CCI Vancouver Chapter

Condo News

Edition #2

President's Message

When I attended the CCI National Conference last fall I heard amazing statistics about how many condominium units there are in Canada and in particular, British Columbia. While we have no way of doing a complete head count short of doing a land title office search of each registered strata plan in every land title office in B.C., the statistics I heard suggested that there were over 220,000 units in B.C. with over 50% of those located in the Lower Mainland.

Suffice it to say the development and construction of condominiums is a growth industry but as many of us found out at our most recent seminar held on February 19, 2011, the majority of people who purchase a condominium as their home know little about what condominium living is all about, including understanding how the Strata Property Act and the bylaws of their strata corporation work in an integrated manner to govern their ownership and condominium lifestyle!

Speaking of the most recent seminar we held, we are once again happy to say that it was quite successful with over 75 registrants in attendance. Those who attended were greeted with our first day-long seminar that covered the following topics:

- RENTAL HARDSHIP – ARE THERE ANY RULES?
- WHAT IS A DEPRECIATION REPORT AND DO WE NEED ONE?
- HOW DO WE REMOVE JOHN THE IDIOT FROM COUNCIL?
- WHAT'S A QUORUM ANYHOW?
- WHAT'S THE BEST WAY TO ENFORCE BYLAWS?

We also had a 3 person legal panel who, after presenting on various legal topics, spent considerable time participating in a Q & A session which, from all accounts, was one of the highlights of the day.

We would like to thank the following presenters who gave up their Saturday (it was sunny!) to present on the various topics:

- Kevin Grasty and Anne Benniger of Halsall Engineers
- Paul Duchaine and Paul Murcutt of BFL Canada
- Shawn Smith of the law firm of Cleveland Doan
- Phil Dougan of Access Law Group
- Jamie Bleay of Access Law Group
- Jim Allison of Assertive Property Management; and
- Stephen Page of First General Restoration

We will be holding another educational seminar on Saturday, May 7, 2011 at the UBC Robson Square campus. More information on this seminar will be available on our website shortly so stay tuned!

Jamie Bleay – CCI Vancouver President

- Inside this Issue -

LEGAL CORNER

Case Law Update

Selected case law relating to strata corporations in the Supreme Court of British Columbia 2010 - present

The Owners, Strata Plan NES 97 v. Timberline Developments Ltd., 2010 BCSC 1811 – 2010/12/16 Supreme Court

In a phased building of a strata complex, the developer must pay contributions towards common facilities until the complete phased strata plan is deposited in the Land Title Office

[27] As a result, I conclude that the hot tubs are "common facilities" within the meaning of s. 217 and that by application of the plain language of s. 227, the owner developer must contribute to the expenses attributable to them during the material time.

[28] The operative language in s. 227 is that the expenses are "attributable to the common facilities". In my view, expenses include repair, maintenance, refurbishment and replacement attributable to wear and tear. What constitutes legitimate expenses should not be narrowly construed. If a common facility requires replacement, it is no answer to say that the replacement involved an upgrade of the facility, as happened here in respect of two of the hot tubs.

Guenther v. Owners, Strata Plan KAS431, 2011 BCSC 119 – 2011/02/01
Supreme Court

To make owners responsible for the repair of limited common property, the bylaws must be amended to say as much

[50] The next issue is whether the obligation to repair the balconies falls to the strata corporation or the individual unit owners. As earlier noted, the Strata Property Act permits a strata corporation to enact bylaws that make an owner responsible for the repair and maintenance of limited common property, and the respondent has exercised that option. The bylaws impose the obligation to repair "railings and similar structures that enclose balconies" on the strata corporation (s. 11(c)(II)). If the corporation wishes to change the allocation of responsibility for repairs to the balcony railings and similar structures, it must amend its bylaws. A mere resolution of council is of no effect to the extent it purports to make such an alteration. Thus, the resolution of council at the September 13, 1999 meeting is of no effect.

Clarke v. The Owners, Strata Plan VIS770, 2011 BCSC 240 – 2011/02/28
Supreme Court

A strata building cannot be re-zoned without the unanimous support of all owners

[13] Governance of the strata corporation raises different issues. In general terms, the owners decide the course of action to be taken by the strata corporation, directly, or indirectly, by electing a strata council which then makes certain decisions under the SPA, through voting. However, the owners cannot individually or collectively grant powers to the strata corporation or the strata council that those entities do not have under the SPA. Depending on the importance of the particular issue requiring a vote by the owners, the SPA provides for different votes, ranging from simple majority to 75% majority and, finally, to unanimity.

