voice from the... strata-SPHERE®

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Form B: Information Certificates

A Consumer Protection Challenge

Ian Stuart, Property Manager
NEWPORT REALTY PROPERTY MANAGEMENT

Section 36 of the old *Condominium Act* provided for disclosure by a strata corporation of its' current state affairs. Section 59 of the *Strata Property Act* (SPA) does all of that and goes a few important steps further. This article will attempt to give both first time and experienced Strata Council members a few suggestions for completing the new Form B.

The challenge for strata councils and property managers who assist them will be in ensuring that the information given is both accurate and timely. The information contained in the Form B is binding on the Strata Corporation in relation to the particular strata lot for which the Form B is issued. The wording of the Form B is direct: *"The Owners, Strata Plan… certify that the information contained in this certificate with respect to Strata Lot… is correct as of the date of this certificate."* The liability for providing incorrect information is great. The penalty for preparing a false Form B is up to $2,000 in fines or 6 months in jail under Section 290 of the SPA. The only possible relief is found in Section 59 (6) which allows the Supreme Court to make any order with regard to the Information Certificate.

A review of the Form B requirements under Sections 59 (a) to (i) follows.

The monthly strata fees for the strata lot in question, section (a), can be verified with the Treasurer or Property Manager.

Section (b) provides disclosure of monies owing by the unit owner to the strata corporation. Note that this item does not include amounts the unit owner is obligated to pay in the future under a special resolution.

Under Section (c) the Strata Corporation is required to provide copies of any agreements to the unit owner that impose a unit owner's responsibility for expenses relating to alterations to the strata lot or common property. Failure to do so could prove very costly to the Strata Corporation. For example, Mrs. Jones wants to extend the patio at the rear of her townhouse and gets verbal permission to do so from the Strata Council President. A year later Mrs. Jones sells her strata lot to Mr. Smith who notices after moving in, that the extended part of the patio is sinking and requests the Strata Council to rebuild it. As no agreement was provided to Mr. Smith with the Form B he requested at the time of purchase, the strata corporation may be liable for the cost to repair the extended portion of the patio. Keeping an inventory of all unit owner improvements and agreements is now essential for Strata Councils.

Section (d) provides for disclosure of Special Levies (see Section 108 and 109) that become due and payable in the future. A copy of the approved resolution(s) and any payment schedules should be labeled and attached to the Form B.

The information regarding the current state of operating expenses required under Section (e) is best dealt with by providing the current operating statement for the strata plan. An explanation of any expenses expected to exceed the budget should also be included.

Section (f) contains a vast improvement over the old legislation in so much as it now provides for

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disclosure of the true state of the contingency reserve funds. Copies of approved expenditure resolutions should be attached to the Form B.

Section (g), (h), (i) & (j) provide for a current picture of the bylaws, meetings and legal health of the Strata Plan. Copies of the current bylaws should also be attached.

Section (k) relates to Sections 83 to 85 of SPA and provides for disclosure of notices and work orders of a public or local authority. The Strata Council or Property Manager should make independent inquiries of the relevant authorities if any notices or work orders have been issued but have not been complied with. Again this Item could prove very costly to the strata corporation if not dealt with properly.

Section (j) provides for a disclosure of how many suites are currently rented. This is not simply a count of Form K's (Notice Of Tenant's Responsibilities) on file, but of strata lots actually rented. Keeping tabs on this can prove to be a challenge for the Property Manager or Strata Council, especially at month's end when both rental turnovers and strata lot sales take place.

Several other documents must be included with a Form B. These include; the rules of the strata corporation, the current budgets and, if available the rental disclosure statement. Strata Councils must be careful as some items can be easily over looked, such as, common room rules or swimming pool rules.

All of this information needs to be provided within one week of the request. Therefore, it could be a busy week for an unprepared Strata Council or Property Manager. A template Form B should be developed and kept updated so that less work is required at the time of the request. The maximum charge for an Information Certificate is $ 35.00 plus 0.25 per photocopied page. All attachments to the Form B should be labeled and dated to ensure the owner or purchaser can clearly understand the purpose of each attachment.

It can not be over-stated that anyone who signs an Information Certificate needs to be aware of the need for providing complete, and accurate information.

Nona Saunders

President

CONDOMINIUM HOME OWNERS' ASSOCIATION OF B.C. (CHOA)

Nona's history with CHOA spans almost six years. Her position as President for the last three years has proven to be a tumultuous challenge marred by the 'Leaky Condo' crisis. She started out as an associate, then served as a committee member for 1 1/2 years before assuming the chair for CHOA. As a committee member, she researched warranty coverage and construction problems. Nona discovered the inadequacies of the BC warranty when she compared the protection available in different provinces. For example, Ontario has enjoyed a legislated warranty since 1976, which afforded homeowners a much higher degree of protection.

Nona is a two time leaky condo owner. The first 'disaster home' was bought in 1981. The owners suffered a great financial loss. Ten years later, she thought she had done a much better job on her homework when she purchased her second condo, which also became a 'leaky condo.' She now believes that no amount of homework would be sufficient for a layperson to be completely confident in buying a problem-free home.

In the 1980's, homeowners were not prepared to speak out about their construction problems. Many were told by legal counsel to keep quiet about the problem for fear of spoiling negotiations with the Developer. After months of haggling with the Developer and empty promises, negotiations often proved fruitless.

Nona candidly admits that it was a mistake not to go public as the magnitude of the problem would have become known sooner and resolved faster. *"It was an elephant under the carpet. We kept tripping over it. It was not going away. The building industry and government were content that it stay that way."*

Nona had no idea that the task of resolving the problem would be so big. However, this is not yet the time for Nona to step back. There are one or two more battles to fight, such as financing or funding for homeowners and licencing of property managers.

She hopes that the issue of funding will become a major election issue in the next federal and provincial elections. A great number of organizations support this initiative. Political candidates are being actively canvassed for their personal and party positions regarding compensation and consumer protection measures for homeowners.

Seventy-one percent of the BC federal ridings and seventy-two percent of the provincial ridings have leaky condo constituents. This issue will not be ignored. Nona anticipates that consumer/voter pressure on different levels of governments will result in further compensation.

