voice from the... strata-SPHERE®

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IS THE *STRATA PROPERTY ACT* DUE FOR AMENDMENTS?

Antonio Gioventu, Executive Director
CONDOMINIUM HOME OWNERS' ASSOCIATION OF B.C. (CHOA)

The Strata Property Act (the Act) and Regulations came into effect on July 1, 2000. Since that time there have been changes in privacy legislation, banking, case law decisions affecting the Act, Insurance provisions and regulations, and the Real Estate Services Act, Regulations, Rules of the Real Estate Council and Real Estate Development Marketing Act and Regulations.

Antonio (Tony) Gioventu, the Executive Director and Strata Property Advisor for the Condominium Home Owners' Association of B.C. (CHOA), brings 18 years of experience in property management, development and strata property legislation to his position. CHOA currently enjoys over 1,000 members.

With over 6 years of functioning operation of the Strata Property Act the practical implementation of the legislation has been tested, with a number of sections of the legislation now either conflicting with other legislation or being insufficient to meet the needs of reasonable operations for strata corporations.

In 2006, CHOA commenced a series of public Regional Advisory Council Meetings for the purpose of consulting with members and industry, in order that the association can formulate a researched proposal to the Ministry of Finance for their consideration of amendments to the Act. The Regional Advisory meetings will be completed province wide by mid 2007 with a final recommendation being submitted for consideration of amendments for the 2008/2009 sessions of the Legislature.

In addition to the consultation meetings, strata owners and industry partners may directly submit their comments and feedback to the committee. Please submit your additional comments by email to : tony@choa.bc.ca, by fax to 604-515-9643, or by mail to CHOA, Suite 202-624 Columbia St, New Westminster, BC, V3M 1A5. All submissions and responses will be provided to the Ministry Staff.

The following sections are a brief summary of the areas of the Act or Regulations where amendments may be required. Extensive consultation and discussion will be conducted in 2007 to address the confusion over "phased developments, types and sections".

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Arbitration Division 4 - Sections 175 - 189

Arbitration: The topics related to the complications that have arisen in strata arbitrations and areas that require additional regulation to create a functional arbitration process in strata corporations.

- The Forms L & M Requires amendments to include additional information and clarification on the proceedings and allow for additional response
- There are currently no rules of proceedings to conduct an arbitration.
- There are currently no schedule of awards.
- Arbitrators may be any party and no qualifications or experience is necessary
- There is no registry of decisions or peer review of decisions without an appeal

Submissions to date:

- Arbitration requires the cooperation of the parties
- Requirement for a deposit for a commencement from the parties
- 3 arbitrators may have to be selected placing a significant financial strain on the parties
- The process is bogged down and burdened as a result of lack of procedures
- There is a problem with unrepresented parties unfamiliar with hearing proceedings
- Costs of arbitrations and awards is unrealistic
- There needs to be a better appointment process
- There need to be rules of conduct, order and proceedings for arbitrations, similar to the Supreme Court
- The benefit of an arbitration is that it can be conducted on site where frequently the dispute has geographic implications or involvement; thus, allowing better access to the evidence and solutions.
- The benefit of arbitration is the scheduling process can me more flexible, casual and cost effective if conducted in a cooperative manner.
- The BC Arbitration and Mediation Institute Should propose rules of Strata Property Arbitrations.

Section 27 Voting Entitlement

Section 27 of the Strata Act creates 1 vote per strata lot, unless the Schedule of Unit Entitlement list otherwise. The Standard Bylaws of the Act and Strata Corporation Bylaws allow for additional casting ballots at general meetings if the case of a tie for the president or vice president of council.

Submission:
The creation of the additional casting ballot is not created anywhere in the Legislation. The indirect result has been the creation of bylaws that allow for additional casting ballots that also enable the ratification of 3/4 resolutions.

The Act requires an amendment to create the additional vote pursuant to section 27.
"for the purposes of majority ballots cast at either annual or special general meetings, or at council meetings, a strata corporation may adopt a bylaw that allows for an additional casting ballot to the executed by the President of Council or failing the President the Vice President of Council"

Section 56 Proxies

Proxies: The Strata Act Section 56 currently does not restrict, limit or allow a bylaw of limitation for the number of proxies a person may hold.