[14] Unanimity is required for the most important questions such as, for example, winding up a strata corporation and converting the interest of the owners to tenancy in common (s. 272). In such event, the strata plan would be cancelled and the strata corporation would be dissolved, but only if every owner agreed.

[15] Decisions respecting rezoning impact directly on individual ownership and, as a result, I do not see how a strata corporation, or strata council acting on its behalf, could become involved in a zoning application, even informally, unless all the owners asked it to. There is, as I have already stated, no such unanimity in the case at bar.

[16] I conclude that, absent the unanimous consent of all strata property owners, neither a strata corporation, nor a strata council on its behalf, nor a court appointed administrator, is entitled to seek any rezoning change for the simple reason that rezoning directly affects the property rights of each individual owner. Those individual ownership rights extend beyond the individual strata lot to a proportionate undivided interest in the common proper

Selected case law relating to strata corporations in the Court of Appeal 2010 - present

The Owners, Strata Plan LMS 2940 v. Squamish Whistler Express and Freight, 2010 BCCA 74 – 2010/02/15
Court of Appeal

The defendants appeal from an order dismissing their application to dismiss the plaintiff's action in negligence for damages caused by a truck colliding with common property of the plaintiff strata corporation. The plaintiff had commenced its action one day after the expi-

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CCI - Vancouver Board of Directors - 2010/2011

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Welcome New Members

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Pacific & Western Bank of Canada
Phoenix Restorations Ltd.
Strata Capital Corporation
The Owners, Strata Plan VR143
The Owners, Strata Plan LMS36

ration of the two year limitation period from the date upon which the right to bring the action arose (the date of the incident) pursuant to s. 3(2) of the Limitation Act. Appeal dismissed. There was a statutory impediment created by the Strata Property Act of at least two weeks before the plaintiff could obtain the owners' authorization to commence the action. Section 6(4)(b) of the Limitations Act, as interpreted in Novak v. Bond, [1999] 1 S.C.R. 808, postponed the running of time for at least one day from when the right to bring the action arose.

Azura Management (Kelowna) Corp. v. The Owners, Strata Plan KAS 2428, 2010 BCCA 474 – 2010/10/28
Court of Appeal

The chambers judge resolved a voting dispute between two factions within a Strata Corporation by declaring that the vast majority of lot owners were the owners of lots that were residential, but that a small number of the lots owned by another faction were nonresidential lots. Under the s. 128 of the Strata Property Act, any amendments to the Corporation's bylaws required a ¾ majority of each type of lot owners in order to pass. Despite the absence of an application under s. 164 of the Act, the Chambers judge ordered that at all future annual general meeting or any special meetings, all lot owners would vote together. The owners of the lots declared to be nonresidential appealed, and the owners of the lots declared residential cross appealed the finding that there were two types of lots. Appeal allowed. Absent an application by either an owner or tenant here was no jurisdiction to grant the impugned order, and in any event no evidence that the nonresidential lot owners intended to act in other than the best interests of the Corporation in exercising their votes as required by s. 164. Cross appeal dismissed. The chambers judge committed no error in his declaration as to the two types of lots within the Strata Corporation.

The Owners, Strata Plan NW 971 v. Daniels, 2010 BCCA 584 – 2010/12/20
Court of Appeal

Appeal from an order for the immediate sale of the appellant's four strata lots due to the nonpayment of her proportionate share of a special assessment. The appellant challenged the validity of the special resolution for capital improvements on the basis that the respondent Strata Corporation had failed to provide formal notice under the Strata Property Act of the adjourned meeting. At that meeting the failed vote from the initial meeting, which had not been recorded in the minutes but adjourned to a second meeting for reconsideration, was passed. The SPA contains no provisions that govern the conduct of a special general meeting. Consequently, the respondent followed the procedure under Roberts Rules of Order. Appeal dismissed. The procedure followed to reconsider the special resolution at the adjourned meeting was not unfair to the minority members of the Strata Corporation, including the appellant, and protected the wishes of the true majority. Therefore, the special resolution was valid, the monies were owed by the appellant, and the respondent entitled to the order for sale.

Martin v. Lavigne, 2011 BCCA 104 – 2011/03/08
Court of Appeal

The appellant owners appeal the dismissal of their damages claims in nuisance and defamation. They alleged that another strata owner, who was also a member of council, over the course of a year would regularly stare at them in their ground floor unit as he walked by. They believed his conduct was associated with their complaints to the strata council of financial mismanagement. They also alleged the president of the strata council, also a strata owner, defamed them in a newsletter to the strata owners when he advised them of the escalating dispute with the appellants and how the strata council proposed to address it. The trial judge had found that while certain words in the headline of the article were defamatory, they were protected by the occasion of qualified privilege. Appeal dismissed. The alleged nuisance did not rise to the standard of a substantial and serious interference with the appellants' use and occupation of their property. The trial judge correctly found the president of the strata council had a duty and the strata owners had a corresponding interest to receive the information in the newsletter concerning the ongoing dispute with the appellants.

