CCI Vancouver Chapter
Condo News

President's Message

I started to write this message about the same time as the 2010 Winter Olympics took Vancouver by storm! Somehow writing about topics such as the Home Renovation Tax Credit, the upcoming HST and its impact on strata corporations and the recent amendments to the Strata Property Act did not quite capture my attention the same way that the Winter Olympics did! However, all good things must come to an end and now that our Olympians have packed up and moved out of the Olympic Village, one of the newest and greenest condominium developments in the Lower Mainland, it's back to the task at hand.

Since our last newsletter your newly elected board has been working hard to put together several "lunch & learn" sessions, a full day spring educational seminar and complete the new and revised website for members and non-members alike. We have also been busy identifying what the board considers important issues to our members.

This edition of the CCI Vancouver newsletter will include something for "everyone", including:

Information on the HRTC,

A case law update and their impact on strata corporations,

The Strata Property Amendment Act

I hope you find this edition informative and useful. Please pass it along to others in your office, in your strata council meetings or other owners in your building. If you have any questions or comments about the contents of this newsletter or about CCI Vancouver, feel free to contact us at contact@ccivancouver.com.

Jamie Bleay,
President – CCI Vancouver

Upcoming Events

Lunch & Learn

Topic: Condominium insurance issues

When? May 13, 2010 at 12 o'clock noon

Where? The office of BFL Canada located at 200-1177 West Hastings Street

How much? $10.00 for members and $20.00 for non-members

How to register? By e-mail by contacting CCI Vancouver at contact@ccivancouver.com or by calling Cindy Law at 604-689-8000.

Space is limited so book early!

Enforcing Age Restriction Bylaws – What does "reside" mean?

The Importance of Reflecting the Vote Results in Meeting Minute Taking

Many strata corporations have an age restriction bylaw that provides that "persons under the age 55 are not permitted to reside in a strata lot". The intended effect of this bylaw is to ensure that no one living in a strata lot is under the age of 55 years. Where a strata corporation adopts an age restriction bylaw, section 123(2) of the *Strata Property Act,* (the "Act") provides that:

A bylaw that restricts the age of person who may reside in a strata lot does not apply to a person who resides in the strata lot at the time the bylaw is passed and who continues to reside there after the bylaw is passed.

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Accordingly, when a strata corporation is trying to enforce an age restriction bylaw, it is important to know who resided in the strata lots at the time the bylaw is passed.

This was the primary issue raised in *The Owners, Strata Plan NW 499 v. Louis,* a 2009 decision of the BC Court of Appeal. In this case, the relevant age restriction bylaw was passed shortly after Mrs. Louis had passed away. At that time, her estate had been probated, with title to a one-half interest in her strata lot registered to the brother of the respondent in the legal proceedings, Roderick Louis. Mr. Louis himself had an executed land transfer form which transferred a one-half interest in the strata lot from the estate to him, but he had not registered it when the bylaw was passed. After Mrs. Louis passed away, Mr. Louis stayed in the strata lot from time to time. The Strata Corporation initiated court proceedings, seeking a declaration that Mr. Louis was not entitled to live in the strata lot because of the Strata Corporation's age restriction bylaw. It was the Strata Corporation's position that Mr. Louis did not reside in the strata lot at the time the age restriction bylaw had passed. The Judge who initially heard the case agreed and ordered Mr. Louis to vacate the strata lot within 60 days. Mr. Louis appealed the decision to the BC Court of Appeal on the basis that he was residing in the strata lot when the bylaw was passed and he was therefore protected by the section 123(2) exemption.

The Strata Corporation's age restriction bylaw provided as follows:

N. W. 499 is an age dedicated building. All residents must be the age of 55+ over, except as a casual visitor

Mr. Louis was less than 50 years of age when the bylaw was passed. He claimed, however, that he had been residing in the strata lot when the bylaw was passed. The issue for the Court to decide was "what does "reside" mean?"

At the trial level, the Judge relied on the 2007 Shorter Oxford Dictionary of English for the definition of "resides" to find that Mr. Louis would have had to have make the strata lot his "permanent home". The Trial Judge held that the strata lot was, at best, occupied by Mr. Louis on an occasional basis. On appeal, the Court of Appeal relied on two legal dictionaries, Stroud's Judicial Dictionary of Words and Phrases, 5th ed., Vol. 4 and Words and Phrases Legally Defined, 3rd Ed., Vol. 4, which contained more extensive discussions about the interpretation of the word "reside". A review of the commentary in these dictionaries revealed that the interpretation of "resides" very much depends on the context in which it is used.