Submission: The following benefits and liabilities of restricting proxies were raised:

Benefits:

- Limiting unfair acts by a person holding more than 25% of the votes
- Preventing individuals from unfairly making or influencing decisions

Liabilities

- The bylaws may interfere with an owners' right to choose their proxy holder
- Corporate owners of substantial unit holdings may be unfairly restricted
- Proxy holders may unfairly disqualify proxies by intentionally collecting proxies that exceed the permitted numbers

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Message from the President

Cora D. Wilson, Editor
STRATA-SPHERE CONDOMINIUM SERVICES INC.

With every new piece of legislation glitches are inevitably experienced that need to be addressed. It is always preferable to address any conflicts with respect to the interpretation of a piece of legislation by way of house amendments as opposed to court proceedings. Court proceedings tend to be lengthy, expensive and unpredictable.

A request for submissions addressing proposals for change to the governing legislation is welcome. Practitioners involved in the day-to-day grind become readily aware of problematic areas and greatly appreciate the opportunity to propose housekeeping changes. The goal of the strata community generally is to drive down a smooth governance road with confidence and certainty and in a manner that emphasizes harmony among the owners.

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- Strata corporations may be placed in a position of liability by having to determine who may or may not be a valid proxy based on the limitation numbers.
- The management and certification of proxies may be unfeasible as it may prevent a strata from reaching quorum for meetings

Land Registry Filing Corrections

Land Titles Registry Changes

- Errors of filing and registry within the Land Title System currently require either a vote of the strata corporation to amend the error or a court order. The Registrar of Land Titles is not currently empowered by the Strata Property Act to implement the corrections.
- CHOA has received numerous complaints and filed several complaints with the Land Title Registry over misfiled bylaw amendments, schedules of unit entitlement and strata plans.

Submission:

- The recommendation is to amend the Strata Act permitting the Registrar of Land Titles to correct defects in the registry filing.
- Amend filings from court ordered decisions

Section 59 Form B

The Form B is created by the strata corporation and provided at the request of an owner or their agent for the purpose of disclosure of specific information regarding the strata corporation that may be relevant specifically to potential investors of that strata property.

Currently the published Form does not meet the requirements of Section 59 and information or amendments are necessary to ensure the proper disclosure of information and the protection of the strata corporation.

Submissions:

- Form B Missing Information pursuant to section 59 (4)
- Form B Include an Amendment in Section 59 for the proper disclosure of a Form E amendment if one had ever been filed in Land Titles either by the owner developer or the Strata Corporation as a duly passed unanimous resolution
- Additional disclosure areas to include parking and storage locker information
- The estimated current number of strata lots that are rented in the strata at the time the form is issued
- Discussion on the applicable fee allowed to be charged for the Form B and Form F

Section 128 Form I Amendment to bylaws

The Form I is a mandatory requirement of filing new bylaws with the Land Title Registry. The form omits the ability of the agent/manager to sign and file the form, and omits the provisions for what action was ultimately undertaken with the filing. That undertaking may be including in the resolution, but in the case of the bylaw filing the resolutions are frequently not included with the filing and the bylaws.

Submission:

- Form I Section 128, include a section to check about what action was taken: Amend, repeal, adopt, etc… and include a section that allows for completion if the amendments apply only to the strata corporation or a specific section, such as residential or commercial or the corporation.
- Signing, the Form May be authorized and filed by the Strata Manager.

Section 128 Bylaw Amendment procedures

- The act requires that bylaw amendments must be filed in the Land Title office within 60 days of the amendment being approved.

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- There is no indication of what the outcome is if they are not filed within the time period.

