all of the property areas that will be accessed, and the type of production that will be on your site. Confirm strata lot owners, tenants and occupants will have continued access to their parking, their strata lots, or other services in the building, unless they have agreed.

• Establish schedules for the time periods of filming, site production and preparation, and when access to the strata lot and strata common property will be required.

• Obtain a copy of the proposed contract from the production company and certificates of insurance for all production related activities. Site production may expose your strata to a higher risk level. Contact your insurance broker and have them review the insurance certificates.

• Review privacy and confidentiality agreements. There may be proprietary conditions that affect your strata and certainly the intellectual property of the production company. The strata corporation and residents may be bound to confidentiality agreements.

Antonio (Tony) Gioventu, is the Executive Director and Strata Property Advisor for the Condominium Home Owners' Association of B.C. (CHOA). He brings 25 years' experience in management, real estate development, construction, building operations, and strata property legislation to this position

• Review your strata bylaws to verify there are no conflicts with the production. Bylaws for surveillance, security, access and use of property may impose restrictions.

•Have the strata lawyer review the terms and conditions of the contract. This cost should be negotiated as part of the fees for the filming, along with the advance payment for the production.

• Confirm your strata has negotiated the fees for the production, liability for any additional maintenance requirements or damages to the strata property, and additional fees if the production runs over schedule. The strata may also require damage deposits to ensure site restoration after the production.

• Once the strata understands the scope of the production, impact on your community and the revenue that is anticipated, determine if the strata has the authority to enter into the film contract. Don't forget, the strata may not significantly change the use or appearance of common property or common assets without a ¾ vote of the owners at a general meeting.

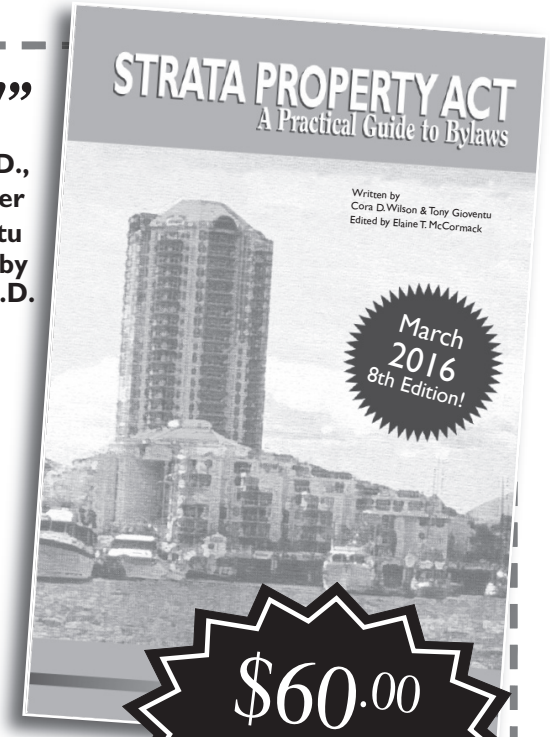
• If an owner is entering into a production agreement, they need to be aware that the strata corporation is most likely affected and they will need the consent of the strata corporation as well. Access to strata lots will likely involve common property, parking logistics, may disrupt use and access to the strata or other owners' strata lots. Owners do not have the authority to grant access to the strata or the common property.

• Before production begins identify who is responsible for the site production on behalf of the strata and the production company and review the post production restoration.

"Every Strata should have a Copy!"

Order Yours Today!

Written by Cora D. Wilson, J.D., Strata Lawyer & Tony Gioventu Edited by Elaine T. McCormack, J.D.



$60.00 *plus HST, shipping and handling*

Name:_____

Address: _____ City: _____

Postal Code: _____

Tel: _____ Fax: _____

Email: _____

❑ VISA ❑ Mastercard ❑ Cheque enclosed *Cheques made payable to Strata-sphere Condominium Services Inc.

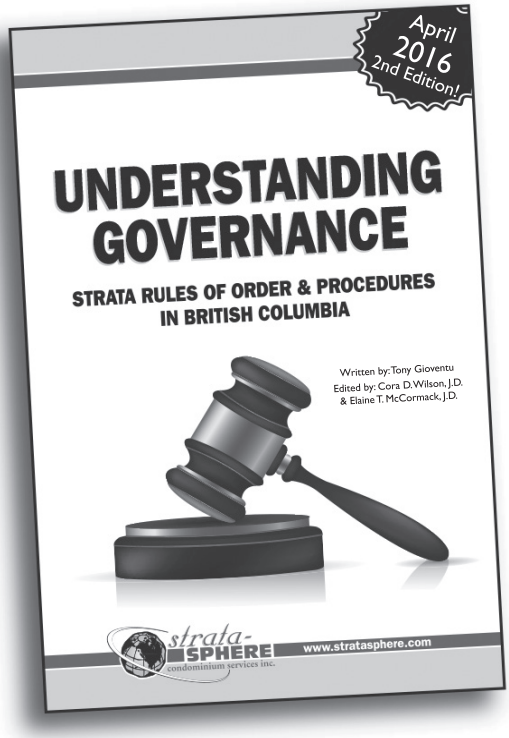
VISA/Mastercard Number _____ Expiry _____

