voice from the... strata-SPHERE®

10th Anniversary!

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Inside This Edition

A DECADE OF ACHIEVEMENT!

CONSUMER PROTECTION FOR BC'S NEW HOME BUYERS

Ken Cameron, CEO
HOMEOWNER PROTECTION OFFICE

The enactment of the *Homeowner Protection Act* in 1998 marked a turning point in the new home marketplace.

The new legislation represented a commitment by the provincial government to provide protection for buyers of new homes. It established the Homeowner Protection Office (HPO) to oversee a range of programs to improve the quality of residential construction in this province.

The HPO is proud of the role it has played in building what is widely viewed as among the best systems of construction defect protection for new home buyers in Canada.

When the Homeowner Protection Office first opened its doors 10 years ago, public confidence in the standard of new home construction in British Columbia had been seriously eroded by the leaky condo crisis. Until then, the construction and sale of new homes in the province was open to anyone who wanted to enter the business. After the collapse of the voluntary new home warranty system offered by builders, consumer protection was minimal, and based on a combination of buyer beware and good faith.

Ken Cameron joined the Homeowner Protection Office as the Chief Executive Officer in September 2004 after 26 years in senior planning and management positions in local government in the Greater Vancouver area, most recently as Manager of Policy and Planning with the Greater Vancouver Regional District.

In addition to his role at the HPO, Ken is the Past Chair of the International Centre for Sustainable Cities, a member of the Board of the Residential Construction Industry Training Organization and Chair of Simon Fraser University's Urban Studies Program. With former Premier Mike Harcourt and local writer Sean Rossiter, Ken is the author of a book titled "City-Making in Paradise: Nine Decisions that Saved Vancouver," which was published by Douglas and McIntyre in September 2007.

Launched in 1999, the new home warranty insurance system gave consumers the best construction defect protection in Canada. The mandatory licensing of residential builders and building envelope renovators introduced a much-needed degree of accountability in the industry.

Since its inception, the HPO has worked hard to become a valuable resource for both builders and consumers. Participating in leading-edge research projects and industry-oriented education and training programs has contributed to better-built homes.

In 2007, the *Homeowner Protection Amendment Act* was passed, paving the way for increased consumer protection for new homebuyers and continued improvement to the quality of homes built in British Columbia.

Great progress has been made in the past decade in restoring public confidence in the new home market. According to a recent opinion survey, 90 per cent of consumers polled expressed satisfaction with the quality of their new homes. The residential construction industry has gone from crisis to economic powerhouse.

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Voice from the Strata-sphere

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Strata-sphere Condominium Services Inc.

630 Terminal Avenue North, Nanaimo, B.C. V9S 4K2

Tel: 1-888-298-7999
(250) 753-0353
Fax: (250) 741-1441

Email: info@stratasphere.com
Web Site: www.stratasphere.com

Editor: Cora D. Wilson
Assistant Editor: Katherine Grilo

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Rebuilding Water-Damaged Homes and Restoring Consumer Confidence

One of the first steps undertaken by the HPO to rebuild consumer confidence in the residential housing industry was to set up the Reconstruction Program to provide assistance to owners of water-damaged homes in the coastal climatic zone who did not qualify for conventional financing to pay for building envelope renovations. The program was established to ensure that these owners did not lose their homes to foreclosure due to the cost of building envelope repairs. Since 1998, $742 million in financial assistance has been provided to more than 16,000 households.

Builder Licensing

The introduction of mandatory licensing for residential builders and building renovators 10 years ago was a major step towards restoring public confidence in the building industry.

The *Homeowner Protection Act* requires residential builders and building envelope renovators in the province to be licensed by the HPO and to arrange for home warranty insurance prior to commencing construction. To date, more than 5,600 licenses have been issued to residential builders, and 62 licenses issued to building envelope renovators.

The *Homeowner Protection Amendment Act,* which came into effect on November 19, 2007, was an important milestone for everyone committed to strengthening protection for new homebuyers and continued improvement to the quality of homes built in British Columbia. The changes strengthen licensing requirements for residential builders and require anyone wishing to build a home under the owner-builder exemption to meet more stringent requirements.