Section 123 Age & Pet Bylaw Limitations

- What is the effect of the exemption if the bylaws are not filed within 60 days.
- discussion

Form E Certificate of Strata Corporation Sections 78, 79, 80, 100, 214, 257, 259, 261, 262, 263, 266, 269, 274, 283,, Regulations 17.20-17.22

- Registration amendment to include the Signature of the Strata Manager if Authorized by the Strata Corporation

Insurance Section 149 - 162 Regulations 9.1-9.3

Insurance and Definitions: submissions:

- Definition is required for "responsible"
- Does section 158 permit a bylaw for the recovery and is it required?
- Is there a limit to the capacity of a deductible?
- Can the strata council decide to increase the deductible without the permission or a vote of the strata corporation?
- Who is responsible if the loss is under the deductible amount?
- What if the strata corporation cannot obtain insurance?

Interest on special levies Section 107 Regulation 6.8

- SPA 107 and Regulation 6.8 do not currently include the term for a rate of interest of special levies, Recommendation to include "special levies" in the permitted fee for interest

Phased Strata Plans Section 217 - 238 Regulations 13.1-13.6

Phased Developments - Submissions:

- The first annual general meeting of each phase creates complications with the harmonization of the budget as the budget approved for that phase also requires that the budget of the corporation be amended to accommodate the equitable implementation of unit entitlement for common expenses.
- Who creates the budget at this phase of the meeting
- Section 230 an "annual general meeting for each phase "is contradictory to the requirement of "an" annual general meeting.
- Possible terminology "special general meeting" for the purpose of implementing of a new phase.
- Who "holds" the meeting and who chairs the meeting
- If the developer over pays their share along with owners in the initial period is there any refund or compensatory equalization?

Management Termination and Return of the Funds Section 37 - Submissions

- Wile the Act contemplates the return of records and termination, its sets no limitation for the return of funds held in trust. Create the same conditions in section 37 as pertain to the Real Estate Services Act on the return of trust funds after termination.
- Adopt a comparable condition for a hold back period of unpaid expenses.
- on termination of the contract the property manager must return the funds held in trust within 30 days of the termination of the contract or early if stipulated in the contract.

Sections 84 & 85 Address the Local Government Act and orders – Submissions

- Recommendation that they include the terms common property or common assets when referring to strata lots. Losses due to nullification of warranty conditions as a result of the infraction and the subsequent order.
- The effect of a grow operation is that a municipality may remove occupancy of a building and order the building be vacated without the strata corporation having any lienable recourse for circumstances beyond their control.

Section 72 2 b) Pertaining to non allowance of owner responsibility for common property

- Conflicts with section 59 3 c) where an owner may take contractual responsibility for alterations relating to common property. Perhaps amend 72 2 b) to include the variable under section 59.
- Example: Except for an agreement where both an owner of a strata lot and the strata corporation have agreed to an alteration of common property, and that owner has taken responsibility for the maintenance and repair of the common property, a strata corporation is not permitted to create a bylaw that requires owners to maintain and repair the common property, unless permitted by the regulations.

Section 193 Creation or Cancelling of Sections

Section 193 3 b) of the SPA section a requires 3/4 resolution however, section b) requires a 3/4 resolution of ***all eligible voters of the corporation.***

There is no definition for what the term "all eligible voters means" does it differ from a 3/4 vote

Personal Information Protection Act 3 (5)

- The conditions of application and exemption of Section 35 to the personal Information Protection Act requires updating.

3 (1) Subject to this section, this Act applies to every organization.

(2) This Act does not apply to the following:

(a) the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose;

(b) the collection, use or disclosure of personal information, if the collection, use or disclosure is for journalistic, artistic or literary purposes and for no other purpose;

(c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use or disclosure of the personal information;

(d) personal information if the Freedom of Information and Protection of Privacy Act applies to the personal information;

(e) personal information in

(i) a court document,

(ii) a document of a judge of the Court of Appeal, Supreme Court or Provincial Court, or a document relating to support services provided to a judge of those courts,

(iii) a document of a master of the Supreme Court,

(iv) a document of a justice of the peace, or

(v) a judicial administration record as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act;

(f) personal information in a note, communication or draft decision of the decision maker in an administrative proceeding;
(g) the collection, use or disclosure by a member or officer of the Legislature or Legislative Assembly of personal information that relates to the exercise of the functions of that member or officer;
(h) a document related to a prosecution if all proceedings related to the prosecution have not been completed;
(i) the collection of personal information that has been collected on or before this Act comes into force.