Smoking and the Strata Corporation

by **Shawn M. Smith, LLB**

Simply by writing those words I have undoubtedly stirred up controversy. Rest assured, however, that I do not intend to enter into a debate as to whether one should smoke or not. Rather, as a result of increased interest in this topic I want to draw attention to some of the legal restrictions that have been placed on smoking in the strata context and the need to have a bylaw that reflects those restrictions in order to comply with the relevant legislation.

As a starting premise, under s.119 of the *Strata Property Act* the strata corporation has the ability to pass bylaws dealing with the use of both common property (including limited common property) and strata lots. This includes the ability to pass bylaws banning smoking altogether. While banning smoking within a strata lot might be going a bit far, certainly the banning of smoking in common areas and on balconies would appear to be consistent with other steps taken within our society as a whole to restrict when and where one can smoke. Where smoking is permitted within a strata lot, a bylaw regarding smoke not escaping from the strata lot would certainly be reasonable (just as a bylaw prohibiting other offensive activities from "escaping" a strata lot is).

Even if a strata corporation does not have a bylaw that expressly prohibits smoking, there already exists a restriction in most bylaws on doing so. Standard Bylaw 3(1)(c) prohibits someone from using their strata lot or the common property in a way that unreasonably interferes with another person's use and enjoyment of their strata lot or the common property. Depending on the severity and frequency of the smoke, the act of smoking could easily fall within the scope of that bylaw. Standard Bylaw 3(1)(a) prohibits someone from using their strata lot or the common property in a way that causes a hazard to someone else. Given the known dangers of second hand smoke, allowing it to travel from a balcony or out of a unit and into another

could well constitute creating a hazard. However, a strata corporation (for the reasons set out below) cannot rely solely on those provisions to address the issue of smoking.

Section 2.3(1)(a)(iii) (in conjunction with Regulation 4.21) of the *Tobacco Control Act* prohibits smoking in the common areas of condominiums. Unfortunately there is no definition of what constitutes a "common area" and that term is not used in the *Strata Property Act*, but presumably it includes areas such as hallways, recreational rooms, parking garages and courtyards; any place where the owners have equal rights of access. Nor can a person smoke within three meters of a doorway, window or air intake leading to any common area. There does not appear to be an express prohibition against smoking on decks and balconies or in backyards unless it is said that those, in the aggregate, constitute "common areas"; which is a possibility. The prohibition on smoking would certainly apply, however, where a deck or balcony were within three metres of an entrance door

Under the *Tobacco Control Act*, the strata corporation (and quite likely the strata council and possibly the strata manager) become liable to see that these restrictions are observed. However, so long as they have exercised reasonable care and diligence to prevent the contravention, they will not be liable. To meet the test of having "exercised reasonable care and diligence" would require: (1) a bylaw prohibiting smoking in the common areas and within three metres of a doorway, window or air intake leading to any common area, (2) signage announcing the prohibition; and (3) rigid enforcement of the bylaw when there is a breach.

In addition to the provisions of the *Tobacco Control Act*, many municipalities have passed their own bylaws dealing with this subject. For example, the City of Surrey passed Bylaw 16694 which, while allowing smoking within a dwelling unit (which would include a strata lot but does not expressly include balconies or decks), prohibits smoking "within seven and one-half metres measured on the ground from a point directly below any point of any opening into any building, including any door or window that opens or any air intake". Nor can smoking take place on any "premises" unless otherwise permitted in the bylaw. "Premises" are defined to be that portion of a building in respect of which a person has exclusive possession (other than a dwelling unit of course). Where a balcony is designated as limited common property (thereby making it for the exclusive use of an owner) it could arguably form part of a "premises". Combining these provisions, it would appear that smoking on balconies and patios of strata lots in the City of Surrey is prohibited.

The bylaw clearly applies to strata corporations since they are included in the definition of "responsible person" and are therefore obligated under s. 2.2 to enforce the bylaw, post the required signage and be subject to penalties if it does not do so. As such, councils should become familiar with the municipal bylaw and take steps (including passing a bylaw that incorporates its provisions) in order to comply with the provisions of the bylaw.