As a result of the changes, prospective homebuyers will also have greater access to information about homebuilders and homes through a New Homes Registry that will soon be available on the HPO website. With its online search function, the registry will enable consumers to check whether home warranty insurance is in place and obtain other information to help them make better-informed decisions when buying a new home.

The HPO also maintains a searchable registry of licensees, available to the public, and has enhanced its web presence with powerful new tools including online registrations and applications, and better access to information for both consumers and our industry partners.

Consumer Information

Simply put, a better-informed consumer is a better-protected consumer. Home buyers in British Columbia now have access to a whole range of information through the HPO to help them make better decisions before and after they buy a new home.

Some publications explain home warranty insurance while others provide important information on building envelope maintenance for property managers and strata councils.

Consumers are making use of this information in large numbers: last year, more than 41,600 callers were assisted through the HPO's toll-free information line, while there were 358,265 website visits to obtain information on HPO programs. HPO staff also make presentations at numerous seminars and trade shows around the province each year.

Research and Education

The HPO's Research and Education initiatives benefit the residential construction industry and consumers. Initiatives aimed at continuous improvement in the quality of construction help to facilitate best practices and standards. Other initiatives provide education and information to consumers.

HPO-sponsored industry education and training programs are designed to give builders access to practical information about new technologies, the latest research results, good building practices and emerging issues. The results of research projects are then disseminated by the HPO to residential builders throughout the province in the form of seminars, workshops, technical bulletins and publications.

Building Smart seminars, introduced in 2004, continue to be held in more than 20 communities across the province in spring and fall each year, providing practical information and knowledge to industry professionals.

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A Decade in Review

Cora D. Wilson, LL.B., Strata Lawyer
EDITOR OF "VOICE FROM THE STRATA-SPHERE"

The first edition of 'Voice from the Strata-sphere' was launched in 1998. No-one could have anticipated the trauma that the condominium world would experience over the decade to come dealing with the "leaky condo crisis", the replacement legislation and an explosion of related litigation.

In the early 1990's, there were so few legal cases addressing condominium issues in British Columbia, that it was not difficult for a lawyer to be familiar with them all. Not so today! Every month there seems to be a new and earth shaking legal decision that threatens to rock the already unsteady boat and attack legal foundations previously believed to be cast in stone. Unit entitlement is but one such example.

From a philosophical perspective, there is no higher objective in the system of justice than to achieve certainty, consistency and uniformity of legal opinion primarily through utilizing the principles of statutory interpretation and reviewing judicial decisions. If all else fails, litigants rely on speedy, cost efficient and just avenues of dispute resolution. Experience shows that this has not always been possible over the last decade due to shifting goal posts.

Mr. Justice Bauman reviewed some of the conflicting decisions in the 2003 decision of *Strata Plan LMS 1537 v. Alvarez* [2003] B.C.J. No. 1610, [2003] C.C.S. No. 12424, 2003 BCSC 1085, Vancouver Registry Nos. L023301 and L030325 (B.C.S.C.).

He interprets the *Strata Property Act* adopted on July 1, 2000 *in the context of a leaky condo case where the issue was "who pays"* and cautions: "There is no more important duty on (legal) counsel than to ensure that the court has the benefit of a complete exposition of a particular statutory scheme when it is asked to construe new, or indeed any, legislation."

Mr. Justice Bauman highlights the judicial struggle that ensued resulting in "competing interpretations and errors." He suggests, "One cannot interpret legislation in a vacuum."

He confirms the general principle in the condominium world that, "We are all in it together." In other words, everyone pays pursuant to the unit entitlement formula (usually based on habitable area) unless there is a statutory exception. He concludes by saying, "I began my reasons with a general admonition. I end by saying that the transitional provisions of the SPA and the SPA Regulation are a minefield for a judge of a court of general, not specialized jurisdiction."

These passages underscore the importance of engaging qualified strata lawyers to address legal issues on behalf of strata corporations, owners and others.