(3) Nothing in this Act affects solicitor-client privilege.

(4) This Act does not limit the information available by law to a party to a proceeding.

(5) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless another Act expressly provides that the other enactment, or a provision of it, applies despite this Act.

Elections BC Signage: To Permit or not to Permit

Canada Elections Act 322. (1) No landlord or person acting on their behalf may prohibit a tenant from displaying election advertising posters on the premises to which the lease relates and no condominium corporation or any of its agents may prohibit the owner of a condominium unit from displaying election advertising posters on the premises of his or her unit.
Permitted restrictions
(2) Despite subsection (1), a landlord, person, condominium corporation or agent referred to in that subsection may set reasonable conditions relating to the size or type of election advertising posters that may be displayed on the premises and may prohibit the display of election advertising posters in common areas of the building in which the premises are found. Submission: The Current BC Elections Legislation for Provincial or Municipal Elections does not impose any restrictions on signage in strata corporations.

Regulation 6.11 and Section 95 Management and Investment of the Contingency Reserve Fund

95 (1) The strata corporation must account for money in the contingency reserve fund separately from other money of the strata corporation.

(2) The strata corporation must invest all of the money in the contingency reserve fund in one or the other or a combination of the following:
(a) those investments permitted by the regulations;
(b) insured accounts with savings institutions in British Columbia.

(3) Any interest or income earned on the money in the contingency reserve fund becomes part of the fund.

(4) Despite subsection (2), the strata corporation may lend money in the contingency reserve fund to the operating fund as permitted by the regulations.

6.11 A strata corporation may invest money from the contingency reserve fund in the following investments for the purposes of section 95 (2) (a) of the Act:
(a) securities of Canada, a province, the United Kingdom, the United States of America or a municipal corporation in a province;
(b) securities the payment of the principal and interest of which is guaranteed by Canada, a province, the United Kingdom, the United States of America or a municipal corporation in a province;

Submission:

- **What about the management of Special Levy Funds**
- **Does 6.11 imply that the entire principal and interest is guaranteed? CDIC limitation is $100,000.**

Regulation 4.1 (4) Section 35 Reference for 6 years

4.1 (1) In addition to the records required to be prepared under section 35 (1) of the Act, the strata corporation must prepare a record of
(a) each council member's telephone number, or
(b) some other method by which the council member may be contacted at short notice, as long as that method is not prohibited by the bylaws.

(2) The strata corporation must permanently retain the records and documents referred to in section 35 (2) (b), (e) and (h) of the Act.
(3) The strata corporation must retain the records and documents referred to in section 35 (1) (a) and (d) and 35 (2) (f), (i), (j), (l) and (m) of the Act for at least 6 years.
(4) The strata corporation must retain the written contracts, including insurance policies, referred to in section 35 (2) (g) of the Act, for at least 6 years after the termination or expiration of the contract or policy.
Submission: Amend the definition to reflect the requirements of Canada Revenue Agency: "for a period of 6 years from the end of the last tax year to which they relate"

Standard Bylaw 27 - 7)

- (7) Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.
- **50** (1) At an annual or special general meeting, matters are decided by majority vote unless a different voting threshold is required or permitted by the Act or the regulations.
  (2) Despite section 45 (3), during an annual or special general meeting amendments may be made to the proposed wording of a resolution requiring a 3/4 vote if the amendments
  (a) do not substantially change the resolution, and
  (b) are approved by a 3/4 vote before the vote on the resolution.

Submission: Section 50 gives no provision for the bylaws to create any other voting thresholds.

Amend 27 7) to read if the secret ballot is requested by a majority vote of the eligible voters present in person or by proxy.

Is a 3/4 Vote of Owners Required to Approve Expenditures to Defend a Suit Against the Strata Corporation?