Ultimately, the Court of Appeal held that, in modern times, persons may have more than one residence, such as a primary home, plus a summer place or a condo in a warmer climate. While there must be an element of permanency to the meaning of "reside", a person can have multiple

residences.

In looking at Mr. Louis' situation, the evidence was that his mother died in 1999, and, after that event, he had two residences: the strata lot and Riverview Hospital. After his mother died, Mr. Louis began paying the strata fees and other expenses for the strata lot and assumed responsibility for her strata unit. While he initially treated it as a secondary abode, the evidence was that, more recently, it had become his primary residence. It was apparent from all the evidence that, during the critical period, Mr. Louis was not just a casual visitor or a sojourner. Rather, he resided there on a regular and not infrequent basis up to January 2002. As a result, the Court found that the suite was a permanent secondary residence and he therefore had to be considered a "resident" when the bylaw was passed. Accordingly, the Court of Appeal held that Mr. Louis was entitled to the benefit of the exemption to the bylaw granted by section 123(2) of the Act.

This case demonstrates the difficulty for strata corporations and property managers in enforcing age restriction bylaws. Before taking steps to enforce an age restriction bylaw, a strata corporation must determine whether the person living in the strata lot is exempt. To do so, the strata council must find out if the person was "residing" in the strata lot at the time the age restriction bylaw is passed. That determination will require a strata council must look at all factors, including who is responsible for the strata lot expenses, how frequently the strata lot is used by the person, whether the person has other residences, and whether the occupation of the strata lot has some degree of permanency. Only after looking at all the relevant factors can the council decide whether the person is exempt from the operation of an age restriction bylaw or whether enforcement of the bylaw should proceed.

Another interesting issue raised by the Court of Appeal was the validity of the bylaw package. The age restriction bylaw was presented as part of a bylaw package. The evidence was that the owners voted on a few specific bylaws, including the age restriction bylaw. However, there was no record in the minutes for the meeting of the bylaws as a whole (totalling 33 in number) being put to a formal vote. Accordingly, the Court of Appeal was reluctant to say that the owners passed the bylaw package at the meeting or otherwise.

On this point, the Court of Appeal held that:

Section 35(1)(a) of the [Act] reads (with emphasis added): "The strata corporation must prepare all of the following records: (a) minutes of annual and special general meetings and council meetings, including the results of any votes". It seems to be clear from the whole of the evidence that this meeting was not conducted in a businesslike manner. It cannot be assumed that there was a formal vote on the bylaws that was not recorded in the minutes.

The Court of Appeal found that, because there was no record in the meeting minutes of the vote being taken on the resolution to adopt the bylaws, the bylaws were therefore not valid. The Court held that there

had to be a minimum compliance with the requirements of the Act before it can be said that a bylaw of a strata corporation is valid and operates to bind those affected by it.

CCI - Vancouver Board of Directors - 2009/2010

Jamie Bleay - President
Jim Allison - Vice President and Treasurer
Jennifer Durham - Secretary
Bill Marler - Member at Large
Paul Murcutt - Member at Large

Welcome New Members

Deborah Howes

This decision emphasizes the importance of accurate minute-taking. The minutes of annual and special general meetings must include the results of any votes. Failure to include the results of votes could have unintended and undesirable effect of invalidating resolutions. In addition, I have noticed in reviewing council meeting minutes, that, while many of these minutes note decisions have been made by the council, they often do not indicate that the decision was actually voted upon or the results of the council's votes (i.e. the number of votes in favour and against, as well as any abstentions). Standard Bylaw 18(1) provides that decisions at council meetings must be made "by a majority of council members present in person at the meeting". This suggests that all council decisions made at a meeting must be voted upon by the council. Given the Court of Appeal's findings in the Louis decision, an owner may have grounds to challenge the validity of council decisions if there is no record of the vote in the minutes.

This article is written by Veronica Franco of Clark Wilson LLP. The information in this article should not be treated as or relied on as legal advice.

Case Law Update – March 2010

Spagnuolo et al v. The Owners, Strata Plan BCS 879, 2009 BCSC, 1733

This case involves a dispute by the petitioners, who were all first purchasers of residential strata lots developed and sold by Bosa Development Corporation ("Bosa") in 2004. Each of the petitioners, including Mr. Spagnuolo, signed a contract of purchase and sale which included the following language:

> "The Purchaser acknowledges and agrees that the Purchaser has received a copy of the Disclosure Statement for the Development dated October 31, 2002 including any amendments thereto filed up to the date hereof (collectively called the "Disclosure Statement") and has been given a reasonable opportunity to read the Disclosure Statement and the execution by the Purchaser of this Agreement shall constitute a receipt in respect thereof."