The *Strata Property Act* contains 322 sections as compared to the former *Condominium Act* which was about 1/3 the size. In addition, there are Regulations and statutory bylaws that must be considered. The voluminous legislation and the resultant complexity create a daunting task even for the experienced. The inexperienced who dabble in this area find themselves struggling to keep their head above water. They flounder around threatening to set off any one or more of the innumerable minefields that they will undoubtedly encounter. The storm continues.

The traditional condominium disputes involving "Pets, People and Parking" will continue for time immemorial. In addition to such customary disputes, British Columbia experienced a litany of leaky condo cases addressing questions of who pays, what do they pay, how do they pay, who decides, who governs, etc..

Initially, if a ¾ vote of owners to approve repair expenditures failed, strata lawyers simply asked the Courts to substitute a court order for democracy. Later, lawyers were beating down the court room door demanding administrator appointments. It was initially believed that an administrator could govern in place of the council and the owners. The Court of Appeal resolved conflicting cases by holding that an administrator did not have the power to approve a resolution where the governing legislation required a vote of owners. Thereafter, lawyers all but abandoned applications to appoint an administrator in the leaky condo scenario.

The author represented the administrator in the ground breaking case of *AviaWest Resort Club v. Chevalier Tower Property Inc*. (2005), 254 D.L.R. (4th)67 (B.C.C.A.). The author also represented the Strata Corporation in *Strata Plan No. 1086 v. Coulter,* 2005 BCSC 1234 which followed *Aviawest* before the Court of Appeal decision. This decision was later varied to allow the administrator to return to court if the owners did not pass a ¾ vote. These cases are prime examples of the trauma experienced by strata corporations caught in the storm of catastrophic change and conflicting legal decisions.

The most recent trend in the legal community has been to thump the drum on "significantly unfair" conduct by the strata corporation or its council towards an owner. Leaky condo owners are utilizing this argument in a transparent attempt to turn the legislative scheme (currently resting on a foundation of Schedule of Unit Entitlement) on its' head. They argue, for example, that it is significantly unfair for an owner to pay in accordance with the statutory scheme and demand that the general principle - "We are all in it together" be discarded in favour of a judicially legislated replacement formula.

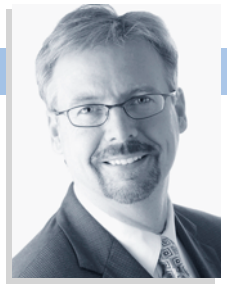
This is a dangerous path to follow since it invites judges to legislate. Administrators cannot substitute their decisions for that of the owners and judges should be loathe to substitute their views for that of democracy exercised in compliance with a statutory scheme.

If such arguments are successful, the floodgates may open and disgruntled owners may storm the Courts with applications of discontent. The breeding ground for dissatisfaction is huge when repair bills soar to over $100,000.00 per strata lot. The repair bills continue to climb as time passes. The condominium community is now threatened with "Everyone for himself." Neighbor is pitted against neighbor. Lifestyle dreams of harmonious carefree living - "We are all in it together" – are shattered

The pendulum is in motion and the line has not yet been drawn in the sand regarding issues of significant unfairness. Until such time as either the lower courts refuse to interfere with democracy and refuse to tread where the statutory scheme lives or alternatively, the Court of Appeal draws the line and definitively slams the door shut on such questions, litigation will flourish.

Over the last decade we initially saw an explosion of arbitrations to address legal disputes, only to discover that they were unduly complicated and crushingly expensive. They were for the most part abandoned. A new and welcome process for arbitrations is currently underway.

In the meantime, the explosion of litigation will continue for some time to come. As we gallop down this road, we must be careful to analyze the impact of our actions and live by the governing principle that "We are all in it together."