Strata corporations which contain commercial strata lots should also consider the provisions of the *Tobacco Control Act* and any applicable municipal bylaw in light of the restrictions placed on smoking in and around businesses and "customer service areas" (which include outdoor patios). Strata corporations can be as equally responsible for enforcement of the restrictions as the business operators, particularly if the customer service areas are on common property.

Clearly strata corporations should be enacting a bylaw that incorporates the provisions of the *Tobacco Control Act* and the applicable municipal bylaw. Doing so will:

(i) ensure that compliance with those pieces of legislation is clearly required;

(ii) ensure that compliance can be enforced; and

(iii) help to ensure that the duty to see that the restrictions are complied with is met.

Lastly, two decisions under the *Human Rights Code (Brown v. Strata Plan LMS952* 2005 BCHRT 137 and *Kabaloff v. Strata Corp Plan NW2767* 2009 BCHRT 344) have left open the possibility that where an owner suffers from a medical condition that is exacerbated by second hand smoke, that there may be a duty to accommodate that person by passing a bylaw that prohibits or restricts smoking. This is another reason for strata corporations to consider putting a smoking bylaw in place; particularly if they have such an owner in the building.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is a member of CCI Vancouver and practices, writes and lectures in the area of strata property law. He is a partner with the law firm Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@cleveland-doan.com.

Filling the Strata Maintenance Gap or Ways to Avoid "Special Levy Musical Chairs"

By Louis M. H. Belzil, LLB, *Strata Capital Corporation*

Louis Belzil is an Edmonton condominium lawyer who has written and spoken at many CCI events over the years. Louis started Strata Capital Corporation in 2008 to help condominiums secure badly needed financing for building maintenance. Commencing in 2011, Strata Capital Corporation is now very pleased to be offering its services in British Columbia. The company is a member of the Vancouver CCI.

All buildings are depreciating assets, and condominium buildings are no different: eventually all condominiums need major repairs. In theory, to counteract the effects of depreciation, strata owners contribute to the contingency reserve fund of the corporation. The contingency reserve fund is to meet longer term periodic maintenance, or maintenance expenses 'that do not usually occur'. The owners may commission a depreciation report to assist in their planning.

The *Strata Property Act* regulations say how much must be placed in the contingency reserve fund, but only up to a point. That is, once the contingency reserve fund is equal to or greater than the annual operating fund, the contribution to the contingency reserve fund "may be of any amount". Usually, this means the contributions become minimal, and so the reserve funds rarely exceed the value of the annual operating fund by much.

The 'Strata Maintenance Gap'?

The problem is that the cost of depreciation of a building does not usually bear any relationship to the annual operating fund. Virtually all buildings have to undergo major renovation and restoration once every 25 to 50 years (depending on the type of construction). When that day arrives, whether all at once or in stages, the expense is likely to be a significant portion of the value of each and every unit. A strata corporation will simply not have enough funds in its contingency reserve fund to carry out the work.

The problem can be worse if, as is often the case, a strata corporation has not budgeted adequately for annual maintenance. The need for regular maintenance is often under-appreciated by owners, who pressure boards to keep to fees low, and minimize annual expense. This means that not only is the annual maintenance budget too low, but the contingency reserve fund is too low.

Yet all of the research points to a few simple facts about building maintenance: minimal annual repairs and deferred major repairs are guaranteed to make matters worse, requiring even more money to catch up. Where operating funds and contingency reserve funds are insufficient to finance catch-up repairs or major restorations, we call this difference between the available funds and the needed work the "Strata Maintenance Gap". Filling this "Gap" is a constant challenge for strata owners, councils, and professionals.

"Special Levy Musical Chairs"

The law is quite clear what should be done when the need for major strata repairs is identified. Section 3 of the *Strata Property Act* says the corporation is responsible for "managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners." If maintenance is needed, then the council should take steps to bring to the owners the need to raise funds, and do the work. The owners, faced with the information will make a sensible decision, decide to pass a special levy, raise the needed funds, and have the building fixed. After all, diligent maintenance is the best way to ensure that strata units hold their market value and are nice places to live, and that is clearly in the interest of all owners.

We all know this does not always happen. The problem has many sides, and it cannot be blamed on simple factors like irresponsible council members, or bad faith among owners. Condominium governance is a human process, subject to all the usual human frailties. When funds are not adequate to fill the Strata Maintenance Gap, conditions are ripe for a game called Special Levy Musical Chairs. Repairs get delayed, the building gets worse, until one day the music stops, and the owners who are left behind are the losers in the game.