A document referred to as a "Rental Disclosure Statement" was attached to and formed part of the Disclosure Statement and included, in section 3, a statement that Bosa the rental period that Bosa intended to rent all of the residential strata lots was "unlimited – no expiry date."

The Petitioners applied, inter alia, for a declaration that the Rental Disclosure Statement was a valid Rental Disclosure Statement and an order that the residential strata lots owned by the first purchasers from Bosa, including the petitioners, be permitted to rent their strata lots until the date they conveyed their strata lots.

After a review of sections 139, 143, 144, section 164 and 165 of the *Strata Property Act*, various other pieces of legislation dealing with the preparation and filing of Disclosure Statements, Mr. Justice Romilly *reviewed the decision of Abbas v. The Owners, Strata Plan LMS 1921*, 2000 BCSC 1930, a case that involved the validity of a Rental Disclosure Statement filed under the *Condominium Act*. In that case the Rental Disclosure Statement completed by the developer stated that it was reserving the right to lease all of the strata lots for an indefinite period of time. However, the developer did not disclose its "intention" to rent in the Rental Disclosure Statement. When the strata corporation refused to allow Ms. Abbas the right to rent, despite the passage of a rental limitation bylaw in 1995, based on the language in her Rental Disclosure Statement, she petitioned the court for an order that she be permitted to rent on the basis of the language in the Rental Disclosure Statement. She argued that the disclosure by the developer in the Rental Disclosure Statement was sufficient to comply with the requirements under the (then) *Condominium Act* notwithstanding the assertion that the developer did not properly disclose its intention to lease or the time the developer intended to lease the strata lots. At the end of the day the Judge concluded that the developer had not complied with section 31 of the *Condominium Act* and dismissed her petition.

Mr. Justice Romilly undertook a detailed review of the *Abbas* decision. He found that Mr. Justice Lowry had not referred to "s. 28(1) of the ***Interpretation Act*** which permits a deviation from a prescribed form if the deviation does not affect the substance of the form, and is not calculated to mislead" or to a 1995 guide published by the Superintendent of Real Estate which stated that developers could use the term "indefinitely" in their Rental Disclosure Statements if they wished to rent residential strata lots for an extended period of time even though section 31 of the *Condominium Act* required the developer to disclose the length of time the developer intended to lease the strata lot.

Turning to Mr. Spanuolo's application, the Judge heard that he and other first purchasers understood from Bosa that first purchasers would be able to rent their strata lots even if the strata corporation subsequently passed a rental restriction bylaw.

Mr. Spagnuolo swore an Affidavit stating that at the time he purchased his strata lot in 2002, he understood that first purchasers were permitted to rent their strata lots notwithstanding the possibility of a future rental restriction bylaw being passed by the strata corporation. Mr. Spagnuolo's understanding was confirmed by his realtor and the salesperson for Bosa. Other owners also understood that first purchasers from Bosa would be able to rent their strata lots. This was supported by a letter provided by the lawyer for Bosa who, having prepared the Rental Disclosure Statement, confirmed that the Rental Disclosure Statement had been prepared and filed on the basis of the conventional practice of the day and as such, used wording that presumably preserved the right for the developer and first purchasers to rent their strata lots. The Judge also noted that at the time the lawyer for Bosa filed the Rental Disclosure Statement with the Superintendent of Real Estate in October, 2002, the *Abbas* matter, although heard in 2000, had not been released. It was subsequently released in December, 2005.

On June 8, 2005, the strata corporation passed a rental limitation bylaw. It was registered in the land title office on July 21, 2005. The bylaw stated, in part, that:

"51.2 At any given time, up to (10) strata lots may be rented, but this number does not include any common asset that is a strata lot in the strata plan. (Owners at the time of passage are grandfathered from this restriction).

51.5 This bylaw does not apply to a strata lot

(a) until the later of

(i) where an owner has rented a strata lot to a tenant pursuant to a tenancy agreement entered into before this bylaw was passed, until one year after the date that the tenant who was occupying the

strata lot at the time this bylaw was passed ceases to occupy the strata lot as a tenant; or

(ii) one year after the date this bylaw was passed; or …"

The strata corporation held a general meeting held on June 25, 2007. At that time the strata corporation subsequently approved a 3/4 vote resolution to rescind the July 21, 2005 rental limitation bylaw, based on legal advice that the rental limitation bylaw could not allow grandfathering, and passed a new rental limitation bylaw which, in part, stated that:

"Section 50 – Residential rentals

50.1 At any given time, up to (10) strata lots may be rented, but this number does not include any common asset that is a stra ta lot in the strata plan.