The Last 10 Years; A Decade in Review

Charlie Parker, Realtor
RE/MAX OF NANAIMO

lenty has happened in the last 10 years. The environment and global warming have become hot topics, we're all going green and housing prices have sky-rocketed. I recall a comment I'd made to clients back in the mid 90's when they asked what I thought of the future for Real Estate on Vancouver Island. I told them that I felt this area was similar to California in the 50's and 60's. I still feel that way. Everybody's talking about it. People don't generally move to Vancouver Island for economic reasons. They move here for lifestyle, weather and recreation. We live in a unique geographical area in this country and that won't change. During the past 10 years, our neighbors to the east, Alberta, have single handedly turned our Canadian Loonie into a Petro dollar. That also is not going to change for the foreseeable future. We've recorded a steady double-digit inflow of migrants from the province of Alberta. These folks are either retired, planning to retire or buying recreational real estate for the future. It seems that in spite of the money to be made in Fort McMurry, not many plan to retire there. And they've been coming this way in droves. Continued improvements in our transportation systems and the eventual runway lengthening at the Nanaimo Airport will stimulate this even further. In 1997 Vancouver Island Real Estate Board (VIREB) recorded 3739 property sales. This past year, unit sales climbed to 5164. The average sale price in this same period went from $159,382 to $343,168. a 215% jump in a 10 year period.

During this past 10 years, there has been a noticeable change in the style of condo's and town homes built here in the mid island area. We're now seeing substantial planning and development of concrete tower structures, something many of the bigger city folks that move here expect. I've long thought that we'd have more people moving here if we had a suitable product for them to buy. When I've reviewed the buyers in these projects, it is once again the out of town buyer who is most active. In our townhouse developments, there is a substantial improvement in the quality of finishing's. Granite countertops, tall ceilings, large, luxurious ensuites and walk in closets are becoming common in new construction. Consumer demand will continue to drive this higher end of the market.

Although it's challenging to know what each year will bring, it is entirely reasonable to think that we'll be looking back ten years from now discussing the generous price increases. Although the United States is going through a debt crisis at the moment, we must remember that we've endured the high tech stock market meltdown, 9/11 and plenty of other concerns this past decade. The resilience of the North American economy has come through every time, making me very optimistic about the next ten years.

As a former Senior Commercial Account Manager for an international bank, **Charlie Parker** personally managed a business loan portfolio in excess of fifty million dollars. As a result, Charlie's financing expertise gave him an edge with buyers, sellers and real estate investors when he joined RE/MAX of Nanaimo in 1991.

On August 1st, 2007, Charlie and his business partner, Mike Heinrich, assumed ownership of the RE/MAX of Nanaimo office. In November of 2007 they opened a second location in downtown Nanaimo to accommodate Nanaimo's growth and higher demand for real estate.

Charlie also believes in giving back to his community and has donated his time, energy and money to numerous charities, including the Children's Miracle Network, Operation Red Nose, Malaspina College Foundation, Port Theatre, Nanaimo SPCA, Canadian Kidney Foundation, and Nanaimo Family Life. Charlie also serves as Director for several local business organizations, including: the Nanaimo Chamber of Commerce, Edgewood Counselling and Transitional Service, and the Nanaimo Capital Corporation.

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Regular surveys of licensed residential builders and focus groups are conducted to obtain input on current issues, research, and education and training needs of the industry. Feedback from builders helps the HPO to evaluate and improve its existing programs and plan for future programs and initiatives.

This year, the HPO will be expanding its initiatives to include a Housing Futures Research and Education Funding Program. This new program will enable researchers, industry, consumer organizations and others to identify and carry out externally-generated research and education projects that support the HPO's mandate.

Looking Forward

In 2008, while the HPO celebrates 10 years of service (1998-2008), it will continue working in partnership with industry leaders to raise the bar of professionalism in residential construction and expand its research and education programs.

The HPO's 10th anniversary and British Columbia's 150th anniversary also present an opportunity to look to the future as well as reflecting on past achievements. To mark these special anniversaries, the HPO will be hosting a one-day conference titled Next Generation: Future of the Housing Industry in British Columbia in Vancouver on May 27, 2008. The conference will bring together all sectors of the market housing industry to explore the trends and challenges to be faced in the next 15 to 20 years.

For more information on the Homeowner Protection Office please visit www.hpo.bc.ca or call the information line toll-free at 1-800-407-7757.

A Decade; What Have We Learned?

Gerry Fanaken, President
VANCOUVER CONDOMINIUM SERVICES LTD.

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.

The celebration of the 10th anniversary of the Strata-Sphere Magazine is a good opportunity to reflect on the past decade and ask ourselves if anything has really changed and have we learned anything? As a reminder, remember that the *Strata Property Act* has now been around for eight years (having been enacted on July 1, 2000). This article's 10 year review therefore takes us back to the days when we were governed by the *Condominium Act*.