The Barrett Commission recognized that its earlier recommendations for compensation such as tax relief and RRSP benefits would not be enough in light of New Home Warranty's collapse and increased bankruptcies and bank foreclosures. Nona was pleased with the Commission's insight. BC is now experiencing 90 foreclosures a week - up from 40 a week in 1996.

She continued, *"For every foreclosed home that CMHC insured, it cost them about $65,000.00 per unit. This cost could be reduced to $25,000.00 per unit if a direct grant was made available to homeowners by way of a shared contribution from the federal and provincial governments and industry. It makes*

good business sense to front these monies, rather than have the whole industry continue in this death spin."

Nona supports the warranty on repairs, which will be in effect at the end of September. *"This is certainly needed,"* she indicated, *"there is debate as to whether it will be cost effective."* She concluded that it could be. *"Ask owners dealing with major repairs for a second time if they would have paid 5-10% more up front to have had the work covered by a warranty with teeth and the answer, with the benefit of 20/20 hindsight, would be YES."*

Nona believes that the new warranty will raise the standard for those performing the work. *"Regrettably, this is a boom industry,"* she stated, *"There are alot of inexperienced people coming into the field and learning on the job."*

However, Nona is pleased to see how much has been accomplished to date. Many of the items in CHOA's 10 point plan outlined in the 1995 Vancouver Sun essay, entitled *"The Homeowner's Titanic,"* have been addressed.

One of the top priorities of the Building Envelope Research Consortium is investigating contributing factors to building envelope failure in high-rise construction. *"It may take longer for the problem to manifest itself. However, these cases will be scarier because the costs to repair will be higher."* Studies have been commissioned into the design features of high-rises, indicating a welcomed industry/government response to a potential problem.

Health concerns related to mould appear to have now been swept under the carpet. Nona finds this frustrating. *"My fear is that the building industry is an incredibly strong lobby group. It will do whatever possible to minimize research and the release of conclusions on this health issue. The reasons are legal - it would not be able to easy to deflect litigation if and when health risks are substantiated."*

A recent multi-party meeting asked participants to prioritize areas for study. At the end of the exercise, mould was the No. 1 issue highlighted. However, in the end, mould did not make the final list as a priority for study. *"What went on behind closed doors?"*

Nona believes that health should be the No. 1 issue. Add the 'Leaky Condo' crisis to the stress of every day 21st century living such as job insecurity, aging, illness, divorces - it creates a psychological and emotional stress few can deal with.

We have come full circle. The first elephant has come out from under the carpet. But what of the health issues? Nona concluded that the emotional cost of this crisis has not been factored into the equation.

The condominium community has benefitted greatly from the outstanding competence, devotion, tenacity and commitment of Nona Saunders and homeowner associations such as CHOA.

Why does she do it? *"I haven't done alot of volunteer work before now,"* she said, *"This is likely to be my lifetime volunteer project. I keep in mind the many other people affected by this crisis who don't have my capacity to fight. It was a wrong that needed to be righted. I am in the middle. There are countless wonderfully committed people now involved to see this out to the end. I no longer feel like I'm looking over my shoulder and asking, 'Is there anybody there?'. "*

Nona had no intention of becoming the 'Leaky Lady'! However, she is hoping that we will end this sorry phase in our housing industry. *"It can't get any worse,"* she said, *"The worst that can happen is that you will end up where you started. By persisting, we have been able to move a step or so forward."* Nona expects that this crisis will last another five years.

Nona is a volunteer with CHOA, as are all its directors. She does not stand to gain personally from the leaky condo crusade. Although this has been a very satisfying experience for Nona, she finds it difficult to accept unwarranted criticism for what others may feel are shortcomings in the efforts of volunteer organizations. Nona calls upon homeowners to actively participate in the matters affecting their communal life style. *"What our members give us in support is what they get back in exchange."*

Common Expense Collections & SPA - What has Changed?

Cora D. Wilson, Condominium Lawyer
C.D. WILSON & ASSOCIATES

Each unit owner is required to pay his or her share of common expenses to the strata corporation based upon the unit entitlement formula. These monies are usually paid on the first of each month. Failure to pay may result in a potential shortfall of funds required to operate the strata corporation business. This shortfall must be covered in some manner by the strata corporation if funds are not recovered in a timely fashion.

If numerous strata lot owners are in default, orderly management of the strata corporation could be impaired. Good business dictates that the strata council must take reasonable steps to collect outstanding monies owing to the strata corporation.

The *Strata Property Act* (*'SPA'*) contains new statutory requirements which must be met prior to the strata corporation entertaining exceptional remedies, such a the registration of a Certificate of Lien or undertaking the forced sale of an owner's strata lot to collect monies owing.

Prior to taking legal proceedings to collect money, the strata corporation must give the owner or tenant at least two weeks written notice demanding payment and indicate what action may be taken if payment is not made within that two week period (s. 112(1), SPA).

Cora D. Wilson, Condominium Lawyer & Educator, C.D. WILSON & ASSOCIATES, Nanaimo. Ms. Wilson has represented condominium interests for over a decade. She currently represents Strata Corporations from Victoria to Port Alice. She is a regular lecturer on Condo issues at Malaspina University College, Editor of *"Voice from the Strata-sphere,"* Publisher through Strata-sphere, of the first ever Vancouver Island Condominium Directory and frequent lecturer and chair of numerous Strata-sphere conferences.

The registration and enforcement of a lien against the strata lot for nonpayment of money owing affords the strata corporation an exceptional remedy in the form of an interest in land sufficient to force a sale of the strata lot.

The SPA provides statutory rights to the unit owner in the form of written notice as a precondition to the registration of a lien. The strata corporation must give the owner at least two weeks' written notice demanding payment and indicating that a lien may be registered if payment is not made within that two week period (s. 112(2), SPA). These unit owner rights are new. One must query whether failure to meet the statutory preconditions will invalidate the lien. The Courts will have to definitively answer this question. However, in my view, there is a good probability that these due process requirements will be strictly enforced.