50.2 The Strata Corporation must administer this Bylaw in the following manner …":

That bylaw was registered in the land title office on July 19, 2007.

On February 26, 2008, the Strata Corporation wrote to Mr. Spagnuolo advising him that when his current tenancy came to an end, he would be given a one-year extension to rent his strata lot (pursuant to the provisions of the *Strata Property Act*) after which he would need to comply with the rental limitation bylaw before he would be able to rent his strata lot again. On June 11, 2008 Mr. Spagnuolo met with the strata council to discuss the rental limitation bylaw after which he was sent a letter stating that his "new" tenant would be permitted to rent from April 1, 2008 until March 31, 2009 after which he would need to apply to rent.

On August 18, 2008, Mr. Spagnuolo submitted an application for an exemption to rent his strata lot on the basis of financial hardship. The strata council met on August 28, 2008 to consider the application, which it subsequently denied because he had not provided sufficient evidence to support the hardship application and in part because he had been told he could rent his strata lot until March, 2009.

Following correspondence back and forth between Mr. Spagnuolo and the strata council regarding an extension of the March 31, 2009 rental date, he began soliciting for support from other first purchasers to challenge the strata corporation's rental limitation bylaw, which resulted in the matter coming before Mr. Justice Romilly.

The issues before the Judge were:

1. Was the Bosa Rental Disclosure Statement valid;

2. Was the decision by the strata corporation to not to allow the petitioners to rent on the basis of the Rental Disclosure Statement significantly unfair; and

3. Was the Abbas decision binding on the court.

After applying the law in *Re: Hansard Spruce Mills Ltd.*, the Judge stated that the *Abbas* decision had been wrongly decided and was not binding on him in deciding the issues before him. He went to say that there was a "policy" reason for not applying *Abbas*, which was that it would "limit the rights enjoyed by the purchasers of rental properties, it would limit those rights as far as defeating the purpose of that purchase (as an investment rental property). In effect, throwing out the petitioners' action based upon *Abbas* and the technical error in the Rental Disclosure Statement would altogether modify the terms of sale bargained for between the parties. This cannot be a just result given the circumstances, most notably that the intent of those parties at the time of purchase is clear and that no evidence of bad faith exists."

Turning to the merits of the case, he found that any deviation in the language in the Bosa Rental Disclosure Statement from what was required pursuant to the requirements in the *Strata Property Act* did not, based on the application of section 28(1) of the *Interpretation Act*, invalidate the clear intention in the Rental Disclosure Statement that the rental rights for first purchasers would continue for an indefinite period of time.

The Judge went on to find, based on the evidence involving the steps taken by the strata corporation toward Mr. Spagnuolo and the petitioners, that the strata corporation had not acted in a manner that was significantly unfair toward Mr. Spagnuolo or the other petitioners. He granted the petitioner's application for a declaration that the Rental Disclosure Statement filed by Bosa Development Corporation dated October 31, 2002 in respect of the strata lots comprising the Strata Corporation was valid and further, that they were entitled to continue to rent their strata lots until they conveyed them. He awarded the petitioners their costs at scale B recognizing however that pursuant to section 169(1)(a) of the *Strata Property Act*, they were not liable to contribute toward the court costs payable by the strata corporation or the strata corporation's legal costs of defending the petition proceeding. He went on to state that the owners who were not petitioners were, to the exclusion of the petitioners, responsible to pay for the strata corporation's legal costs to defend the petition proceeding, including any special levy to refund monies used from the strata corporation's operating fund or contingency reserve fund.

Commentary:

Needless to say the Abbas decision may have been responsible for several hundred rental property investors selling their properties, moving into them or alternatively, leaving their investment properties vacant. Mr. Justice Romilly "fixed" this problem, albeit 9 years after Abbas and in the process,

he recognized that it was not reasonable to allow Abbas to defeat the purpose of rental property investment owners who, based on the terms of rental disclosure statements, purchased for the purpose of renting their properties.

Amendments to the Strata Property Act

On December 10, 2009 our Government, by Order in Council, approved a substantial number of amendments to the *Strata Property Act* (the "Act") and the regulations to the Act. Many of the amendments can, in my view, be considered to be "housekeeping" amendments. By this I mean amendments that either clarify what certain sections of the Act were supposed to mean or amendments to clean up language that was otherwise inconsistent or possibly ambiguous. Examples of what I refer to "housekeeping" amendments are as follows:

Section 7(b) [amending section 35 of SPA]:

This minor amendment revised section 35(2)(n) to read:

> *(n) the records and documents referred to in section 20 or 23 obtained by the strata corporation;*

It is simply a housekeeping amendment and should have no impact on day to day management issues.