There is no doubt that the "new" *Strata Property Act* is a vast improvement over the previous legislation and, as a consequence, we are doing things differently. On the other hand, in some respects, nothing has changed. For example, and this is the biggest worry, the total apathy by condominium owners generally is as prevalent today as it was 10 or 15 years ago. Strata councils do their best to foster participation and "spark" with their owners; yet nothing seems to motivate them. Just getting a quorum for an annual or special general meeting seems to be the same old challenge.

Another aspect that has not changed is the fact that the condo buying public still have little perception of how strata corporations are administered and the fact that they are essentially business organizations that require proper funding to maintain, and that the Contingency Reserve Fund must be built up to provide for future needs. The average condo owner still feels that his or her strata fees are "too high" and that an increase for next year's budget is unwarranted.

Also in the "same old, same old" department is the lack of interest by the Provincial legislature in improving the Act. We think of the *Strata Property Act* as being "new" but, hey, it is now eight years old. Sure, governments do not usually tinker with administrative statutes on an annual basis: these types of laws tend to be reviewed every 10 years, but there appears to be no appetite from the government to encourage and foster public input on revisions even though we are nearing the 10 year mark.

Another aspect to strata administration that has not changed has to do with the services offered by strata management companies and especially in respect of fees. It is still a very "competitive" industry meaning that the fees charged are insufficient to provide really good and meaningful professional services to their clients. It is not entirely the fault of the industry because all this ties back to the comments above about owners not wanting to pay higher strata fees. The management companies that have increased their fees to proper levels find themselves losing out over and over to the bargain basement style pricing that prevails and dominates the industry. We have made no progress in changing this mindset.

All this, however, is the bad news. There is, alas, some good news. Some things have changed for the better.

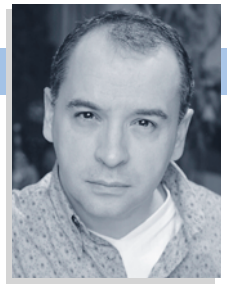
The procedures and prescriptions found throughout the *Strata Property Act* for basic administration are generally well written and clear. As a result, management companies and strata councils are much more likely to do their administrations in compliance with the law and in compliance with ethical standards. The sections dealing with budgeting and financial management have made a significant impact and strata corporations are today generally much better managed fiscally.

The government introduced licensing for strata managers and, although much of the educational requirements were "off point", the process has introduced a modicum of professional status and respect. The extremely strict requirements of the *Real Estate Services Act* (RESA) in respect of accounting and finances (if provided by management companies) are very beneficial and valuable. Unfortunately many strata corporations do not engage professional management; therefore, they are excluded from the RESA and remain unregulated which is too bad. Licensing has also created a huge shortage of agents (property managers) in an industry already squeezed by the provincial labour shortage. There is not only no end in sight, if anything the situation will only worsen. No matter: the implementation of strict financial controls is a good thing.

Litigation in strata affairs is at an all time high. The number of cases being heard in the courts, particularly the Supreme Court of British Columbia is so substantial that it is hard to stay on top of all the decisions. Although there are some questionable decisions (such as the Mari case) the courts have provided excellent guidance to strata corporations in respect of their obligations in law. In the old days, under the *Condominium Act*, it was rare to be able to pull out a court decision and use it as a management tool. Today, there are many court decisions which are very helpful to strata corporations in their struggles to "do it right." Interestingly, the use of arbitration has dropped dramatically (and a good thing too). Ten years ago, arbitrations were used quite extensively to resolve strata disputes. For the most part, the people doing arbitrations were out of their depth and, as a consequence, their decisions were appalling. Management companies and their strata clients steered away from arbitration and headed for the courts instead. Another element leading to this change was the "beyond-belief" complexity of the procedures for arbitration in the *Strata Property Act*. It is so complicated that just complying with the bureaucracy is enough to cause abandonment.

The above only highlights the changes, both good and bad, over 10 years. There are many more topics that should be included in such an article but space is limited. The bottom line is that we are making progress. Sometimes not as fast as we want but it is happening.

