

voice from the...



# strata- SPHERE®

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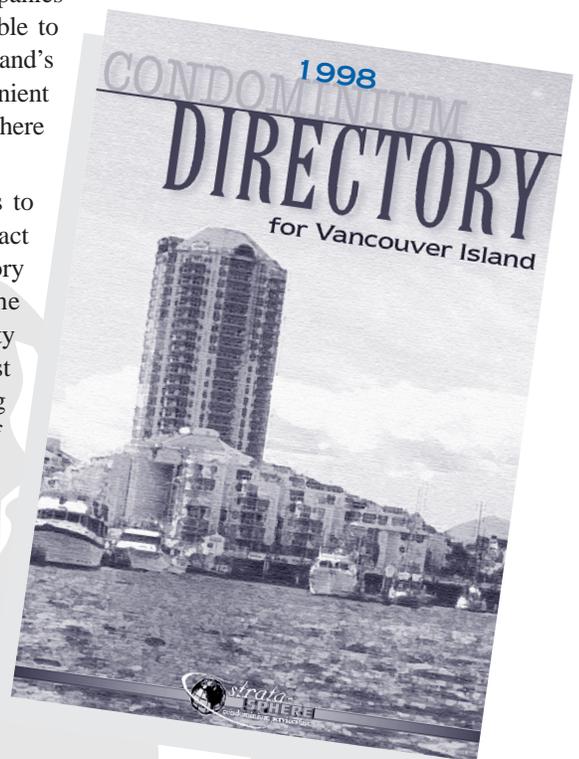
For the first time ever, companies and individuals will be able to look up most of the Island's 4,294 strata corporations in a convenient reference book published by Strata-sphere Condominium Services Inc.

By providing quick and easy access to strata corporations and their contact people, this handy resource directory will be a useful tool for the professional and business community of Vancouver Island. It will assist legal conveyancing firms in obtaining a "Certificate of Full Payment" of strata fees, which is required to complete every condominium purchase transaction. It will aid real estate agents accessing copies of bylaws, rules and regulations and other important information, in order to make full disclosure to purchasers. It will also be helpful to municipalities for bylaw enforcement purposes.

The Condominium Directory also contains a Resource Guide for strata corporations. The guide provides useful tips on managing and administering condominium projects. Also, it enables strata council members and management companies to source out services and products available to the strata community.

The Directory lists over 4,000 of the 4,294 Strata Corporations filed in the Vancouver Island Victoria Land Titles Office over a thirty year period from March 19, 1968 until May 27, 1997.

The 1990's witnessed an unprecedented explosion of condominium construction on Vancouver Island. During the last 7.4 years, 2,440 strata plans were registered in the Victoria Land Title Office or an average of more than one strata plan every single business day. 57% of all strata plan registrations took place during this period.



continued on page 2...



## Voice from the Strata-sphere

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# Advice from the Condo Consultant

David Busby

**J**dwelt at length during 1997 on the shortcomings of Dictator Dave or Donna, the strata council chairperson, and Jane or John Whyner, the constantly complaining owner, who individually or together can rapidly ruin the concept of condominium living.

My message for 1998 is that all strata lot owners, including members of strata councils, heed the words of Madame Justice Proudfoot in a judgment handed down in a case she heard regarding a condominium problem:

*"The Condominium lifestyle can indeed fulfill many of the promises of almost carefree living. It can also be a frustrating and extremely aggravating situation if the concept of shared responsibility is not accepted."*

In my mind, all owners have a duty to accept the concept of shared responsibility .. try it, keep at it and the promise of almost carefree living will become a reality!



**DAVE BUSBY**

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*continued from page 1...*

Growth brings with it growing pains. Volunteer strata council members and others associated with the creature of statute quickly discover that administering a strata can be like walking through a mine field. Problems explode in front of them and until recently, there was little support available to guide the unsuspecting through their difficulties. Education, professional consultation and self-awareness are the keys to avoiding the pitfalls.

## Strata-sphere provides many Services and Products including:

- Vancouver Island Condominium Directory & Resource Guide
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For further information, please call Strata-sphere at (250) 751-8590 or 1-888-298-7999.