Why does this happen? In practice, strata councils are usually staffed by volunteers, who generally do not have experience with managing large buildings. Council members can be frightened at the expense of undertaking large maintenance projects. When major repairs are identified, the costs can yield heart-stopping repair estimates. Council members, who are democratically elected by the owners, can be frightened to tell the owners the bad news, especially if it means that there is going to be a special levy. They can be torn between their statutory responsibility to maintain the building, and a genuine fear of revolt among owners. Being a council member can be a very stressful position for a person who only wanted to volunteer their time for the sake of their neighbours!

As for owners who have been asked to approve a special levy, many may vote against the levy for personal reasons which are not, by themselves, objectionable. Individual owners usually do not have the money at hand, and they are not keen to go to the bank and borrow more on their own account for the benefit of the strata corporation. Or, they may genuinely feel that the repairs are excessive and not needed, despite the advice of industry experienced consultants and experts. Often a significant number of individual owners do not have long term plans to reside in the building, and even if they recognize the problem and accept the expense, the simply want to defer the special levy until they have moved on. A particular problem may arise with investor owners, who are generally reluctant to incur large lump sum expenses.

The chances that a sufficient minority of individual owners will vote against a special levy for one or more of these reasons, or for any other personal reason, means that special levies are hard to pass in the ordinary course, and the whole issue gets put off to a later date.

The strata council carries on. It may fret from time to time about the need for repairs, but no one wants to confront the owners with another special levy request. If the work is delayed, owners do not always take notice because building depreciation is gradual, and the issue can sit "on the back burner" for a long time. While the issue simmers in the background, owners who know what is coming may quietly sell and move on.

Then one day, the problem becomes so serious it must be repaired on an urgent basis. It may be building envelope water and mould, falling concrete, a failed mechanical system, or structural instability. Unfortunately, not only are urgent unplanned repairs the most

expensive repairs to undertake, but when repairs have been delayed, the extent of the repairs, and the effect on other parts of a building usually grows significantly. The issues compound, and so does the expense. When it happens, owners have no choice but to pass a large special levy. The game comes to an end, and the owners are not happy about it, and they certainly do not feel like winners.

Ways to Avoid Special Levy Musical Chairs

The best solution to the problem has to be education. Many industry professionals and conscientious council members strive to educate owners on the need for timely repairs. Industry groups like the CCI are vital to raising the level of knowledge and awareness among professionals and owners alike. As a result, over time the level of strata decision making and professionalization is growing and many strata corporations function very well, and are able to communicate and have owners support the essential needs for building maintenance and repair. This trend is to be commended and encouraged.

Yet it still has to be recognized that the owners themselves struggle with the financial demands of major maintenance items. There is still a widespread reluctance to accept special levies, even when they are needed.

We believe that one way of bridging the gap between the available funds and the maintenance of the building is condominium finance. This option is often sought after, but rarely used, because of the reluctance of chartered banks to enter this field. Yet condominium corporation financing it is now readily available in British Columbia and may be used responsibly to address this problem.

Condominium finance has benefits that address some of the reluctance of owners to pay for major repairs. Most importantly, from an individual owner's point of view, it does not transfer corporation repair liabilities onto their mortgage, because it is the corporation that borrows, and the loan is repaid through the general corporation operating funds. Owners do not have security registered against their titles.

Condominium finance also allows the cost of a repair or restoration to be spread out over the lifetime of the asset, so as owners come and go, each will bear a proportion of the cost of the improvement through the operating fund. This means that owners who may be planning on moving, or who are simply reluctant to commit to the entire costs of repairs because they are unsure how long they will be in the building, can be comforted to know that they will not pay the whole price.

Condominium finance is not a magic cure for building depreciation, but it is a solution that should be considered in appropriate cases to fill the 'Strata Maintenance Gap' and restore a condominium to its proper state of repair. Property Managers, strata councils, consultants and legal counsel should be familiar with the availability of financing for strata corporations, and should recognize when it is an appropriate option to present to strata owners for the funding of major repairs.

TECHNICAL CORNER

A Contingency Reserve Fund Study - The Engineered Capital Plan

There is a revolution in progress in our strata industry. After years of unplanned special levies - costing Owners billions of dollars, owners, councils and property managers are still left asking: How much money will the strata need to pay for future repair and replacement work? A capital plan will help you answer this question.

Amendments to the B.C. Strata Property Act legislated in December 2009 are encouraging strata's to develop long term capital plans (Act section 94). The type of plan referred to in the Act is called a Depreciation Report (DR). Guidelines for DR were previously defined in the Strata Property Regulations (Reg. section 6.2). This planning approach estimates the repair and replacement cost and timing for each building component. The intent is to assist in determining the appropriate amount for money to be annually contributed to the Contingency Reserve Fund (CRF). The DR approach typically involves a simple mathematical model and little engineering evaluation or financial analysis. Because of this low tech approach to planning it can result in inaccurate funding of the CRF.