Amount _____ Signature _____

Fax orders to: (250) 741-1441

Tel: (250) 753-0353 • Toll Free:1-888-298-7999

Coming Soon!



$25.00 *plus taxes, shipping and handling*

Order Yours Today!

Name_____

Address: _____ City: _____

Postal Code: _____

Tel: _____ Fax: _____ Email: _____

☐ VISA ☐ MASTERCARD ☐ CHEQUE ENCLOSED *Cheques made payable to Strata-sphere Condominium Services Inc.

VISA/Mastercard Number _____ Expiry _____

Amount _____ Signature _____

Fax orders to: (250) 741-1441

Tel: (250) 753-0353 Toll Free: 1-888-298-7999

Short Term (Holiday) Rentals

Gerry Fanaken
VANCOUVER CONDOMINIUM SERVICES INC

Gerry Fanaken

There is a growing concern by strata councils over short term, so-called "holiday" rentals of strata lots within their strata corporations. Airbnb is one of several business operations that have sprung up in recent years that organize rentals of houses and condo units for very short periods of time – anything from one or two days to several weeks or a month. Some of these rentals are for the business traveller but most are typically for tourists. This article deals, of course, with only such short term rentals within strata corporations. Recently there have been news articles on the topic (some of which quite alarmist in tone) and the resulting reaction of strata councils to such short-term rentals. It is well-established that the vast majority of strata councils hate rentals of any sort, never mind short term rentals for holiday guests. What to do about it?

Some strata councils have "banned" short term rentals or imposed rules or issued threats and/or fines on strata lot owners who allow their strata lots to be used in such a manner. Are such strong-arm tactics workable and legal? Perhaps workable but who knows if legal until a court renders a judgment or decision which will provide guidance and certainty. In the meantime, here is what you need to know.

Whether or not a rental restriction or limitation on strata lots rentals can be implemented first requires a strata corporation to properly pass and register a bylaw. Without an enforceable bylaw, any attempt by a strata council to stop short-term rentals (or any rentals) is a wasted effort. In fact, the strata council could invite legal action for damages against the strata corporation by improperly making threats and/or imposing fines. The *Strata Property Act* is very clear about rentals: a strata corporation can impose a complete prohibition or a limitation of the number of strata lots that can be rented/leased. Section 141(2) states that "The strata corporation may only (emphasis added) restrict the rental of a strata lot" by creating a bylaw. In other words, a simple rule or policy invoked by a strata council does not meet the requirement of the *Strata Property Act*. Also note that the legislation does not specifically define what constitutes a rental period. What is vital to remember is that, if a strata corporation currently does not have a bylaw pursuant to Section 141, then the strata council is powerless to prevent or punish an owner from using his or her strata lot as a short term "holiday" rental. Furthermore, any attempt to somehow get around this dilemma by imposing a "move fee" rule would be very dangerous. A person arriving and departing a strata lot with a suitcase does not constitute a move.

Gerry Fanaken ***is a 38 year condo owner, former CEO of Vancouver Condominium Services and author of Understanding the Condominium Concept: An Instightful Guide to the Strata Property Act.***

If a strata corporation already has a rental bylaw in place (i.e. registered in the Land Title Office) could such a bylaw be used to pounce on a short-term rental? Possibly, but only under very specific circumstances. Know first that the vast majority of so-called rental limitation bylaws in use by strata corporations are likely not enforceable. The reason is that they do not comply with the *Strata Property Act*. Here is why. Section 141(3)

states that such a limitation bylaw "under subsection (2)(b)(i) must set out the procedure (emphasis added) to be followed by the strata corporation in administering the limit." Most strata councils and strata management companies have overlooked or misunderstood the word "procedure" and, as a result, the bylaws are missing this key element and therefore become unenforceable.

A strata corporation that has enacted and registered a prohibition bylaw pursuant to Section 141(2)(a) may rely on this bylaw to stop short-term holiday rentals. (A prohibition bylaw means no rentals at all. Zero. Period.) However…

Keep in mind that there are other provisions in Division 8 of the Act that must also be considered when attempting to stop short-term holiday rentals.