## 1998 Annual Seminars: When & Where (TBA)

Courtenay - Oct 3/98

Victoria - Oct 24/98

Duncan - Nov 7/98

Nanaimo - Nov 21/98

## Trade Show:

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# Report of the President – Year in Review

*Cora D. Wilson, President*

STRATA-SPHERE CONDOMINIUM SERVICES INC.

The last year was both challenging and rewarding. Our goal was to make condominium information, products and services more accessible to the condominium community. We would like to thank everyone who helped us to achieve this goal and motivated us to continue with this enormous undertaking.

The publication of the first ever Vancouver Island Condominium Directory was an arduous task occupying eight months of research and data compilation. We were able to obtain contact names and addresses for all but 5% of the strata corporations. Thanks to the advertisers and those who purchased the Directory for their patience and co-operation.

Management Companies and strata councils are reminded that it is a mandatory requirement to keep the strata corporation's address for service up-to-date. Also, it must provide a convenient receptacle suitable for postal delivery with the name of the corporation clearly marked on it (s. 70, Condominium Act). Few strata corporations comply with these requirements. Stratas are asked to please provide Strata-sphere with any changes to the address for delivery so that we may keep our data base current.

Strata-sphere hosted full day seminars in the fall of 1997 in Nanaimo, Courtenay, Duncan and Victoria. Over 20 highly competent and qualified guest speakers provided informative and

entertaining presentations on topical condominium issues. These speakers included presentations from the Ministry of Finance and Corporate Relations on proposed changes to the Condominium Act, New Home Warranty on the Leaky Condo Issue, engineers on the building envelope, and banks on financing repairs. Also, many other professionals made presentations such as lawyers, arbitrators, condominium consultants, accountants, insurance agents and property managers.

The seminars highlighted the complexity of condominium issues and emphasized the importance of the varied professionals working together to ensure the smooth operation of the strata corporation business.

The Condominium Act is fraught with interpretation difficulties and is in desperate need of legislative change. Many people are unaware of the pitfalls associated with sitting on strata council and the potential personal legal liability associated with failing to carry out the mandatory obligations under the Act. Awareness will be heightened as more legal cases are decided. However, our goal is to provide information to strata corporations so that they may take preventative steps to avoid lengthy and costly recourse to litigation. We hope that you will join us in our pursuit of providing information, education, support and resources to the strata community. I would like to wish you a prosperous and happy 1998.

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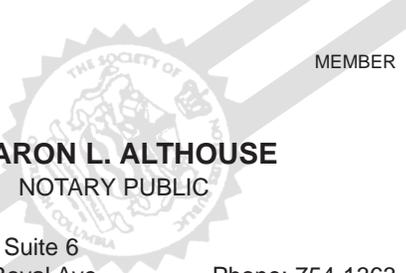


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# Arbitration

*Cora D. Wilson, Condominium Arbitrator*  
C.D WILSON & ASSOCIATES, Nanaimo

The glorified vision of the condo communal environment is a selling feature to the unsuspecting purchaser looking for a life style change and care free living. The dark side of this bright picture is that condos by their very nature become a breeding ground for discontent and disputes between owners and the council and owners against owners. The strata council orders the unit owner to remove the "unsightly" Canadian Flag or orders the removal of a blind man's pet, his seeing eye dog. Dictatorial strata councils act like pitbulls in a quest for power over unit owners. They levy unreasonable and discriminatory fines against those who challenge their authority. Unit owners refuse to comply with the bylaws. They install fences and enclose common areas without the permission of council. They are delinquent in paying strata fees and rant that reasonable council decisions are oppressive and unduly prejudicial. Alleged corrupt practices and breaches leaving the impression of injustice must be tempered by resorting sometimes at great cost to litigation. Arbitration is an alternative.