Section 11[amending section 53 of the SPA].

This amendment states:

> *(4) Despite subsection (1), if there is a tie vote at an annual or special general meeting, the president, or, if the president is absent or unable or unwilling to vote, the vice president, may, if the bylaws so provide, break the tie by casting a second, deciding vote.*

This amendment confirms what is already said in section 27(5) of the schedule of standard bylaws (unless it has been repealed) which states that the president, or failing the president, the vice president, may cast a second, deciding vote at an AGM or SGM.

Section 22 [amending section 142 of the SPA]:

This amendment states:

> *(4) If the bylaws of a strata corporation include a bylaw referred to in section 141 (2) (b) (i), a residential strata lot that has been rented*
>
> > *(a) to a member of the owner's family, or*
> >
> > *(b) under an exemption from the bylaw granted or allowed under section 144 is not to be considered, for the purposes of that bylaw, as a residential strata lot that has been rented.*

Many strata corporations unintentionally include strata lots rented to family members or rented pursuant to hardship exemption applications. Now this uncertainty has been eliminated and certain rentals are not to be included as residential strata lots that have been rented.

Section 2 [amending section 11 of the SPA]:

Section 11 of the SPA reads as follows:

> *11 In the period after the first conveyance of a strata lot to a purchas er but before the first annual general meeting, the strata corporation may pass a resolution requiring a 3/4 vote as follows:*
>
> > *(a) for a resolution to amend the bylaws under section 127 (2) or (4) (b), the resolution may be passed in accordance with sec tion 127 (2) or (4) (b), as applicable;*
> >
> > *(b) for a resolution under section 139 to change a Rental Disclosure Statement, the resolution may be passed in accordance with section 139;*
> >
> > *(c) for any other resolution requiring a 3/4 vote, the resolution must be passed by a unanimous vote at a special general meeting.*

For property managers engaged prior to the first annual general meeting, this is a minor housekeeping change dealing with bylaw amendments before the first annual general meeting. The amendments clarify when a ¾ vote versus a unanimous vote will be required.

Section 3 [amending section 27(2)(b) of the SPA]:

Section 27(2)(b) of the SPA has been amended by the addition of subsections (iv) and (v), which read as follows:

> *(iv) whether a person should be required under section 133 (2) to pay the reasonable costs of remedying a contravention of the bylaws or rules, or*
>
> *(v) whether an owner should be exempted under section 144 from a bylaw that prohibits or limits rentals.*

Section 27(2)(b) is amended by expanding the circumstances when the strata corporation cannot direct or restrict the strata council in its exercise of powers and performance of its duties.

There are several substantive amendments to the Act which I would not categorize as "housekeeping" amendments, some of which include:

Section 4 [amending section 32 of the SPA] reads as follows:

> *A council member who has a direct or indirect interest in*
>
> > *(a) a contract or transaction with the strata corporation, or*
> >
> > *(b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member,*
>
> *must*
>
> > *(c) disclose fully and promptly to the council the nature and extent of the interest,*
> >
> > *(d) abstain from voting on the contract, transaction or matter, and*
> >
> > *(e) leave the council meeting*
> >
> > *(i) while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and*
> >
> > *(ii) while the council votes on the contract, transaction or matter.*

These amendments expand on the disclosure of conflict of interest by strata council members. Prior to the amendment council members only had to disclose a direct or indirect interest in a contract or transaction. The amendments now require disclosure of a "a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member … ". Time will tell whether this results in more disclosure at the strata council table or not.

Section 8 [amending section 36 of the SPA]:

The substantive amendment to this section reads as follows:

> *(1.1) On receiving a request from a former owner, from a former ten ant referred to in subsection (1) (b) or from a person authorized in writing by the former owner or former tenant, the strata corporation must, with respect to records and documents referred to in section 35 that, whenever created, relate to the period during which the former owner or former tenant was an owner or tenant, make those records and documents available for inspection by, and provide copies of them to, the former owner, former tenant or person authorized in writing, as the case may be.*

Prior to the amendment records and documents only had to be made available to an owner, a tenant assigned with a landlord's right to inspect or a person authorized in writing by the owner. The amendment now allows a former owner or former tenant access to records of the strata corporation that, whenever created, relate to the time they were an owner or tenant. This may very well lead to even more record and document access requests (and more expense to strata corporations to provide the manpower to oversee the inspection and take the time to respond to the requests) by former owners and tenants months or maybe even years after they move out.