Cora D. Wilson, Lawyer and President
C.D. WILSON & ASSOCIATES

One confusing issue that arises in the context of a law suit against a strata corporation relates to the approval process for legal expenditures to defend the suit. In other words, does the scheme for approving expenditures pursuant to section 98 of the *Strata Property Act* ("SPA") apply or alternatively, are expenditures automatically authorized by virtue of section 167(2) of the SPA?

Some lawyers suggest that owner approval of legal expenditures to defend a suit is not required based on a reading of section 167(2) of the SPA. They argue that section 167(2) of the SPA creates an exception to the statutory scheme governing expenditures set out in section 98 of the SPA in circumstances where a strata corporation is sued and thus provides independent authority to the Strata Corporation to pay all related legal costs.

Section 167(2) reads as follows:

> **167** (2) The expense of defending a suit brought against the strata corporation is shared by the owners in the same manner as a judgment is shared under section 166, except that an owner who is suing the strata corporation is not required to contribute.

Section 98 of the SPA outlines the scheme for making expenditures, as follows:

> **Unapproved expenditures**
> **"98** (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting (ie a special levy), the strata corporation **may only make the expenditure in accordance with this section.** (emphasis mine).
>
> (2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is
> (a) less than the amount set out in the bylaws, or
> (b) if the bylaws are silent as to the amount, less than $2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.
> (3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise…."

In my view, the legislature did not intend to provide blanket authorization to the strata corporation under s. 167(2) of the SPA to make expenditures related to the suit beyond the prescribed amount for unauthorized or emergency expenditures. From a practical perspective, the strata corporation should seek owner approval for these legal expenditures as soon as practically possible.

Cora D. Wilson, Lawyer and President of C.D. WILSON & ASSOCIATES. Ms. Wilson is a condominium lawyer, educator and author. She currently represents numerous strata corporations wherever they are located in British Columbia. She is the author of the Do-it-Yourself Bylaw Package. She is the editor of Strata-sphere Condominium Services Inc..

The strata council may make emergency expenditures pending the general meeting, but only if those expenditures are required to prevent significant loss or damage whether physical or otherwise to the strata corporation, and no further. Any legal expenditures incurred during the interim period between the date legal proceedings are served on the strata corporation until the general meeting, likely qualify as proper emergency expenditures.

In other words, any legal steps taken in the interim period should be limited to those that are necessary to ensure that the strata corporation does not suffer prejudice pending approval of expenditures at the general meeting. Such steps would clearly include responding to the proceedings by filing the appropriate documents within the time lines under the *Rules of Court*, providing limited legal advice and answering some correspondence.

If the legal expenditures to defend a suit are not authorized in this fashion, then the legality of the expenditures may be brought into question. If a Court declares that the expenditures are void, then the strata council members may be personally responsible to pay the bills. As such, in order to avoid this unacceptable risk to the council, the requisite vote of owners at a general meeting should be obtained before non-emergency expenditures are incurred.

In this context, the more reasonable interpretation of section 167(2) is that it governs the formula or the method by which the strata corporation assesses and levies the expenditures against the owners (ie. those persons suing the strata corporation do not contribute towards the expenditures of the strata corporation).

Section 167(2) of the SPA does not authorize the expenditure. This is accomplished pursuant to the scheme set out in sections 98 or 108 of the SPA by the requisite vote of the owners at a general meeting or by a strata council resolution on an emergency basis.

The confusion and uncertainty related to the interpretation of section 167(2) of the SPA could easily be resolved by a housekeeping amendment to the legislation. The interpretation problems could be resolved simply by making section 167(2) subject to section 98 of the Act.

I wish to thank the Ministry for providing consumers with an opportunity to highlight areas of confusion and/or concern with respect to the interpretation of this relatively new piece of legislation. The *Strata Property Act* is clearly a significant improvement over its predecessor, the *Condominium Act*. As a result, the strata community has made great strides forward.

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Should B.C. Adopt a Mandatory Reserve Fund Study?