I recently sat as chair on a three person arbitration panel on the mainland convened pursuant to section 44 of the Condominium Act. The other two arbitrators were very competent and knowledgeable each having sat on numerous other arbitrations. The parties were each represented by competent and experienced condominium lawyers. Although the proceedings resembled a court room, they were quite informal taking place in the strata corporation's meeting room. Proper notice was given pursuant to the Condominium Act and numerous unit owners were in attendance to witness the proceedings. The location of the arbitration permitted the arbitrators the opportunity to view the subject matter of the dispute. Witnesses were sworn and gave testimony in the traditional fashion. Legal counsel provided opening statements, witnesses were examined and then cross-examined by opposing counsel, and closing arguments were presented. The hearing was convened within a few months on a date convenient to all of the parties. The stress associated with long delays stretching into years and traditional Supreme Court proceedings was minimized.



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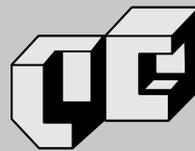
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Sections 44 and 45 of the Act provide statutory authority to unit owners and strata corporations to refer certain disputes to Arbitration. This must be done prior to the commencement of a court proceeding. The Claimant must give notice to the Respondent that the dispute is being referred to Arbitration. Within two weeks after the notice is received, the parties must agree on and appoint a single arbitrator. If they cannot agree, each party must within a further week, appoint an arbitrator and the two arbitrators appoint a third arbitrator who shall be the chairperson. As the parties bear the costs of the arbitrators, it is preferable to agree upon and appoint a single arbitrator.

Anyone who is an owner and occupier of a strata lot in another strata development for at least one year qualifies to sit as an arbitrator. Even these restrictions can be waived by agreement of the parties. This means that just about anyone could sit as an arbitrator. A working knowledge of the Condominium Act is not a minimum criteria for selection nor is experience. In light of the enormous power granted to the arbitrator this is alarming.

The arbitrator has authority to make any award which is "just and equitable." He or she can order injunctions, payment of damages and stipulate who will pay the costs of the arbitration and the remuneration of the arbitrators. The decision is final.

The Act provides that the arbitrators can "conduct the hearing as they believe proper," including hearing evidence which is inadmissible in court. The portion of the Commercial Arbitration

Act, B.C., which outlines a procedural framework for resolving disputes is specifically excluded from application under the Condominium Act. This leaves a procedural vacuum for those intending to proceed to arbitration. Arbitrators are not governed by legal principles or precedent. This flies in the face of legal foundations. The lack of standards could and has resulted in unpredictable and surprising arbitration awards.

The parties are at the mercy of the Arbitrator. Notwithstanding the pitfalls, Arbitration should be seriously considered to resolve a dispute. If parties appoint experienced, knowledgeable and competent condominium arbitrators to hear the dispute, the process can and will smoothly with appropriate awards.

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# Glass – Can You See Through It!

Trevor Bebb, RPM, RIM  
Condominium Consultant

KOLYVAN

**G**lass replacement is a topic that regularly appears either on a Strata Council Agenda or on the Property Manager’s desk. Whose insurance covers glass - the strata corporation’s policy or the individual strata owner’s policy? Many strata corporations have implemented a clear Bylaw which addresses this issue by defining exactly who and what is actually covered by which policy.

Section 54(1)(a) of the Condominium Act of B.C. requires the strata corporation to insure “the buildings, common facilities and any insurable improvements, against fire and other perils as are usually the subject of insurance.” Glass breakage is not considered to be “usual peril” in the insurance world. As a result, most strata corporations insure against such breakage as an option. If you don’t have this optional coverage, Section 54(1)(b) of the Act gives the corporation authority to obtain it.

The issue of glass ownership still confuses many owners and some property managers. Section 54(2) of the Act refers to “buildings.” Does glass form part of the building? Section (1) of the Act, Interpretation Section, defines “buildings” as a building or group of buildings shown on a strata plan. This does not help us.

Turning to Section 115(c), an owner must “repair and maintain the strata lot, including windows and doors” and it goes on to say “those areas allocated to the owner’s exclusive use” which would appear to cover glass enclosed balconies which are Limited Common Property. That same section also states that owners “keep them in a state of good repair; reasonable wear and tear and damage by fire, storm, tempest or act of God excepted.”