Another, more detailed capital planning approach is an Engineered Capital Plan or Contingency Reserve Fund Study (CRFS). A CRFS that meets the needs of the strata and its owners can:

- Shift from "putting out fires" to proactive management and planning
- Assist in responsible financial planning for the strata
- Provide owners with the information to assist with their personal financial planning
- Provide you with a better understanding of the value of your asset

For most strata's, the list of components which need to be evaluated during the preparation of an engineered capital plan or CRFS includes:

- Structure (including garages and balconies)
- Building envelope (roofs, walls, windows, doors)
- Fire safety systems (detection, alarm, suppression systems)
- Mechanical systems (heating, ventilation, air conditioning)
- Plumbing systems (distribution piping, drainage, hot water heating)
- Electrical systems (access and security systems)
- Elevators
- Interior finishes (lobbies, corridors, recreational facilities)
- Site features (paving, landscaping etc.)

Defining the list of common components to include in your capital plan is not rocket science, but predicting the future repair and replacement needs with a degree of accuracy requires a unique set of skills and a significant amount of knowledge. Most strata's do not

have this knowledge and engineering expertise internally or from their property managers.

In order to develop an engineered capital plan, you will need the help of a "Qualified Person" as referred to in the Act - although within the recent amendments the term "Qualified Person" has yet to be defined. Ideally, this person should be a professional with experience and expertise in evaluating the condition of common components and the knowledge of failure mechanisms to estimate time and costs of future repair and replacement needs.

The "Qualified Person" - your capital planning professional - should be willing to work with the strata council to develop a capital plan that is functional and practical; a plan that won't bankrupt the strata. Successful capital planning requires that the professional have an understanding of the strata's needs. They need to take a holistic and practical approach to planning that considers the cost/benefit of repair and maintenance options as well as eventual replacement.

Steps to obtain an Engineered Capital Plan (aka Contingency Reserve Fund Study), include:

- Define the scope of services you want your capital planning professional to provide. 1
- Select qualified professionals who have the knowledge and experience needed to provide a sound engineered capital plan (ask for qualifications, even references);
- Challenge your professional to provide you with options and to explain the benefits and risks of the options presented; and
- Work with the professional to tailor the plan to the Strata's needs.

A Request for Proposal and standard Scope of Work documents can be downloaded for use at www.halsall.com/rfs [password: RFSdocs]

Your strata lot is likely one of the largest investments you will make. Having a Contingency Reserve Fund Study will help you protect that investment.

Halsall Associates Limited

Kevin Grasty, P.Eng., LEED AP and Ted Denniston, AScT, LEED AP

Halsall has completed well in excess of 1,000 capital planning type studies across the country over the past 20+ years, including CRFSs in the Vancouver Area since 2003. Halsall's expertise in structural design, building science and building repair creates a solid foundation for capital planning, which allows us to compare actual site observations with known building failure mechanisms. We have developed a reporting style which is easy to read and understand by Councils and Owners, and therefore easy to implement.

STRATA CLAIMS: Duties and Responsibilities

By BFL Canada Insurance Services Inc.

Who is doing what…

- So many times, when a loss occurs in a strata property, dis cussions and arguments ensue about who is responsible for emergency work, final repairs and the deductible.
- Answers to these questions are found in the Strata Property Act, individual strata corporation by-laws and the strata property insurance policy.

Strata Property Act requirements:

Article 149 of the SPA states:

"the strata corporation must obtain and maintain property insurance on

a) common property,

b) common assets,

c) buildings shown on the strata plan, and

d) fixtures built or installed on a strata lot, if the fixtures are built or installed by the owner developer as part of the origi nal construction of the strata lot."

Repair and maintenance:

Article 72 of the SPA states:

"the strata corporation must repair and maintain common property and common assets."

Notice the significant differences between the duty to "repair and maintain" and the duty to "obtain property insurance"? That's what often leads to the confusion and arguments!

Strata by-laws: which do you have?

When it comes to the right of the corporation to assess a unit owner back a deductible, two (2) types of by-law are usually found:

1. A by-law requiring an act or omission by the unit owner, resident or visitor;
2. A by-law rendering the unit owner responsible, regardless of circumstances.

Bullet-proof by-law?