The strata corporation's lien, once registered, ranks in priority to every other lien or registered charge except a crown lien, a builders lien or a unit owner's share of a judgment against the strata corporation (s. 116(5), SPA). Generally the single largest charge against most properties is the first mortgage usually in favour of an institutional lender. Mortgagees are loathe to have any party enjoy an interest that ranks in priority to its own interest. In many cases, mortgagees pay the property taxes on behalf of the owner to avoid priority battles in the event of a foreclosure or distress sale. Many mortgagees are willing to pay common expense arrears to ensure that the strata corporation does not take proceedings against the property to the prejudice of the mortgagee.

Given that mortgagees are motivated to pay strata fee arrears, it is surprising that the SPA does not require that they be provided with notice of arrears and any proposed action. A mortgagee is only entitled to a copy of any arrears notice given to an owner when it provides the strata corporation with a Mortgagees Request for Notification (s. 113, SPA). Mortgagees rarely provide this notification.

The goal is to collect the common expense arrears as quickly and as inexpensively as possible. As a result, it is recommended that the mortgagee be provided with notice of strata arrears as a matter of course.

A Certificate of Lien may be registered against a strata lot for nonpayment of strata fees, a special levy, reimbursement of the strata corporation's cost to rectify work orders against a strata lot and the strata lot's share of a judgment against the strata corporation (s. 116(1), SPA). Fines and the cost of remedying a contravention of a by law or rule may not form the subject matter of a lien (s. 116(3)(c), SPA).

A Certificate of lien may not be registered if the amount owing has been paid into court, or to the strata corporation, in trust, or if arrangements have been made to pay the amount owing which are satisfactory to the strata corporation (s. 116(3)). For example, a strata lot loan approval from the Homeowner Protection Office to fund a special levy would qualify as a satisfactory arrangement to pay the amount owing.

Upon receipt of the amount owing, the strata corporation must remove the lien

within one week by registering an Acknowledgment of Payment in the Land Title Office (s. 116(6)).

In certain circumstances, the strata corporation may wish to enforce the Certificate of lien by making application to the Supreme Court for an order for the sale of the strata lot (s. 117(1)). Prior to suing for money owing, the strata corporation must authorize the suit by a vote of the unit owners at a general meeting (171(1)). The *Condominium Act* did not require authorization as a precondition to suing. It is unfortunate that this wording was adopted by SPA. Hopefully, this will be rectified by the legislature so as to minimize legal costs and time delays associated with enforcement.

Is authorization required for every law suit for money owing, or is a general resolution authorizing the strata corporation to sue as representative of all owners for money which becomes owing sufficient? Section 171(2) of the SPA provides that "the suit" must be authorized before the strata corporation sues. Suit is defined as any kind of court proceeding. Sue means the act of bringing any kind of court proceeding. The definition provisions are general as opposed to referable to a specific suit contemplated at the time that the resolution is passed. It is not clear how the strata corporation could authorize a law suit for money owing if no monies are owing at the time of the resolution. The Courts will undoubtedly address this issue over time.

The safer course of action is to tailor make a resolution to cover specific strata arrears and have it approved at a general meeting of unit owners. This may be an administratively inconvenient, time consuming and expensive process for the strata corporation especially in a duress situation such as Leaky Condo special levy arrears.

Strata Corporations should consider passing a bylaw pursuant to section 171(4) dispensing with the need for authorization to bring a proceeding under the *Small Claims Act* to collect money owing from an owner or other person, including a fine. This may become a reasonable alternative to enforcement of the lien.

Court proceedings once properly authorized may not necessarily result in an order for the sale of the strata lot. This order may be granted by the Court either before or after judgment, upon consideration of all of the circumstances (s. 117(2)&(3)). This is new. Under the *Condominium Act* if judgment was granted, then it was mandatory for the court to make an order for the sale of the strata lot.

An order for the sale of a strata lot must provide that, if the amount owing is not paid within the time frame required by the order, the strata corporation may sell the strata lot at a price and on terms to be approved by the Court. If strata fee arrears are insignificant, a court may be reluctant to order the sale of a strata lot to satisfy those arrears.

The following costs of registering a lien or enforcing a lien may be added to the amount owing to the strata corporation under the Certificate of Lien: reasonable legal costs, land title and court registry fees and other reasonable disbursements (s. 118, SPA). The legal costs of the proceeding under the *Condominium Act* was interpreted as party and party legal costs. As a result full recovery of legal costs was not possible. The SPA wording is new. It will likely be interpreted as indemnity of reasonable legal costs. This is a welcome addition. Previously if the strata corporation took appropriate action to recover strata arrears, then the other unit owners were potentially penalized for the default and required to subsidize the legal proceedings to ensure recovery.

Strata corporations owe a duty to ensure that reasonable steps are taken in a timely fashion to collect strata arrears. There are more administrative and legal hurdles to overcome when taking legal action under SPA. Undoubtedly, the new legal constraints will deter Strata Corporations from taking proceedings to enforce a lien.

The Immediate Impact of the New 'Strata Property Act'

Gerry Fanaken, *Property Manager*
VANCOUVER CONDOMINIUM SERVICES LTD.

The new *Strata Property Act* has been law since July 1st and the question I ask is *"How are we doing after three or four months with the new legislation?"*

As a property manager, I must confess to being quite apprehensive. I had watched the development of the new legislation for the last year or so and spent a considerable amount of time studying it, making recommendations for changes to the government (many of which were implemented) and projecting into the future as to just how it would all work out. I am very pleased with the new legislation and, notwithstanding a few minor criticisms, I repeat my position that it is an excellent statute and one that will surely cure many of the problems that have arisen over the past three decades. I understand that Ministry of Finance officials are keeping an open file to receive suggestions from the public. It may very well be a number of years before the government implements further changes to the legislation but it is important for all of us involved in strata administration, whether we are property managers, council members or other professionals associated with strata administration, to make submissions to the government for consideration.