Jamie Bleay, Lawyer
ACCESS LAW GROUP

Are you tired of being subjected to special levies to pay for building repairs and maintenance which are not otherwise adequately covered by the funds contained in your contingency reserve fund or your operating budget? Are the repairs and maintenance items predictable in nature, ie. painting, the installation of a new roof, the replacement of boilers or exterior wall repairs? If you answer "yes" to each of these questions, you (and your strata corporation) are not alone. Owners in strata corporations in the Lower Mainland and elsewhere in B.C. are routinely hit with significant special levies, many of which exceed $10,000.00 per person and $100,000.00 per levy to pay for predictable repairs to their buildings. I am not sure why this has become a "routine" problem for strata corporations. Perhaps it's due to the age old adage that "if it ain't broke, don't fix it" or perhaps it's due to the fact that many owners think it is better to lower common expense contributions to create the impression that the building's finances are in good shape. That mindset brings to mind another old adage which is "penny wise, pound foolish".

I dare say that our legislation is also partly to blame for this problem. Section 94 of the *Strata Property Act* (the "Act"), which is entitled "Depreciation report", says that:

> "(1) The strata corporation **may** prepare a depreciation report estimating the repair and replacement cost for major items in the strata corporation and the expected life of those items to assist it in determining the appropriate amount for the annual contribution to the contingency reserve fund. (Emphasis added)
>
> (2) A depreciation report may contain information based on the guidelines for depreciation reports as set out in the regulations and may be in the prescribed form."

Section 94(1) of the Act gives a strata corporation the **option** (emphasis added) to try and determine, in advance, the repair and replacement cost for major items in their building in order to assist the strata corporation with determining what the appropriate amount should be for the annual contribution to the contingency reserve fund. Whenever we are given an option to do something that could take considerable effort and could cost a considerable amount of money, all too often the option is not exercised. Who can blame owners for not wanting the section 94 "option" to be exercised when it means they will have to contribute more money on a monthly basis to their strata corporation! Thanks to initiatives developed by a number of the building envelope consultants in the Lower Mainland, many strata corporations have voluntarily implemented contingency reserve fund planning and have put into place a funding model to pay, over time, for the costs associated with the repairs and replacement recommended in the contingency reserve fund planning report. However, without something more significant in our legislation, the majority of strata corporations will not likely plan for such contingencies and will not opt to put away sufficient funds to cover the cost of future repairs and/or maintenance.

As much as it may pain us to look to our neighbours to the East for assistance, it may be useful to look to the Province of Ontario for some guidance in how they dealt with issues relating to funding major repairs and replacement of common assets and common property. As a result of amendments made to the Ontario legislation that culminated in the enactment of the *Ontario Condominium Act, 1998*, it is now mandatory for strata corporations in Ontario to maintain a reserve fund "solely for the purpose of major repair and replacement of the common elements and assets of the corporation." (see section 93 (2) of the *Ontario Condominium Act*). Strata corporations in Ontario must conduct a reserve fund study to determine whether the fund will be sufficient to pay for these costs. Once the strata corporation has concluded its study, the board (in our case it would be the strata council) is required to develop a plan that will adequately fund these costs. Thereafter, owners are given a notice containing summaries of the reserve fund study and the board's proposed plan to cover the costs for the repairs and maintenance.

In order to allow existing strata corporations to get up to speed in terms of the implementation of this requirement, all existing corporations were given until May 5, 2004 to complete the study. In addition, all existing corporations had 10 years from the date of the study to fully fund the fund. New condominium corporations are required to complete the study within one year from the date of the registration of the corporation and the fund has to be fully funded by the end of the following fiscal year.

Will this type of legislation work in British Columbia? It is my view that the implementation of legislation similar to that adopted in Ontario would go a long way toward relieving many of the financial burdens experienced by condominium owners because their strata corporations do not have sufficient money in the bank to pay for "expected" repairs and replacement. Certainly there would be "short term pain" while strata corporations raise the money to pay for the study and then begin to fund the reserve fund (which would be over and above common expenses paid for day-to-day operating expenses). However, think of the "long term gain" associated with having a healthy reserve fund with a plan in place for the major repair and replacement of the common assets and common property of a strata corporation? Purchasers would, in all likelihood, be more likely to want to purchase a strata lot in a financially healthy building than buy into a building that has a history of imposing expensive special levies while having an under-funded contingency reserve fund! The existence of a well-funded (contingency) reserve fund would likely have an impact on the sale price of a strata lot.