Section 9 [amending section 43(1) and 46(2) of the SPA]:

This amendment reduces the percentage of votes required to requisition a special general meeting. Prior to the amendment the required percentage was 25%; now persons holding 20% of the strata corporation's votes can requisition a special general meeting.

Section 23 [amending section 143 of the SPA]:

The substantive part of the amendment reads:

> *(2) Subject to subsection (1), if a strata lot has been designated as a rental strata lot on a Rental Disclosure Statement in the prescribed form, and if all the requirements of section 139 have been met, a bylaw that prohibits or limits rentals does not apply to that strata lot until,*
>
> *(a) in the case of a Rental Disclosure Statement filed before January 1, 2010, the earlier of*
>
> *(i) the date the strata lot is conveyed by the first owner of the strata lot other than the owner developer, and*
>
> *(ii) the date the rental period expires, as disclosed in the Rental Disclosure Statement as it read on December 31, 2009, and*
>
> *(b) in the case of a Rental Disclosure Statement filed after December 31, 2009, the date the rental period expires, as dis closed in the Rental Disclosure Statement.*
>
> *(3) Even if a Rental Disclosure Statement filed before January 1, 2010 is changed under section 139 (2) after December 31, 2009, subsection (2) (a) of this section applies. , **and***
>
> ***(c) by adding the following subsection:***
>
> *(4) Subsection (1) (b) does not apply to a bylaw that is passed under section 8 by the owner developer.*

The key amendments to section 143(2) of the SPA focus on the Rental Disclosure Statement prepared by the owner developer. Prior to the amendment if a strata lot has been designated as a rental strata lot, a bylaw prohibiting or limiting rentals did not apply to that strata lot until the earlier of the date the strata lot was conveyed by the first purchaser and the date the rental period expired as noted in the statement. Now, there are two time periods to consider when determining whether or not a bylaw prohibiting or limiting rentals will apply in the case of Rental Disclosure Statements:

(i) Rental Disclosure Statements filed before January 1, 2010:

The rental restriction bylaw will not apply until the earlier of the date the strata lot is conveyed by the first owner after the owner developer and the date the rental period expires, as the Rental Disclosure Statement read on December 31, 2009

(ii) Rental Disclosure Statements filed after December 31, 2009:

For Rental Disclosure Statements filed after December 31, 2009, a bylaw that prohibits or limits rentals will not apply until the date the rental period expires, as disclosed in the Rental Disclosure Statement.

Practically speaking, for Rental Disclosure Statements filed after December 31, 2009 (by developers), there is no limitation on the number of subsequent purchasers who can take advantage of the ability to rent in the face of a rental limitation bylaw until the date the rental period expires. It also means that developers may start to look more closely at whether to take away a strata corporation's ability to limit rentals.

The amendment in subsection (4) appears to allow the owner developer to enact a bylaw without being impacted by the consequences of section 143(1(b) of the SPA. If there is a bylaw passed under section 8 of the SPA before the first conveyance, it would appear that the one year grace period will not allow an owner to avoid a rental prohibition bylaw.

Space does not permit me to refer to all of the amendments to the Act or for that matter, the "amendments" that many of us hoped would also come into force, including the proposed amendments regarding the preparation of depreciation reports, audit reports and increased access to the Provincial Court for strata-related disputes. Suffice it to say that property managers and strata councils will need to stay on top

of the amendments and what the amendments means to them in terms of how strata corporation business is conducted and how strata council decisions are made.

This article is written by Jamie A. Bleay of Access Law Group. The information in this article should not be treated as or relied on as legal advice.

Information Bulletin Re Home Renovation Tax Credit

The Home Renovation Tax Credit (HRTC), which was introduced by the Federal Government as part of the stimulus plan in the 2009 Federal budget has presented some challenges for boards and property management companies.

A full overview of the HRTC is too long to include as part of this information bulletin, but for those interested in reviewing the rules and guidelines you can visit http://www.cra-arc.gc.ca/hrtc to view the Canada Revenue Agency (CRA) website.

After reviewing the information on this site you may have questions regarding how this tax incentive affects Condominiums. On behalf of CCI Toronto & Area Members, and in conjunction with ACMO, a lawyer specializing in tax law was retained to coordinate a meeting with CRA representatives in order to address many questions submitted by our members regarding the legal interpretation of the HRTC rules and how they affect the practical management of Condominium Corporations. This meeting with CRA representatives was also attended by an Auditor specializing in condominium accounting and taxation.