One of my early predictions was that the cost of strata administration would rise substantially as a result of the new *Act*. This we are seeing immediately with regard to the cost of producing documents such as the AGM notice. Many strata corporations have their Annual General Meetings in the fall each year and, over the next several months, strata corporations will see huge costs associated with the production of AGM notices. Several of my clients have already had their AGMs in July or August and the councils and owners were astounded at the amount of paperwork that was necessary. Of course, all of this paperwork costs money and most strata corporations simply do not have the budget allowances for these types of expenses. The proposed budget must now be accompanied with a wide variety of documents, most of which are very important and excellent additions to the statute. Unfortunately, one of the requirements (actually a regulation) is that the strata corporation must issue with the budget the details of expenditures from the Operating Fund and the Contingency Reserve Fund for the past year. This amounts to an enormous amount of paperwork and unwarranted expense. In a 200 unit strata corporation that I manage the *"details"* amounted to over 30 pages using teeny, tiny computer print. Just imagine the cost of producing 200 copies for all of the owners. Not surprisingly, that particular strata council, as will do many others, simply chose to ignore the law. That is always a dangerous policy but it is certainly understandable that strata councils will choose this route. I can only hope that the government will amend the regulation to eliminate this requirement.

Another immediate impact of the new legislation was that the Real Estate Council issued a notification to its members in the real estate community who deal with strata corporation sales advising the agents that they should be more alert to strata issues and, in this regard, it was suggested that real estate agents should always obtain what is now called a *"Form B Certificate of*

Gerry Fanaken, Author, Educator and President of Vancouver Condominium Services Inc., Vancouver. Mr. Fanaken has been actively involved in the administration of strata corporations for over 25 years. His company currently manages 225 residential strata corporations which represents approximately 13,000 individual condominiums units.

Information" pursuant to Section 59 of the *Act.* (This used to be Section 36 in the *Condominium Act.*) Real estate agents have dutifully responded to this advice and are asking management companies and/or strata councils for this document. It is a costly venture for the agents since the basic form costs $35 plus GST but, many management companies are charging additional fees known as *"rush charges."* As a property management company owner, I am in support of reasonable rush charges since they are necessary to finance the additional staff that are required to produce these documents, not only for sales purposes but also for real estate information purposes. I am opposed to management companies which charge outrageous amounts for these documents simply to take advantage of a new revenue opportunity.

Another area of great concern to me is the need to identify rules of the strata corporation, not only for the owners but also for the Section 59 Certificates. Many strata corporations and their management companies do not have these rules available for production and it means going back through minutes of many council meetings over a period of years to cull this information and put it into one cohesive document. Although this document is required for a number of purposes, it is simply being overlooked at this time. It may take many months before strata corporations are able to produce the rules for dissemination as required by the new statute.

We have also learned that the levying of fines by council is now controlled in a much different fashion with the new *Strata Property Act* and an owner who is the recipient of a fine is entitled to a hearing. While that certainly makes good sense in the context of conduct issues, the question has arisen as to whether or not it makes sense for owners who are late with their monthly strata fees. Most strata corporations charge a late payment fee, usually $25, on owners who do not make their payments on time or at all. Under the new *Act*, before the strata corporation can technically charge the owner a fine, they are to be notified and given the opportunity for a hearing. This is just not happening and strata corporations are continuing to levy fines for late strata fees without complying with that specific section of the statute.

A somewhat related issue deals with the process of foreclosing on an owner who has defaulted substantially in strata fee payments to his or her corporation. Under the new statute, the strata corporation cannot commence a foreclosure action without first having obtained a vote resolution (formerly known as a special resolution) from the general ownership at a Special General Meeting (formerly known as an Extraordinary General Meeting or AGM). In the past, if an owner fell into arrears by a substantial amount of money, the strata corporation would simply engage the services of a lawyer and a foreclosure action would commence pursuant to Section 37 of the *Condominium Act.* Now it is necessary for the strata council to call a general meeting and pass a vote resolution. One can only hope that the government will change its policy in this respect and amend the statute at an early date so that this unnecessary bureaucratic procedure can be eliminated. The philosophy behind the new statute is that an owner who is being foreclosed on by the strata corporation should have an opportunity to present his or her case to the other owners. While this may sound good in principle, in reality it is a total waste of time and money because those owners who are in arrears to such an extent that foreclosure has commenced are usually in that situation because of personal financial situations which have nothing to do with the strata corporation itself. Indeed, there are other mechanisms and remedies within the statute for an aggrieved owner to be heard by the council or the owners generally. For the time being, however, strata corporations will have to abide by the new statute and foreclosures will not be able to commence until such time as the vote resolution has been passed.

We are only in the early stages of operating under the new statute and these are some of the problems that have come to the surface immediately. No doubt, over the coming months and year many other problems will surface and we will have to deal with them. As I said earlier in this article, it is extremely important that all of us involved in strata administration make sure that we document these concerns and forward them to the Ministry so that they can deal with them. If we do not bring problems to their attention, then we will have no one to blame but ourselves.

To Arbitrate or to Mediate - That is the Question!

Sharon Kelly, Chartered Arbitrator and Mediator
SHARON KELLY CONSULTING SERVICES

As both a Mediator and an Arbitrator, I receive calls from parties who wish to initiate an arbitration process. Arbitration is a semi-judicial process with rules of procedure. The arbitrator hears the evidence of the parties and then renders a written award that is binding on the parties. People often say they want an arbitration as opposed to say a mediation, because it is binding. What most people do not realize is that with arbitration the parties have very little control over the outcome, while with mediation they are the decision makers.

Usually, when people want to arbitrate they have chosen this path because they are frustrated with the strata council. In my experience, most arbitrations are initiated by individual owners, although the opposite also occurs. As a potential arbitrator, I am unable to *"screen"* the parties and ask them questions such as what have you done to resolve this dispute? That is a good question to ask yourself before initiating arbitration. It is easy to get upset about an issue, jump into a process and then down the road wonder why you are there.

When a strata council does not appear to be acting reasonably, ask yourself if there is anything more you can do to resolve the issue. I always suggest that an owner approach a neutral third party and present the facts to that person. Sometimes we all need a reality check, and an independent party can provide that needed advice.