The unit owner is responsible for any loss or damage caused to common property, limited common property, common assets and/or any strata lot when the cause of that loss or damage originated within the owner's strata lot, regardless of liability.

Unit owner also responsible when an act or omission by the owner, resident, tenant, etc. is involved and

The unit owner is responsible for an amount equal to any insurance deductible plus any uninsured portion of the loss or damage, whether a claim is made or not under the strata insurance policy.

Responsible or liable?

Being liable implies some degree of negligence; either by an act or an omission, the person has caused the loss or damage to happen.

Being responsible is a much wider net; for example, a strata by-law may render unit owners responsible for the strata deductible, while the same unit owner may not be strictly liable for the loss or damage.

Emergency work: get it started!

Strata corporations are normally expected to deal with emergency situations. In the event of a fire, water damage, sewer back-up or other insured peril damaging the property, the strata or its representative usually takes care of calling a qualified restoration company to deal with necessary emergency work. There is plenty of time to determine who is responsible for these costs after the fact: just call a preferred vendor if possible.

Over or below deductible?

Once emergency work has been initiated, the next step is to estimate if the loss or damage to insured property will exceed the applicable deductible (emergency work + final repairs).

The deductible on the strata policy is a pivotal element as it determines whether the strata and its property insurers will or will not be involved, except for common areas: always the corporation's duty to repair.

Damage below deductible

When damage resulting from an insured peril is below the strata policy deductible, the strata corporation's only duty is to address the loss or damage to common property and common assets. There is no duty on the corporation to effect repair to a strata lot, unless there is a by-law in effect wherein the corporation has assumed responsibility for repair and maintenance of the damaged property

Example 1

An appliance leaks in a unit; there is damage by water to one or more units, but no damage to common property. The strata corporation initiates emergency work. Total damage does not exceed the strata policy deductible. The strata charges back the emergency work to the source unit; each unit owner effects repairs at his/her expense and seeks a refund from the source unit OR the strata corporation coordinates repairs to be fully charged back to the responsible unit owner.

Example 2

An appliance leaks, causing water damage to one or more units and common property. The corporation calls a preferred vendor to handle emergency work. Total damage does not exceed the strata policy deductible. The strata charges back the emergency work plus repairs to common property to the source unit; each unit owner effects repairs at his/her expense and seeks a refund from the source unit OR the strata corporation coordinates repairs to be fully charged back to the responsible unit owner.

Example 3

A common property pipe bursts inside a wall, causing damage to one or more units and common property. The strata corporation initiates emergency work. Total resultant damage by water does not exceed the strata policy deductible. The strata pays for the emergency work in addition to repairs to common property; each unit owner effects repairs at his/her expense. No responsible unit owner can be charged back and, unless the corporation is liable, the strata corporation only has to repair common property.

Example 4

An appliance malfunctions or a sink overflows causing water damage to several units. Once a preferred vendor is called for emergency work, it becomes obvious the damage to insured property will exceed the strata deductible. The strata insurers pay for repairs, net of deductible. The corporation charges back the deductible to the responsible unit owner, who can claim it under his/her policy. Reminder: unit owners are also insured under the strata property insurance policy.

Example 5

A fire accidentally starts in a kitchen, only the source unit is damaged. A preferred vendor attends to emergency. If the damage is below deductible, the strata is uninvolved. If the damage is above deductible, the strata policy will contribute, subject to deductible, which can be charged back to the unit responsible owner. NOTE: the strata policy is not intended to cover loss of use or lost rental income; these are personal losses.

Example 6

A windstorm causes tree limbs to fall on the building; there is damage to the roof, gutters and exterior wall. These elements are all common property, which the corporation has a duty to repair and insure. If the damage is over deductible, a claim can be made to the strata insurers. The deductible is a common expense, as per usual, but not recoverable in this case. If the damage is below deductible, the strata foots the bill.

Don't Panic!

by **Stephen Page**

Whether you are the Strata President or Building Manager, when you get the call from one of your suite owners that they have a waterfall in their living room, don't panic! The first reaction can sometimes be to hang up the phone and hide. Hopefully the next few paragraphs will leave you more confident in dealing with an emergency.

A hot water line disconnects from the dishwasher...on the top floor...and the owner is on vacation...with their entire family...on a technology free excursion. Is this reason to panic? I'm sure if you had a panic button you would hit it; but wouldn't it be much better to hit the "That was Easy" button?

In an effort to have you slide that "panic" button off to the side and replace it with the "That was Easy" I would like to take you through some steps that will help you have the confidence to meet property emergencies with coolness; meeting each stage from the call the unit owner makes to you to let you know their ceiling just collapsed and there is a waterfall in their entrance way to the call from Miss Daisy who has noticed a damp corner in her closet.