Listed below are the 16 questions, which formed the basis of discussion and a summary of the answers that CRA representatives provided.

Notes:

1. For the purposes of clarity in the questions and answers listed below the word "Invoice" refers to the invoices received from service providers regarding a payment owing for services rendered. The term "Receipt" refers to an income tax receipt or summary of proposed eligible expenses prepared by a condominium corporation or property management firm for use by an owner in supporting and HRTC claim on their personal income tax return.
2. This bulletin is provided to CCI Toronto members for informational purposes only and is not intended to constitute any form of professional advice. It is understood that the legislation is subject to interpretation and its application and enforcements has yet to be tested in the Courts. Moreover, CRA employees cannot be held responsible for an incorrect interpretation of the law.

1. Do condominium corporations have to provide an HRTC Receipt to condominium owners?

No. A condominium corporation "Corporation") is not obligated to provide a receipt summarizing the eligible expenses incurred by the Corporation on behalf of all owners. However, qualifying owners are entitled to claim their portion of eligible expenditures as part of their HRTC credit. Owners are therefore entitled to request to review copies of the invoices for work which they think is eligible and submit as part of their HRTC claim their proportionate share in accordance with Schedule D of the declaration.

2. Do property management companies "Management") have the obligation to provide these receipts on behalf of their clients?

No. There is no legal requirement for Management to provide these receipts since there is no requirement for the Corporation to provide the Receipts to its owners. If the Corporation chooses to prepare these invoices for their owners, it stands to reason that the contract between Management and the Corporation would determine the obligation, if any, of Management to provide this service.

3. Are condominium corporations (and by extension Management companies) justified in taking the position that the Receipt will be issued to the owner of record on January 31, 2010 for all eligible expenses incurred between January 27, 2009 and January 31, 2010? (this would address the issue of ownership changes during the 2009 calendar year.)

As currently written the answer to this question is "no", the right to the credit belongs to the owner of record at the time that the expense was incurred by the Corporation. The impracticality of this is explained below from a legal and financial reporting standpoint. The HRTC requires that the owner that paid the funds should receive the credit, without recognition of exceptional circumstances surrounding condominium ownership. In the condominium industry the asset that is the reserve fund is sold with the unit. It is the position of ACMO and CCI (Toronto) that the credit that results from the expenditure of those funds should also be transferred to the new owner. Then is a matter between the present owner and the previous owner to decide on how to partition or divide the credit.

4. Must Receipts be provided by February 28, 2010 for all eligible expenses incurred between January 27, 2009 and January 31, 2010?

Since there is no requirement to provide the Receipts on behalf of the Corporation the answer is no – there is no deadline. From a client service perspective, if receipts are to be issued it is recommended that owners receive their report in sufficient time to meet the April 30th filing deadline for the 2009 taxation year. If issued after an owner has already filed their 2009 income tax return,, CRA has advised that the taxpayer has the right to file and request for an adjustment. There is also a period of 10 years to file a claim for the HRTC credit.

5. With the exception of furnishings and other clearly ineligible expenses, do reserve fund expenditures (in spite of the fact that some would call them planned maintenance) qualify as eligible expenses?

Generally "yes". The spirit of the law is that if the renovation is an enduring improvement to the dwelling including the land that forms part of the dwelling (and not an annual, routine or recurring renovation) then it is eligible. It is important to make the determination of what is an eligible expense separate from whether it was paid from the Reserve or Operating fund.

The CRA website states that, "The expenses are eligible when they are incurred in relation to a renovation or alteration to an eligible dwelling (including the land that forms part of the eligible dwelling) and are of an enduring nature and integral to the dwelling. As a general rule, if the item you purchase will not become a permanent part of your eligible dwelling, it is not eligible."

6. Do ancillary expenditures related to eligible expenses (professional engineer fees, security costs related to eligible work etc.) qualify as eligible expenditures?

Yes. Any costs associated with the completion of a project that is an eligible expenditure is eligible to be included in the calculation of the HRTC. An example of engineering fees incurred to supervise, tender or consult on a project that is eligible was given to representatives of CRA and their response was that these costs can be included in theclaim.

7. Are Corporations (and by extension Management companies) protected by placing a disclaimer on the receipt in the event that an expense deemed eligible by the Corporation is subsequently deemed ineligible by CRA?