Glass breakage is not reasonable wear and tear or subject to the other perils listed; however, glass does break. Exterior glass should be clarified by a clear (no pun intended) Bylaw and coverage should be provided under the strata corporation’s policy.

In the case of a sealed or double glazed window or door, you may wish to define who pays for breakage of the inside glass pane. This type of breakage is frequently due to an accident or misuse by the strata lot owner; however, be aware that structural deflection of the window header can also cause a glass pane to break.

Section 116(f) clearly states that the duty of the corporation is to “maintain and repair the exterior of the buildings, excluding windows, doors, balconies and patios.”

The individual strata lot owner’s policy usually insures exterior glass generally. Owners should verify with their insurer the extent of this coverage. Skylights should be covered by the corporation’s insurance as part of the roof structure. A properly drafted Bylaw should also address the common place failure of the sealed glass unit due to condensation.

In summary, glass breakage or seal failure can cause extreme frustration for all concerned. Until the Provincial Government addresses this issue by modifying the Condominium Act, strata corporations would be prudent to clarify and define “glass” issues.



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# The Comprehensive Fire Safety Plan

Don Nicholas

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The B.C. Fire Code regulations and minimum standards for building and occupant safety are not well known. This article will introduce the British Columbia Fire Code so that strata corporations may take a more proactive role in the safety of your buildings and the people in your care.

The British Columbia Fire Code provides a minimum standard for fire prevention in existing buildings. After construction, the level of occupant safety achieved by the B.C. Building Code must be maintained by the owner or the owner's agent. The following provides some direction on the implementation of a Fire Safety Program at minimal cost to the owner:

1. Appoint a Fire Safety Director and Deputies to administer the safety plan by, for example, keeping records of all false alarms, fire drills, and fire incidents; providing information to occupants on general fire safety and evacuation procedures; and, maintaining familiarity with the building's fire protection systems;
2. Set up procedures to maintain fire detection, alarm systems, and automatic sprinkler systems in good working order;
3. Conduct fire drills on an annual basis in conjunction with the Fire Safety Director to test safety and evacuation procedures and to identify any problems associated with these procedures;
4. Familiarize yourself with the location and operation of the fire safety features and equipment in the building such as type and functions of the fire alarm system; location and coverage areas of emergency light units; types and locations of elevators, fire extinguishers, fire hoses, natural gas and electrical shut offs and sprinkler system and water shut down locations;
5. Provide owners with handicapped person information sheets detailing proper evacuation and occupant assembly procedures in emergency situations and prepare information sheets for those in need of assistance during an evacuation stating their name, disability, and location in the building;
6. Obtain copies of floor plans showing the location of Fire Department connections, water and natural gas shut offs, the

nearest fire hydrants, fire extinguishers, fire exits, and other fire safety features within the building;

7. Set up and conduct regular inspections, testing and maintenance to the fire equipment including the fire alarm systems, sprinkler systems, emergency light systems, standpipes and hose systems, portable fire extinguishers, and other safety equipment. Monthly inspection and testing of equipment can be carried out by the Fire Safety Director and the records must be kept for two years. Annual inspection, testing and maintenance of equipment must be carried out by a qualified contractor or service company and the records kept for two years. Fire Safety Plan outlines developed by organizations such as the Fire Commissioner's office and local Fire Departments are available, usually at no charge, from certain local fire and safety service companies during the annual inspection of a building. The implementation of a comprehensive Fire Safety Program in compliance with the B.C. Fire Code will maximize safety in your building and minimize the potential for loss of life and damage to property.



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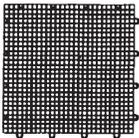
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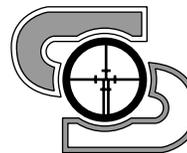
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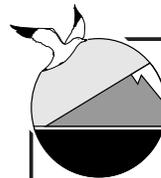
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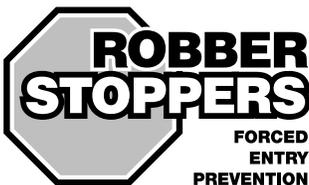
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Recently a lot of media attention has focused on the so-called "leaky condos," particularly in the coastal area of BC. Many dramatic T.V. segments and newspaper reports have portrayed condominium owners faced with significant repair costs. The "Building Envelope" is the barrier between the interior of the building and the exterior environment. It includes roof, exterior walls and exterior decks. The Building Envelope is intended to maintain a comfortable, dry interior environment.