At the end of the day, it is my view that our Government needs to take a good hard look at this issue when looks at making legislative changes to the *Strata Property Act.* If one of the main goals of our legislation is consumer protection, what better way to protect consumers/purchasers of strata lots than to adopt legislation that will minimize the need for substantial special levies each and every time a strata corporation is faced with a significant repair/replacement expense. This could help to reduce the stigma associated with buying into a condominium! A mandatory reserve fund, such as the fund required under the Ontario legislation, is also more likely to accurately reflect the actual costs of long-term ownership and create a more stable market place for developers and owners alike!

Jamie A. Bleay Since being called to the bar in 1987, Jamie has practiced extensively in the area of condominium/strata law. He has worked with and acted for several hundred strata corporations in that time. He has worked closely with strata councils in dealing with a range of services from corporate governance matters, financial matters, property management matters and litigation matters. He has also worked for countless strata lot owners who have required his expertise in dealing with their duties and obligations, as owners, and their ongoing relationship with their strata councils.

Friends of the... strata-SPHERE

Is It Time to Update The Act?

Gerry Fanaken, President
VANCOUVER CONDOMINIUM SERVICES LTD.

Time does indeed fly. I still refer to the *Strata Property Act* as the "new" Act. Well, it is not really new any more. This past July 1st marks six years since the "new" legislation was enacted. I recall that, at the time, I was working with government ministry officials and we wondered what would work and what would give us problems. We agreed to go for five years and see what emerged. The five years has flown by and we are now headed into our seventh year. So, does the legislation need updating, correcting and amending? You bet it does.

Before getting into some examples, let me say that the *Strata Property Act* (July 1, 2000) is a very good piece of legislation. Condominium legislation in British Columbia started in 1966 with plagiarized law from Australia, ie. the *Strata Titles Act* of New South Wales. From time to time the provincial government would tinker with it and, at one point, even changed the name of it to the *Condominium Act* of BC, a goofy political decision intended to supposedly simplify the statue, although nowhere in the Act was the word "condominium" used.

Finally, in the late 1990's, the government developed and ultimately enacted the *Strata Property Act* of BC, an actual home-grown statute that made a quantum leap forward. It is an excellent piece of legislation, but not perfect. Rumour has it that ministry officials are once again studying the legislation with a view to making changes. Believe it or not, you can have an opportunity to get your 2 cents worth into the mix. If you have a section of the Act that really bugs you, why not let the ministry know about it. Maybe your point will be well taken and maybe the law will be changed. Do not just sit back and complain about the "dumb law". Here is a chance to implement change. You may be a council member, an owner, a property manager or a related professional. It makes no difference – your perspective is very useful.

I have some pet peeves, so here is my list:

The number one biggest headache from my experience as a property manager is the requirement at Section 36 to permit any owner or tenant to have copies of correspondence from other owners to the strata council. Often this is driven by nothing more than vindictive and mean-spirited politics and the process benefits no one. The concept is that an accuser ought to be open to challenge and scrutiny by the accused. In reality, it can cause immense problems involving personal safety and security.

Number 2 on the list is a similar provision in the Act (also at Section 36) that permits an owner or tenant to inspect the records of the strata corporation. there is no cost to this owner and he or she can tie up council members' or the property manger's time for hours on end while they hunt for some needle in the haystack which they believe will reveal some great evil. In the last six years I have seen numerous such hunts, not one of which has ever revealed a single shred of evil. It is an unnecessary provision in the legislation and a costly burden on strata councils and their administrations.

For those of you who live in strata corporations that have mixed components, such as residential and commercial, or such as highrise and townhouses, there are provisions for what is called a "split budget" but there is no provision for amending the split allocations that are established. These are generally established by the developer. This omission has caused considerable debate and (unfortunately) guesswork by councils and property managers once it is discovered that the developer's allocations were inaccurate and need correction. The result is that strata councils and/or their management companies are guessing how changes are to be implemented. The legislation is silent on this topic and needs to address it.