Why doesn't a council respond or meet the needs of an owner? There can be many reasons. For example, some councils are self managed and may lack the resources to respond to complaints. Also, if a council is currently *"knee deep"* in a building envelope crisis they may not be able to focus their energies on other issues. There is also politics. Some councils have owners who 'run the show' and they sway the other members of council. If an owner is on the wrong side of that person, unfortunately, there may be an unevenness in the way that owner is treated by council. These are just some of the reasons why an owner may not get satisfaction from their council.

Sometimes an owner wants to initiate arbitration over a fine. Possibly the fine is for $100 and while it has been disputed, the strata council won't budge. The reality is that arbitration is an expensive process for resolving a fine. First, the parties have to agree on a single arbitrator, otherwise a panel of three arbitrators will be three times as expensive. Secondly, the arbitrator will require a retainer from each party, usually around $500. The arbitrator will charge by the hour and it is unlikely that the costs will be less than $1,000 by the time the process is completed. If the hearing runs through several days the costs will be considerably higher. So, while ultimately an owner could win and have their fine waived, the costs incurred both financially and emotionally to achieve that goal can be worse than the original fine! My suggestion is to think first, don't just leap into arbitration.

What about the alternative of mediation? Many owners are still unsure about this process and express concerns about whether or not a decision is binding. Firstly, mediation is a voluntary process under the *Strata Property Act.* So, both parties would have to agree to enter a mediation process and agree on the chosen mediator. I recommend contacting the B.C. Mediator Roster Society at 1-800-663-7867 or visiting their website at www.mediator-roster.bc.ca to find a mediator.

Once the parties agree to mediate, the mediator will meet with the parties, 'assess' them and discuss how the mediation will work. Usually, a mediation agreement is signed by the parties that addresses matters such as confidentiality. During the mediation the parties may reach an agreement regarding the issues. In that case, the mediator can draft up a *"Memorandum of Understanding"* that outlines the terms and conditions of the settlement. Alternatively, the Memorandum can be the basis for a formalized agreement drafted by independent legal counsel. Where an agreement is signed, the parties will usually follow it. After all, they CHOSE that outcome, it wasn't imposed. In the event one party breaches the agreement or memorandum, there is usually a provision for what happens next.

My experience is that mediation is usually less expensive than arbitration and more satisfactory to the parties. Under the *Strata Property Act* all arbitrators are bound to suggest mediation as an alternative to arbitration. When you are in that situation, please consider mediations an alternative.

Sharon Kelly, experienced mediator, arbitrator and President of Sharon Kelly Consulting Services Inc.. Ms. Kelly has an extensive background in property management and has taught courses at various colleges and private institutions. She is a member of the B.C. Arbitration and Mediation Institute and holds the designation *"Chartered Arbitrator."* She has experience in mediating construction disputes and currently serves on the Board of Directors of The Mediation Development Association of B.C.. She is also listed on the B.C. Mediator Roster Society.

Friends of the... strata-SPHERE

Strata Property Act - Financial Update

Tony Fitterer, B.Sc., Econ., CA
PARK AND BRAITHWAITE

On July 1, 2000 the *Strata Property Act* (the *"SPA"*) along with the Strata Property Regulation (the *"SPR"*) replaced the *Condominium Act.* As a result, new financial and income tax reporting requirements have been imposed on strata corporations and must be complied with by all strata councils and/or property managers.

FINANCIAL REPORTING

The significant changes found in the SPA include the following:

- Changes to expense-sharing rules are allowed, but only with unanimous agreement (SPA, section 100);
- The Operating fund may only be used for short-term and recurring expenses while the contingency reserve fund is to be used for longer term or uncertain expenses (SPA, sections 92, 96 and 97);
- The minimum contribution to the contingency reserve fund has been increased to 10% of the total contribution to the operating fund (SPA, sections 93 and 94; SPR, section 6.1 and 6.2);
- The introduction of new rules for the management of the contingency reserve fund, including investment options (SPA, section 95; SPR, sections 6.3 and 17.5);
- New requirements for budgets and financial statements (SPA, section 103; SPR, section 6.6 and 6.7); and,
- Money-borrowing options for strata corporations have been clarified and the rules for imposing special levies have been established (SPA, sections 111 and 108).

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A Strata Corporation's proposed annual budget and financial statements must be distributed with the notice of each annual general meeting and must contain the following financial information as outlined in the SPR sections 6.6 and 6.7:

- the opening balance in the operating fund and contingency reserve fund;
- the estimated income from all sources other than strata fees;
- the estimated expenditures out of the operating fund;
- the total of all contributions to the operating fund and the contingency reserve fund;
- each strata lot's monthly contribution to the operating fund and contingency reserve fund; and,
- the estimated balance in the operating fund and the contingency reserve fund at the end of the fiscal year.

Further, the SPR states that the financial statements must be prepared within 8 weeks of the Strata Corporation's fiscal year end.

INCOME TAX REPORTING

Canada Customs and Revenue Agency (the 'CCRA') has also recently reviewed the income tax reporting requirements for residential condominium corporations. In the opinion of the CCRA, most residential condominium corporations will qualify as non-profit organizations under paragraph 149(1)(l) of the Income Tax Act because they are normally operated *"for any other purpose except profit."* As a result, the interest earned on their operating funds, reserve funds or other incidental income will be tax-exempt.

However, these organizations are still corporations. Therefore, they are still required to file Corporate T2 returns. A residential condominium corporation is also required to file a Non-profit Organization Information return if the following conditions are met:

- the total amount of all dividends, interest, rentals or royalties earned by the strata corporation during the fiscal year exceeds $10,000.00;
- the total assets of the strata corporation at the end of the preceding fiscal year (determined in accordance with generally accepted accounting principles) exceeded $200,000.00; or,
- the strata corporation filed an information return for the preceding fiscal year.

CONCLUSION

As a result of the SPA and the CCRA reviews, strata councils and property managers will spend more time on financial and income tax reporting and be held more accountable to the unit owners they represent. Strata councils and property managers should seek accounting, tax and legal advice when attempting to implement the new SPA.

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What is the Cladding of Choice?

John Hofman, BEP, P.Eng.
CHATWIN ENGINEERING LTD.

Building owners suffering cladding problems have to overcome many hurdles before getting to the top of the mountain or to a point where decisions are made and finances are committed. A building committee must look at options that not only repair water penetration problems, but that also address issues such as the appearance of the buildings and enhancement of property values.