On-going water penetration through the building envelope will result in deterioration - it is only question of time. If left unchecked, moisture penetration in wood frame buildings may lead to complete degradation of not only the interior finishes such as floor coverings, trims and drywall, but also the structural wood frame elements. Consequently, prompt identification and correction of a problem will result in reduced damages and costs.

*Strata corporations should consider undertaking a Building Envelope Investigation to identify sources of water penetration early in the game and to develop cost effective, long term solutions.*

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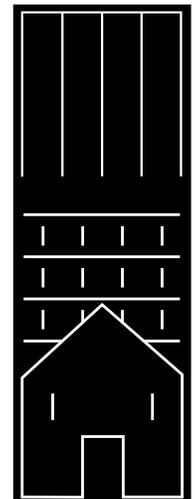
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# Preventative Maintenance for the Leaky Condo

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Every winter the amount of rain water we receive causes problems. Vancouver Island receives up to 147 inches of water per year, mostly between the months of November and April. We think little of forecasts of .5 to 1.5 inches of rain. However, one inch of rain over a 1200 square foot living space equates to 100 gallons of water weighing 1,000 pounds. This water has to go somewhere. Your living room or your bedroom would not be your first choice of storage. Gutters and drainpipes connected to storm sewers permit the water to run away only if the drainage lines are clear.

As some trees, such as evergreens, shed needles and leaves all year round, roof drains should be checked regularly. This is especially true if you live under a flat roof. The tops of downspouts should be checked as often as once a month in windy winter weather.

Sea birds frequently eat or nest on the flat roof. The mess left behind contributes to plugged drains. Hosing the debris into the drain could result in it getting caught at a corner and plugging the system royally. This could be an expensive mistake. The hand and bucket technique is the best "tool" for cleaning around the downspout holes and the debris should be deposited in the dumpster or the compost.

Check the leaf guard regularly to ensure that it is in good condition, clean, and free of broken or missing spokes that allow debris into the drains. The 1996 blizzard witnessed many strata maintenance members scrambling to clean the flat roof drains to allow the melting snow to drain. Common plug-ups could have been avoided with a proper maintenance program.

The truss design (the framing that supports the roof) usually takes care of the water weight problem. However, plugged drains lead to an unusual amount of water. The increased weight causes the sheathing (plywood or OSB nailed onto the truss) to shift unevenly and this causes tears in the roof membrane (or coating) and leaks result. The first indication of a slow leak is usually a drip from the ceiling drywall in the unit directly under the leak. If there is a fast leak, the ceiling will bow from the weight of the water trapped above the ceiling drywall. The larger the bowing the greater the risk of the drywall "letting go" and a sudden flood bursting forth. It is possible for someone to be hurt by the falling drywall and the weight of the water (one gallon of water is a cubic foot and weighs 10 pounds).

Before the drywall is repaired, the roof leak must be fixed to prevent a reoccurrence of the problem. Small tears or holes in the roofing membrane can be patched using a patch material that will bond to and not damage the main membrane material. Some sealers contain solvents that can damage the roofing membrane, so care is needed in selecting a patching material. Consulting a professional is cheap insurance against a larger problem.

Although the amount of rain per year varies dramatically across Vancouver Island, the basics of protecting ourselves and our property are the same. Constant vigilance is needed. The monthly walkabout by the council member in charge of maintenance can be the means of finding problems before they become serious.

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# Ask Gord the Weathergard Man

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ASK THE WEATHERGARD SHOP

Waterproofing a building structure is a critical element of its design and construction. Water infiltration and leakage damages a building's structure and its contents. The most common sources of water leakage are through structural defects such as cracks and voids, or through construction and control joints. Below-grade areas are susceptible to fluctuating water tables while horizontal decks are susceptible to ponded water. The best way to avoid the problem is through the proper design and careful selection of the waterproofing system.