Stop the flow! This is obvious and it is a natural response for all who are faced with a broken sprinkler head or a snapped water line. But while you are searching the building unsure of the source call your preferred Emergency Restoration Company, have them send their team to mitigate the damage. If this is a serious pipe break I can't stress enough to *make this call as you run to find the source*. Get your contractor mobilized! Their number should be almost as important as 911. Even if the cause for the water ingress is not sourced by the time the response team gets there, a professional water damage Technician can do much to mitigate the damage from spreading and getting worse. Another important number to have is one for a reputable Locksmith; if the source turns out to be behind locked doors you have to get in and stop the water, although most restoration contractors have sledgehammers in their trucks.

Once the source has been found and the water stopped, it's time to diligently track the water from the source, follow the direction, establish its perimeter outwards and down. This job is the responsibility of your restoration contractor, this is what you have hired him to do; to find all damaged areas of your building and he will have all manner of tools to do that job, from moisture finding probes, non-destructive water sensors to thermal imaging cameras. Sometimes it is very obvious where the damaged areas are but when it comes to the outlying extremities of the damage a good contractor will only do what he has to do and these tools will help him keep the costs as low as possible.

Generally in the middle of the night only the very necessary work gets completed. Obviously the standing water needs to be extracted; any and all affected carpets need to have the water vacuumed out, the under pad may need to be pulled and disposed of. Safety of the workers and the occupants needs to be a priority, for instance a falling ceiling would need to be removed so it wouldn't completely collapse on someone. The next day a crew will show up, especially if several suites have been affected, and work to remove what has been completely damaged, and dry what can be dried.

But you have more questions:

What are these big machines? Why do I need to leave them on and ramp up my electric bill? Why are they opening my walls and my ceiling? My carpet is soaked, is it ruined? Why does my engineered hardwood look like the rolling hills of Scotland? I thought laminate floors were waterproof? Why did they save my baseboard? Why did they dispose of my baseboard?

In future issues of the newsletter we will address these questions and others, dealing with property damage restoration. If you have any questions feel free to e-mail me at spage@ccivancouver.ca and I will make sure they are addressed, either in a personal e-mail or a future article.

Canadian Condominium Institute – Vancouver Chapter
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Please provide photo quality advertisement in either electronic or camera-ready format suitable for scanning (inkjet print-outs are not acceptable). Scanned images must be in high resolution of at least 300 dpi. Electronic files must be submitted in tiff or pdf format. **Note: PDF** files should not be converted from colour to black & white. If the ad is to be in black & white, the original file must be in black & white. If the ad is to be in colour, the original file must be in colour. The ad copy submitted should be sized to the ad requirements (see above ad sizes).

Please call or e-mail for additional specifications. If you do not have an advertisement already prepared, setup is an additional charge at $25.00 per hour.

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or to the chapter's e-mail address at: contact@ccivancouver.com

MEMBERSHIP APPLICATION

MEMBERSHIP FROM JULY 1ST TO JUNE 30TH

Referred By: _____ (For Ambassador Program)

■ NEW STRATA CORPORATION MEMBERSHIP: *Please complete all areas*

Strata No.: _____ No. of Units: _____ ❒ Townhouse ❒ High-rise

Management Company: _____ Contact Name: _____

Address: _____ Suite #: _____

City: _____ Province: _____ Postal Code: _____

Phone: ( ) _____ Fax: ( ) _____ Email: _____

Strata Corporation Address: _____ Suite #: _____

City: _____ Province: _____ Postal Code: _____

Phone: ( ) _____ Fax: ( ) _____ Email: _____

President: _____
Name *Address/Suite*

Vice President: _____
Name *Address/Suite*

Treasurer: _____
Name *Address/Suite*

Please forward all correspondence to: ❒ Management Company address ❒ Strata Corporation address

Fee: $ 110.00

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Name: _____ Occupation: _____

Company: _____

Address: _____ Suite #: _____

City: _____ Province: _____ Postal Code: _____

Phone: ( ) _____ Fax: ( ) _____ Email: _____

Full Year Fee: ❒ Professional Membership . . . . . $ 110.00
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■ INDIVIDUAL STRATA RESIDENT MEMBERSHIP

Name: _____

Address: _____ Suite #: _____

City: _____ Province: _____ Postal Code: _____

Phone: ( ) _____ Fax: ( ) _____ Email: _____

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Cheques should be made payable to:

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Attention: Jamie Bleay, President of the Board

Email: contact@ccivancouver.com
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