What new cladding material should be used to replace the *"old stuff?"* The 'cladding' is the component of the wall assembly which forms the exterior surface of the wall. Likely your building envelope consultant will recommend a rain screen wall system be applied for the retrofit work. Consequently, removal of the existing cladding is generally required and replacement cladding must be considered. The selection of cladding materials is usually left to the building owners. A variety of rational and emotional criteria may be considered before a strata corporation comes to a decision on this issue. The Building Envelope Consultant will be able to offer necessary facts on cladding products so that the strata corporation may to make an informed decision. The following addresses the cladding options:

STUCCO

Stucco is also a traditional material that has proven to last a long time depending on climatic exposure conditions, proper detailing and adequately designed wall systems. It is an economical material that can be durable. It possesses water, sound and fire resistance properties. For these reasons, stucco is used extensively worldwide as a cladding material. It can be shaped and coloured to accommodate architectural forms with the use of locally available materials and labour. Many details at wall terminations and interfaces have been developed over the years and are published in the *"Stucco Resource Guide"* from the B.C. Wall and Ceiling Association.

Unfortunately, stucco is directly associated with the recent rash of cladding problems on the B.C. West Coast. Many building owners find it difficult to accept stucco as their material of choice for the second time around.

VINYL SIDING

An example of the more modern materials that have been used for twenty years or more is vinyl siding. It seems that during the last few years, there has been a significant shift in the use of this material on the B.C. West Coast, as well as the image that it can portray. It may be argued that this material lacks the abrasion resistance, fire resistance and sound absorbing properties that some other cladding materials enjoy. However, it is water resistant and water proof. If these advantages are combined with proper detailing at interfaces and terminations, it can provide a relatively low maintenance, durable and economical solution for a cladding material in a retrofit situation. Manufacturers of vinyl siding have developed product lines that include custom made trim pieces for corners of walls, terminations at windows, starter pieces and other implements that provide solutions to potential problems in the wall system.

Vinyl has a high coefficient of thermal expansion and again, careful detailing and execution during construction is of the utmost importance to achieve success. It should be recognized that it is rather lightweight and may be sensitive to wind. It is known to flutter at exposed corners of buildings during storms, which can be annoying to occupants during the night.

WOOD SIDING

Wood siding, particularly cedar, has been used extensively and successfully as a cladding material. Its performance is very dependent on climatic exposure conditions, the quality and species of the wood, the detailing and the durability of preservatives and coatings. Its cellular structure allows some water egress thus permitting trapped water behind wood siding to escape more readily than trapped water behind stucco. Wood is an organic material. Depending on its natural form, species and moisture content, wood siding may support destructive organism such as moulds and fungi. Species, such as cedar, have a natural resin to reduce their vulnerability to decay. However, cedar is becoming less abundant and therefore more expensive.

Wood siding materials dependent on coatings or paint require are more costly to maintain. They may have to be replaced in ten to twenty years time depending on exposure conditions.

John Hofman, BEP, P.Eng., building engineer, Chatwin Engineering Ltd., Nanaimo. John has 25 years of experience in building design and retrofit work in Western Canada.

FIBRE CEMENT BOARD

The use of fibre cement board was almost unheard of prior to the 1990's. It is a product that encapsulates wood fibres in a cement matrix. The durability and inherent strength properties of cementitious products in general are features that favour this material. It provides fire, sound and water resistance; however, it requires maintenance. Manufacturers recommend a factory applied prime coat and periodic repainting during the lifetime of the building.

Details and trim pieces to accommodate terminations of wall areas and interfaces with other building envelope components are left to local designers and builders. Cedar and various types of pre-manufactured and pressure treated wood boards in combination with caulking and flashing are used to detail this cement board around windows, corners and other interfaces.

MASONRY VENEER

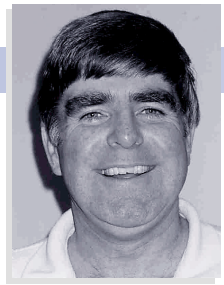
Traditionally, masonry veneer walls have been used successfully as a cladding material, because of the durability and the rich and aesthetically pleasing appearance. The cavity between the brick veneer and the backup wall forms an inherent rainscreen wall, often resulting in low maintenance and a durable wall system. Brick veneers are expensive, although the Masonry lnstitute may argue that in the long run, over the lifetime of a building, the cost will be comparable or even less than other systems, particularly if the replacement and maintenance costs of walls are included in the equation.

This type of cladding may be difficult to defend in a retrofit situation if structural upgrading is required to support the significant extra weight of a brick veneer. Masonry veneers require proper detailing around windows to prevent rain penetration, cavities need to be drained and control joints are required to account for thermal and volumetric movements of the masonry material.

Masonry veneers require substantial structural support to transfer lateral and vertical loads to the building structure. In addition, veneers need to be detailed with expansion joints to become independent from the settlement and long term movements of the structure, otherwise the brick may end up supporting structural building loads.

There are many cladding materials to choose from that will not only perform well in the building envelope assembly, but can be tailor made to make your building look attractive and add value to your investment.

Wet Buildings – An Assessment Perspective



Dave Hitchcock,
REAL ESTATE INSTITUTE OF BRITISH COLUMBIA - APPRAISAL INSTITUTE OF CANADA

BC Assessment is a provincial agency, responsible for determining the market value of your real estate for property tax purposes each year.

Like their counterparts in the private sector, BC Assessment appraisers are faced with the challenging task of valuing condominium units in leaky or wet buildings.

Dave Hitchcock, Area Assessor responsible for the Capital Assessment Office in Victoria, recently provided answers as to how BC Assessment has reacted to this problem:

Stratasphere: Does BC Assessment take into consideration the fact that a condominium has water damage?

Hitchcock: The marketplace creates the value of property, we report these values. The current 2000 Assessment Roll reflects market values as of July1, 1999, taking into account the physical condition of each property on October 31, 1999. Sales evidence and the estimated cost to repair a water-damaged condominium building are considered by BC Assessment appraisers when determining market values.

Stratasphere: How does BC Assessment become aware of problem buildings?