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 about 200 residential strata corporations which represents approximately 13,000 individual condominium units.

Although not many strata corporations have had to appoint an Administrator to regulate their affairs, such situations are becoming more and more common and, in the decade ahead, I predict that the use of Administrators will be substantial. (Arbitration has all but disappeared because it does not work effectively in strata corporations. The story is too long for this article, but trust me, the reality is that very few strata corporations or aggrieved owners now rely on arbitration.)

The problem with Administrator appoints is that the Act gives the Administrator no more power than has a strata council. If a strata council is dysfunctional, then sure, the appointment of an Administrator can be beneficial. Unfortunately, this is not the usual case. The more common problem is that the strata corporation as a whole (i.e., the owners themselves) is dysfunctional and needs professional help. If, however, the Administrator is not given the tools to clean up the mess, all it achieves is a huge waste of time and money since each and virtually every dispute has to be remedied by the Supreme Court of B. C.

As mentioned above, arbitration is no longer in vogue. There are several reasons for this status, but one of them has to do with the extremely cumbersome requirement of Section 179. The bureaucracy is so intense that owners, even their lawyers, council members and property managers simply drown in it. I have seen several arbitrations just fizzle out in mid-stream because no one could keep up with the ping-pong. It is plainly too complicated.

A major flaw exists at Section 169 which addresses the issue of who pays for court costs if there is a dispute either in court or by arbitration. If the strata corporation sues an owner, or vice-versa, that owner does not have to contribute to any legal costs that the court or arbitrator may assess against the strata corporation. The thought is that the owner is already paying for his/her own legal costs and should not also have to pay his/her share of the strata corporation's costs in the action involving him/her. Makes sense. The problem, however, is that in some strata corporation litigation it is conceivable that most <u>but not all</u> owners are named litigants and are therefore exempted from having to pay any portion of the strata corporation's costs. That leaves only a few owners who have to shoulder the burden. Ironically, these few owners are the ones who kept "out of the fray" but end up having to pay the cost. Although extreme, it is conceivable that, in a strata corporation of 100 units, five owners who do not get involved in litigation with their strata corporation would have to pay the entire amount of the strata corporation's legal fees since the other 95 owners are exempted by this section. A fix is necessary.

So folks, these are a few examples. Now it is your turn to put "pen to paper".

Welcome!

to Brian Rodonets RA, NCARB

Vice President, Building Science Division,
CHATWIN ENGINEERING LTD.

Mr. Rodonets, an experienced Architect, businessman and developer, was born and raised in Comox, British Columbia. He has recently accepted the challenging position as Vice President of the Building Science Division for Chatwin Engineering Ltd.. He will undoubtedly be extremely busy in the foreseeable future taking charge of three Chatwin offices located in Nanaimo, Vancouver and Victoria.

Mr. Rodonets is up to the challenge given a 20 year history of running his own successful business as an Architect in Maine, USA. He stresses that he is no stranger to the building standards applicable to housing in British Columbia, since, he states: "With global warming, Maine has a similar climate to that of British Columbia."

Mr. Rodonets intends to focus his efforts on new construction, medium to highrise buildings and remediation of housing stock suffering from Wet Building Syndrome.

By way of back ground, Mr. Rodonets graduated from the Carpentry Apprenticeship Program at Camosun College in 1973. After running his own construction company in Comox, Vancouver Island, building commercial and residential projects, he decided that he wanted more of a challenge - so he became an Architect! He studied Architecture in both Los Angeles at SCI-ARC and finished his studies at BAC in Boston. He worked with large architectural firms in Boston for a number of years until 1982, when he started his own business, Coastal Architects, in Kittery Point Maine.

After 20 years with his own successful business, he and his wife of 30 years have returned home to Vancouver Island. His two children, both girls, have stayed behind in the United States pursuing their own exciting careers.

This is not a paid announcement. Strata-sphere Condominium Services Inc. is pleased to announce Mr. Rodonets' appointment as Vice President of the Building Science Division of Chatwin Engineering Ltd.

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