Often times the terms waterproofing and dampproofing are incorrectly interchanged. Waterproofing is the treatment of a surface to prevent the passage of liquid water in the presence of hydrostatic pressure. Dampproofing is the treatment of a surface to retard the absorption of moisture in the absence of hydrostatic pressure.

Virtually all building envelopes, particularly below-grade areas and plaza decks encounter hydrostatic pressure from water during their lifetimes. Therefore, the use of a quality waterproofing system is essential to preserve the watertightness of the building envelope.

A quality waterproofing system consists of three key elements:

- A waterproofing membrane which prevents the passage of liquid water in the presence of hydrostatic pressure
- A prefabricated drainage composite which protects the membrane while reducing hydrostatic pressure
- Accessory products which compliment, attach and detail the waterproofing and drainage courses

The problem of water intrusion into a structure can be addressed via three general avenues:

1. **Positive Side Waterproofing:** Waterproofing systems should be placed on the same side of the structure as the source of the water. This is known as positive side waterproofing. Placing the waterproofing on the positive side prevents water from passing through the structure. This protects structural elements from damage due to water infiltration.
2. **Negative Side Waterproofing:** Some new structures and many existing ones, have waterproofing placed on the inside or negative side of the structure. These systems may prevent water intrusion into the interior of a structure. However, they allow the damaging effects of water to continue unabated within the structural members.
3. **Blind Side Waterproofing:** In some instances it is impossible, economically or practically, to waterproof the positive side of the structure after the concrete has been poured. This includes under slabs and against foundation walls cast against soil retaining systems such as timber lagging. However, waterproofing systems may be installed on the positive side before the concrete structure is poured. This technique is known as blind side waterproofing and requires specially designed systems to provide proper waterproofing.

The best way to avoid the Leaky Condo is through proper design and careful selection of the waterproofing system.

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## Proposed Legislation on Third Party Warranty

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The Provincial Government currently is working towards draft legislation which would make it a requirement that every new home in British Columbia, be it a single family home, a townhome, a condominium or high rise, has an independent third party warranty placed on it. New Home Warranty of British Columbia has worked with the Government to provide as much information as possible to enable them to pen legislation which will be fair and equitable to all British Columbians as it pertains to the residential construction industry in the province.

It is anticipated that this legislation may be tabled as early as the spring of 1998 and New Home Warranty not only is supportive but encourages the Government to bring in this needed legislation.

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# The Financing Alternative for Strata Repairs

*Russ Burke*

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Campbell River, B.C.

The “leaky condo syndrome” has gained much attention in the press of late, for good reason. The image of mould growing in walls, floors and ceilings brings chills to the strata condo owners. The cost of these repairs can run into the hundreds of thousands of dollars. In many cases the repairs are required before there is a significant contingency reserve fund available to cover the costs.

Strata council members are responsible by law to ensure that the required structural repairs are carried out. Failure to do so may leave the individual members subject to legal action from owners in the future. The strata council has a limited number of options to raise the required funds to effect the repairs, as follows:

- 1. LEVY:** The council can assess a levy subject to the Act on the strata unit owners based upon the square meters, or feet for the less than metric literate, occupied by the individual unit. The individual owner is then responsible to make payment to the strata council. If the sum is sizeable the owner can seek a personal loan from a Bank or Credit Union to be repaid over a period of time, usually five years or less. If the levy is sizeable then the lender may require a mortgage over the strata unit to secure the loan. This may involve a first, second or even a third mortgage if existing financing is in place. Most lenders will be amenable to rewriting existing mortgages. This involves one new first mortgage which will pay off the existing financing and provide the new funds required for the repairs. Mortgage financing in Canada is usually restricted to a maximum of 75% of the current value of the property. As such the lender may require a fresh appraisal of the value of the unit. Appraisal fees typically run at about \$200.00. Legal fees for the preparation and registration of a new mortgage are usually paid by the borrower. These fees are generally in the \$500.00 to \$1,000.00 range. The fees can be financed if the total amount required including the existing financing, the new funds required for repairs and the financing costs do not exceed 75% of the value of the property.
- 2. STRATA CORPORATION FINANCING:** In the past most lenders have been reluctant to lend directly to the strata corporation. Strata councils change over time as owners sell and move on or members grow tired of the task and different members take their place. Hard security was difficult to offer as a strata corporation cannot grant a mortgage over the individual units. However, with the advent of the Personal Property Security Act in B.C. and a desire by the Bank of Montreal to assist this significant market place, an alternative has been developed. A unique security package was developed by a distinguished Victoria Lawyer, Guy Whitman, of Crease, Harman and Company. The security documentation is fairly complex. In simple terms, the package provides the Bank with access to the unique taxing power of the strata corporation. The