From the standpoint of CRA the reporting relationship that exists is between the individual taxpayer and the Canada Revenue Agency. A Corporation that makes an honest error in judgment in determining whether an expense is eligible can expect no penalties by CRA. That does not hold true necessarily for Corporations that intentionally or fraudulently misrepresent the eligible expenses in order to increase the amount of the claim by its owners. CCI (Toronto) and ACMO have prepared a suggested disclaimer for those that wish to use it.

8. In the event of expenses incurred by shared facilities of two or more condominium corporations, does the responsibility of the SF management company end at providing the total of the eligible expenses for the SF to the management company of the condominium corporations that contribute to SF (based on the % of their contribution)?

The short answer is yes. This is in keeping with the philosophy that since the condominium corporations contributed to those expenses based on their proportionate share then the owners who provided those funds to the Corporation are entitled to claim the portion of the funds that they provided.

9. Do Corporations (and by extension Management) need to supply copies of the invoices being claimed as eligible expenses to each owner along with a copy of schedule D of the declaration for that Corporation? Do those need to be submitted with the tax return of each unit owner making a claim?

CRA is not expecting each unit owner to provide copies of the contracts entered into by the Corporation as proof of eligible expenses. If the Condominium Corporation provides a Receipt or summary of eligible expenditures incurred on behalf of all owners, then the unit owner can rely on that summary and the Corporation is responsible to maintain the records and proof of expenses to support the summary which it provided to owners. CRA did indicate that if possible, but no mandatory, they would like to see the owners with a list of the contractors, their GST numbers and very short description of the work completed and when. It is important to note from an administration standpoint, that Corporations need to maintain those records in the event the taxpayer gets audited.

10. Should Corporations (and by extension Management companies) issue their receipts based on the total expenses or only those expenditures over $1,000? Is the reduction of the $1,000 from the total expenses the responsibility of the owner at the time of filing their tax return or should the Corporation make that reduction in the total amount before issuing a Receipt?

There is no minimum amount on which Corporations should report. The deduction of $1,000 from the total eligible expenses is done by the individual taxpayer when completing Schedule 12 of their personal 2009 Income Tax Return, and not by the Corporation.

11. Holdback on a project that has been completed but the holdback not released as at January 31, 2010?

The eligible expenses include the value of any work completed as at January 31, 2010. Therefore if work on a project was completed prior to January 31, 2010 then the entire value of the contract is an eligible expense even though the contractor has not yet received payment in full. *Note: If a Corporation is in the midst of a large project that is eligible it would be beneficial to have the invoice and the consultant prepare a certificate for payment for work completed to January 31, 2010.*

12. Are the common element portions for parking spaces and lockers included in the portion of eligible expenses assigned to an individual unit which owns those parking spaces and lockers?

The proportionate interest in common elements which determines the percentage of contributions to Common Area Maintenance (including parking and locker percentages, if applicable) dictates the percentage of the eligible expenditures that an individual unit owner can claim.

13. What are the reporting responsibilities for Corporations without any eligible expenses?

Technically there is no responsibility on the part of the Corporation although a letter to unit owners indicating that the Corporation has not incurred any eligible expenses is advisable.

14. Can the Corporation include as an eligible expense the consulting fees for work which has not been started or has not been contracted as at January 31, 2010?

Yes, provided the consulting or engineering work is in relation to an eligible expenditures and the services (consulting work) for which the claim is being made were received prior to January 31, 2010.

15. If it is determined subsequent to releasing the receipts to the owners that an expense should be included or excluded by way of reporting error or CRA audit, what will be the obligation of the Corporation with respect to revising the receipts previously issued. For instance will the revisions require the owners to revise their 2009 income tax returns or could the revision be reported for the next tax year ie 2010?

In the event that an error is discovered that alters the amount of the claim made by owners in relation to the HRTC claim, then the owners should be notified as soon as possible and they should forward the information on the correction to CRA in order to have their personal income tax return re-assessed.

16. Is there any reporting obligation to CRA direct from the Corporation for the record of Receipts issued?

No. There is no summary or detail that is required to be filed with CRA in connection with the HRTC other than the requirement to maintain the records in the event that CRA chooses to further investigate any claims made by unit owners in connection with the Corporation's eligible expenses.

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

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How are we doing? We welcome your comments, questions or suggestions that you may have. You can provide your comments by e-mailing us c/o contact@ccivancouver.com or writing to us c/o 1700- 1185 W. Georgia Street, Vancouver, B.C. V6E 4E6. If you write to us, please include your name, address and strata plan #. If any strata corporation members would like to submit an article about a topic of interest or do a profile of your complex, we would be happy to include your article or profile in one of our upcoming newsletters.

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Name *Address/Suite*

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