(a) A family member is exempt pursuant to Section 142.

(b) Section 143(1)(a) permits rentals to occur for 1 year after an existing tenant ceases to occupy a strata lot.

(c) Section 143(1)(b) permits rentals to occur for 1 year after a bylaw is enacted.

(d) Section 143(2) exempts some strata lots that were "designated as rental strata lot(s)" on a Rental Disclosure Agreement, issued by the developer.

(e) Section 144 makes provision for "hardship" exemptions.

In summary, if your strata corporation is grappling with the issue of controlling short-term "holiday" rentals, here are some guidelines:

(1) If the strata corporation already has a rental prohibition bylaw, i.e. no rentals at all, chances are good that you will be able to prevent such rentals (or at least apply fines for violation,

Short Term (Holiday) rentals... *continued from page 17*

assuming that the fines are properly enshrined in the bylaw.)

(2) If the strata corporation has neither a rental prohibition or limitation bylaw in place, there is little, if anything, that can be done to stop the event.

(3) If the strata corporation has a compliant rental limitation bylaw in place, and the procedure and number tracking are in order, the council can attempt enforcement. If the procedure aspect is faulty, enforcement will be futile. If the number of actual rentals in effect is less than the bylaw stipulation, enforcement will be futile.

Historically and typically, in strata corporations the renting of units has been viewed as a long-term residential accommodation arrangement (usually at least one year as a minimum). When the Act was created many years ago, no one had anticipated short-term occupancies such as discussed in this article and the result now is that there are some legal opinions and court decisions that distinguish long-term rentals as opposed to daily, weekend or weekly occupancies. Although it is somewhat unchartered territory, a strata corporation wanting to stop holiday rentals might wish to create a new type of bylaw which would clearly spell out that strata lots can only be used as single family dwellings and cannot be used for commercial and/or non-residential purposes, etc. Very specific criteria would also have to be incorporated within the bylaw to identify what would not be acceptable.

Once again, remember that a bylaw must be created and that all procedures and requirements of the Act in respect of bylaw creation and registration are mandatory. The entire business of controlling rentals in strata corporations is extremely complicated and the very specific (but widely ignored or misunderstood) requirements of the Act are very demanding. My best advice to any strata council wishing to stop short term holiday rentals is to retain qualified legal counsel for guidance.

Gerry Fanaken is a retired strata property manager and the author of *Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act*. He can be reached at gfanaken@shaw.ca

Pacific Rim Appraisals Ltd.

Pacific Rim Appraisals Ltd. has been servicing all of British Columbia with over 40 years of experience with offices in Victoria, Nanaimo and Richmond.

Order an insurance appraisal and depreciation report (reserve study) at the same time and receive a 20% to 30% discount on the cost of the insurance appraisal.

2-57 Skinner Street
Nanaimo, B.C. V9R 5G9

Phone: (250) 754-3710
Fax: (250) 754-3701

550-2950 Douglas Street
Victoria, B.C. V8T 4N5

Phone: (250) 477-7090

305-5811 Cooney Road
Richmond, B.C. V6X 3M1

Phone: (604) 248-2450

Toll Free Phone: 1-866-612-2600

Toll Free Fax: 1-866-612-2800

E-mail: info@pacificrimappraisals.com

Website: www.pacificrimappraisals.com

One Stop Shop for Depreciation Reports and Insurance Appraisals
Serving All of British Columbia with Certified Reserve Planners

CORA D. WILSON, J.D

C.D WILSON
LAW CORPORATION

630 Terminal Ave. N.
Nanaimo, BC V9S 4K2
Tel: (250) 741-1400
Email: cora@wmlg.ca

WILSON McCORMACK

AN ASSOCIATION OF LAW CORPORATIONS

ELAINE T. McCORMACK, J.D.

McCORMACK & COMPANY
LAW CORPORATION

Suite 350-500 Sixth Avenue
New Westminister, BC V3L 1V3
Tel: (604) 545-0095
Email: elaine@wmlg.ca

Simon Patterson, BSC, BEng. -New Westminister (Office Manager & Bookkeeper); Cassandra Cooper- Legal Assistant; Lesley White- Conveyancer; Mary Milner- Nanaimo (Office Manager); Elaine T. McCormack, J.D.- Strata Lawyer; Cora D. Wilson, J.D.-Strata Lawyer; Cindy Bartlett- Nanaimo (Bookkeeper); Laura Borger-Legal Assistant.

Over 50 Years of Combined Legal Experience

- Bylaws
- Collections
- Development
- Construction Litigation
- Mediation / Arbitration
- Court Applications
- Privacy / Human Rights
- Termination of Sections & Strata Corporations

www.wmlg.ca