corporation is required to pass a special levy and authorization to borrow with the consent of a minimum of 75% of the strata members. The levy provides a monthly assessment sufficient to repay the principal and interest of the loan over a period of years. This may extend to 10 or 20 years but typically we would see the loan repaid over 5 years. All the unit owners choosing this option are bound by the levy and failure to make payment can be enforced by the council in the same manner as the monthly maintenance charge on the property. This situation is similar to the collection of property taxes by a municipality.

The advantages of this type of financing are many. Firstly, the individual condo owners do not have to raise the funds themselves or worry about qualifying on the basis of income or maximum financing level. Appraisals are not usually required and legal fees are reduced as only one set of security documents are required.

Strata corporations now have options and should seriously consider each one when dealing with significant levies on the unit owners.



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# LEAKY CONDO CRISIS - DAMAGES OF ONE HUNDRED MILLION?

Cora D. Wilson, Lawyer  
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In 1997 Lower Mainland headlines alarmed us with reports of water damage to condominiums. The cost was estimated at \$100,000,000.00 to remedy. The problem also affects Vancouver Island. The volunteer Strata Council could be faced with untold personal legal liability and years of court battles if they fail to properly handle such a crisis. If the Condo springs a tiny leak, failure to take prompt effective repair action could result in the Titanic nightmare. If roof replacement becomes a reality then in the absence of a suitable warranty or insurance coverage, the unit owner must bear the proportionate cost of the repair work. This could be financially disastrous to an unsuspecting 95% financed first time home buyer who sought out the newly constructed lifestyle condo dream. New condos rarely have a Contingency Reserve Fund adequate to cover the potential crippling costs associated with remedying water damage.

Unfortunately, the prevailing attitude of poorly equipped council members is that they are immune from liability. They refuse to become familiar with the murky Condominium Act. They fail to educate themselves. They refuse to retain experts and professionals to assist them. They fail to obtain inexpensive Director's and Officer's Liability Insurance which would shield them from potential gigantic legal costs.

They would be shocked to learn that strata council members owe a fiduciary duty not only to current unit owners who elect them, but also to future unit owners to properly carry out their duties. One of the mandatory duties imposed on the unwary under the Condominium Act is the duty "to keep the common property, common facilities and other assets in a state of good and serviceable repair and properly maintain them" (Section 34(1)(d)). This unalterable statutory duty is colored by sections 116 and 117 of the statutory bylaws.

In Strata Plan 1229 v. Trivantor Investments International Ltd. [1995] B.C.J. No. 557, DRS 95-13857, Victoria Registry No. 91 2714 [912714] (B.C.S.C.) subsequent owners complained of a variety of physical problems with the individual units and common property including water entry, water leaks, water supply, and freezing problems. The court held that the sole strata council member breached its fiduciary duty to maintain the property. The measure of damages was the amount necessary to put the building in the state it would have been in, had the strata council member complied with its fiduciary duty to have the strata corporation carry out its obligations under the Condominium Act. Judgment was awarded for \$49,152.07, plus prejudgment interest and costs.

The Courts have raised the red flag to the council. Don't ignore the warning signals. Don't be caught through ignorance by the pitfalls of liability which could emanate not only from current owners, but future owners as well.

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