Hitchcock: Primarily we receive notification from Strata Owners. We have been very proactive in making condominium owners, their associations and strata councils aware that they should inform BC Assessment. If condominium owners are unsure as to whether BC Assessment knows about a problem building they should contact their local assessment office as soon as possible.

Stratasphere: How many water-damaged units are affected in British Columbia?

Hitchcock: That's a good question! Estimates vary and I don't believe that anyone knows the final figure at this stage. Although the problem started to come to light in the Lower Mainland in the mid-1990's, wet buildings are still being discovered in that area, as well as on southern Vancouver Island and other parts of the province.

The latest Provincial Assessment Roll contains over 200 affected complexes comprising approximately 14,000 units, with the current loss in value due to water-damage estimated at around $260 million. The final figures could be significantly higher.

Stratasphere: Are adjustments made to all suites within a wet building, even though some may have suffered no water-damage?

Hitchcock: Yes, if there are indications that the repair cost will impact the entire complex and all owners will bear the cost of the remediation. These costs are typically apportioned based on the unit entitlement.

Stratasphere: What happens to condominium assessments once repairs have been completed?

Hitchcock: Again, we have to reflect the physical condition of the building on October 31, 1999. Buyers and sellers determine the market value. There are a number of factors involved in the market that can go beyond the repairs to the building. It has been suggested that new and repaired buildings will have the protection of longer warranty periods, more stringent inspections and improved technology. The marketplace will have to weigh these benefits against the current mistrust and disillusionment that exists for this type of real estate in the affected areas.

Once the repairs are completed, BC Assessment appraisers will examine sales that have taken place in this and other remediated buildings to determine their appropriate market value for that assessment year.

Stratasphere: So, can the owners of leaky condos that have been repaired look forward to their property assessments and, therefore, their taxes increasing?

Hitchcock: I guess this is a good news/bad news situation! If condo assessments rise, most owners will be relieved to learn that they have regained their equity and resale value. By comparison, this positive news should outweigh the fact that they will see a relatively small increase in their property taxes.

Stratasphere: What general advice can you give to condominium owners regarding their assessments?

Hitchcock: As I mentioned earlier, if you live in a wet building make sure that your local assessment office is provided with any repair estimate that you have obtained from a professional engineer.

If you are unsure as to whether your assessment has been adjusted to reflect the water damage or how the market value of your individual unit was determined before, during, or after the remediation work (or even in a dry building), I encourage you to contact your local assessment office. They will be pleased to explain this to you.

Dave Hitchcock is a professional member of the Real Estate Institute of B.C. and the Appraisal Institute of Canada. He has worked with BC Assessment for 25 years and is Area Assessor for the Capital Assessment Area, which has currently identified some 46 wet buildings containing over 2,200 units.

Building Envelope Renovation Regulations take effect in September

Shayne Ramsay, CEO
HOMEOWNER PROTECTION OFFICE

In July the regulations for building envelope renovations were announced. These regulations pertain to building envelope renovations undertaken to prevent unintended water penetration and/or to repair damage caused by unintended water penetration. The building envelope renovations come into effect after September 30, 2000.

After September 30, 2000, contractors who perform building envelope renovations must be licensed as Building Envelope Renovators by the Homeowner Protection Office and obtain third-party home warranty insurance on their work in order to get a building permit for applicable building envelope renovations. In geographic areas where building permits are not required for such renovations, licensing and warranty insurance must be in place prior to the commencement of the renovations.

Building envelope renovator licensing and mandatory warranty insurance on building envelope renovations will be required to ensure that the renovations are effective, long-term solutions, performed by qualified contractors and backed by third-party warranty insurance.

The building envelope renovation regulations do not apply to the following categories: buildings with only one or two self-contained dwelling units, rental buildings other than social housing projects, hotels and motels, dormitories, care facilities, floating homes, renovations carried out by the original builder at no cost to the owner(s) or when there is a cost-sharing agreement between the original builder and the owner(s), buildings covered with Homeowner Protection Act legislated warranty insurance and buildings with building envelope renovation costs less than the greater of $10,000 and $2,000 per unit in the building.

This threshold requirement of more than the greater of $10,000 and $2,000 per unit was developed to exclude normal maintenance from warranty insurance and licensing requirements. A building envelope consultant is required on building envelope renovations that meet the threshold requirement for licensing and warranty insurance.

The warranty insurance on renovations is two years on labour and materials for all building envelope renovations that meet the threshold requirement. Where all or more than 60 per cent of a wall is replaced, the warranty insurance must provide for an additional coverage of five years for water penetration.

This two-tiered warranty insurance requirement was established to permit targeted renovations. In some cases walls do not have to be completely rebuilt, but only require renovations to damaged areas. For example improved flashing details, adding an overhang coupled with inspection and maintenance may solve the water problem. Under this system the five-year water penetration warranty is required when most or the entire wall is replaced. For a targeted renovation, the two-year labour and materials warranty is required.

Similar to the requirements for new construction, warranty insurance on building envelope renovations are only underwritten by home warranty insurance companies approved by the Financial Institutions Commission and meeting the requirements of the Homeowner Protection Act. The regulations also have requirements for limits on warranty coverage, commencement dates for warranties, maintenance and other warranty conditions.

Disputes between the strata council and the warranty insurance company can be handled through a mandatory mediation process. This process is at the sole option of the strata council and owners.

Building envelope renovators must complete an HPO Building Envelope Renovation Schedule and provide it to the strata corporation/owners before applying for a building permit. In geographic areas where building permits are not required for building envelope renovations, the schedule must be provided prior to the commencement of the renovations. The building envelope consultant must be named in the HPO Building Envelope Renovation Schedule.

The Homeowner Protection Office is continuing its series of free repair process information sessions. Our next session planned for Vancouver Island will be held in Victoria on Saturday, November 4. Details about the new licensing and warranty insurance requirements for building envelope renovations will be discussed at this session. To register or to find out more about the building envelope renovation regulations, contact the Homeowner Protection Office at 1-800-407-7757 or visit the Web site at www.hpo.bc.ca.

Shayne Ramsay, CEO, Homeowner Protection Office. Mr. Ramsay's experience in the housing and Construction field goes back to 1986. He is the former Director of Development Services for the B.C. Housing Management Commission (1996-1998) & Housing Policy and Program Development with the B.C. Ministry of Municipal Affairs & Housing (1995-1996).

Two Barrett Commissions Later - Where are We?

Pierre E. Gallant, MRAIC, Senior Principal & Manager,
MORRISON HERSHFIELD, VANCOUVER

BACKGROUND

The first Barrett Commission clearly delineated the events that lead to the premature building envelope failure in British Columbia. The commission also successfully suggested that all members of the construction industry had a role and a responsibility for the systemic failures of so many buildings. Those deemed responsible included the architects, engineers, municipalities, developers, contractors, sub-trades, suppliers and manufacturers. The province itself did not escape criticism. Only the building code escaped serious 'finger pointing.'

The second Barrett Commission essentially expanded its original findings, with particular attention to the building code and to the collapse of the New Home Warranty program. The second Commission publicly stated that it was hoping to bring some cohesion to the construction industry and some unanimity as to where to proceed.

WHERE ARE WE NOW?

The design professionals dealing with building envelopes (architects and engineers) are near unanimous as to what details and assemblies are required to provide durable functioning building envelopes. Virtually all new designs integrate either rainscreen principles (on wood or steel stud framing) or mass walls (e.g. cast-in-place concrete walls). Window and other wall penetration details have been revised to foresee eventual leaks and to redirect the water outside of the wall assemblies.

The municipalities are attempting to better interpret and enforce the Code (in my opinion, however, most municipalities do so inadequately when dealing with Part 5 Wind Water and Vapour Protection).

The developers are including in their budgets the improved construction details recommended by the various consultants. In my experience, most of the developers are embracing those improvements willingly.

The contractors are now generally understanding the purpose and need for the design improvements, and usually welcome the use of mock-ups (samples or trial construction details) of major interface details (e.g. windows to wall, balcony to wall, etc.)

Sub-trades (e.g. stucco applicator, balcony membrane applicators) also generally welcome the design and detail improvements. In my experience, the various sub-trades that our firm (Morrison Hershfield) is often dealing with usually endorse the various improvements. The sub-trades, for the most part, concur with the necessity of the changes in the design and construction practices.

Suppliers have often redirected their marketing and technical information to show how their respective products can be installed in a rainscreen system.

Manufacturers have in many cases improved their product line (e.g. window manufacturers) to better meet the applicable standards.

That is the good news. The reality, however is that there may remains a small but relatively vocal minority that continues to cling to a few myths. I respectfully submit that in many cases, clinging to myths betrays a sense of denial.

PERSISTING MYTHS

In part, the Barrett Commission's mandate was to clarify a few issues to dispel some of the myths ("*The Renewal of Trust in Residential Construction*"). The Commission had hoped that, by clarifying roles, circumstances, responsibilities, etc., the construction industry and the public would be relatively unanimous as to how to resolve the problems. Some myths, however, persist:

"The Code is Wrong"

I believe this is why considerable effort on the part of the Commission was focused on issues pertaining to the Building Code. I recently wrote a brief article on the role of the Building Code for the last issue of Industry News; an informative publication perhaps similar to the Stratasphere you are now reading. Without repeating what was written elsewhere, it is appropriate to at least highlight a key element: the second Barrett Commission clearly and thoroughly dispelled the argument that the polyethylene vapour barrier prevented the drying of the walls. The wall should not have suffered rainwater leaks in the first place, and removal of the poly does not significantly improve the drying of the wall. The Code is neither a best practice guide nor a recipe book, it is only a minimum standard. The Code does not and will never replace sound architectural or engineering judgement.

"Gold-plated solutions"* or *"Cadillac instead of a Chevy"

Consultants (architects and engineers) only make recommendations. The owners make the decisions, albeit usually based on the recommendations they have received. If your surgeon recommends surgery, you as the patient decide whether or not to proceed with the recommendation. No one is making a decision for you. If an owner believes the building envelope consultant's recommendations are excessive, he or she can obtain second or even third opinions. The owner should proceed with the work only if he or she is satisfied that the consultant's recommendations suit the needs of the particular project. Therefore, there should not be "gold-plated" solutions as far as the owners are concerned, only appropriate solutions that they believe meet their own needs.

"Rainscreen is Unproven"

The rainscreen principle including the strapping of cladding (i.e. 1 x 2 strips to create a space between the stucco or siding and the building paper) is at least 100 years old. Rainscreen assemblies have been constructed in B.C. for decades, and have demonstrated good performance. Most of the major building envelope consultants have installed monitoring probes and instruments in the wall assemblies to collect data on how rainscreen retrofit walls are performing. To date, the data confirms that the assemblies are performing as intended.

Because of these issues that I believe to be myths, it is obvious that unanimity in the construction industry is not yet achieved. Perhaps unanimity is utopia, but at least a general consensus is required before the public restores its confidence in the construction industry.

WHERE ARE WE HEADING?

We are gradually heading towards consensus, and I believe that most of the remaining skeptics will eventually concur with the steps taken by the consultants, contractors, manufacturers, etc.

In the end, the only true solution is for every player on the team to accept his/her role and responsibilities, and to agree to be accountable. In other words, we should not finger point to find blame elsewhere (e.g. don't blame the Code, municipal inspectors, etc.). Instead, we are to look as to what it is that we can do to help for the benefit of all. A whole is only as good as its parts.

SUMMARY

The construction industry has progressed enormously in the last two to three years. B.C. is now a world leader in rainwater management for buildings. Notwithstanding the tremendous amount of work yet to be done, we should be mindful of the extraordinary progress accomplished in a remarkably short period of time.

Pierre E. Gallant, MRAIC, Senior Principal & Manager, Morrison Hershfield, Vancouver. Pierre specializes in building science with particular attention to the development of practical building envelope details. He is often retained as an expert witness in both Canada and the U.S.. Pierre is currently involved in the rehabilitation of numerous buildings. He was involved with the new copper roof and air barrier projects for the Supreme Court of Canada and the Parliament Buildings of Canada.

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