32 Years of Consumer Protection

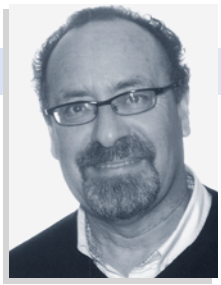


Tony Gioventu, Executive Director
CONDOMINIUM HOME OWNERS ASSOCIATION OF BC

In the last 32 years consumers in British Columbia have experienced every type of building failure know to our industry. UFFI (insulation), asbestos products, pine shingle roofing, substandard copper pipe, recalled sprinkler heads, recalled toilets, building envelope failures, new home warranty failure, radiant floor heating, to mention a few, have all placed strata owners under extreme financial pressure. In the 10 years that Stratasphere was published we have experienced sweeping changes in the conduct of business transactions with strata corporations and management services. The introduction of the *Homeowner Protection Act* and Office, provided relief and support for the thousands of leaky condos that have been repaired to date. The introduction of licensing for strata agents and brokers has imposed standards for performance, record keeping and financial management on a struggling industry, ensuring better service and protection for consumers and a growing career oriented industry. Above all, education province wide has resulted in consumer taking their business decisions and responsibilities seriously. This checklist on contracting is a must for every strata corporation, and on of the over 400 bulletins on the CHOA web site that are vital tools in strata management and operations. Congratulations to Stratasphere in the 10th anniversary publication.

Checklist for Contracts for Goods and Services - Before you sign an agreement

1. Establish clearly the total cost. ___
2. Is it by contingency or fixed price? ___
3. Are there conditions in the contract that can escalate costs? ___
4. Who has to approve any changes to the agreements/costs? ___
5. Does this contract require the approval of the owners by 3/4 vote? ___
6. Has your lawyer reviewed the contract? ___
7. Is the cost for legal included in your budget? ___
8. Have you defined clearly the list of services & goods being provided? ___
9. Are there fixed commencement and completion dates? ___
10. Are there any costs or penalties for changes in the dates? ___
11. What insurance coverage is being provided? ___
12. Is it exclusively for your strata or general coverage for blanket coverage of the contractor? ___
13. Is the coverage sufficient for your job? ___
14. Is the insurance current and valid? ___
15. Is additional insurance required? ___
16. If yes, who will have to pay for it? ___
17. Are there conditions in the insurance that exclude the strata? ___
18. Is a warranty for the contract provided? ___
19. Is the warranty being provided by the contractor or a 3rd party? ___
20. Is there sufficient security for the warranty? ___
21. Does the warranty require maintenance and repair schedules? ___
22. Who is providing the warranty M&R service manual? ___
23. Is bonding required for the project? ___
24. Are building permits required? ___
25. Who will obtain the permits? ___
26. Who will pay for the permits & are they part of the contract? ___
27. When will copies of the permits be provided and where are they posted? ___
28. Is the contractor delegated the right authority to obtain the permits? ___
29. Have you considered operational costs? ___
30. Demolition and disposal: Who pays the costs? ___
31. Security Fencing and Hoarding: Who pays the costs? ___
32. Sanitary & Site Safety: Who pays the costs? ___
33. WCB Coverage ; Who pays the costs? ___
34. Supervision & Project Management; Who pays the costs? ___
35. Restoration to adjacent affected areas; Who pays the costs? ___
36. Is Termination of the Contract and Dispute Resolution in the contract? ___
37. Do you understand the terms and conditions of termination? ___
38. Are there costs and penalties associated with termination? ___
39. Are the terms of dispute resolution clear? ___
40. Is a specific procedure recommended for dispute resolution? ___
41. When do you know the contract is complete? ___
42. How are deficiencies or defects addressed? ___
43. Are letters of assurance required for any sub contractors? ___
44. How are the hold back and draw amounts being handled? ___
45. Does your contract for consulting or services, set out specific terms when the fees are earned ___



The Human Rights Code and Our Little Village

James J. Klassen, B.A., LL.B.
JAMES J. KLASSEN LAW CORPORATION

Townhouse and Condominium living has always been like living in a little village within a larger society. In an earlier time villages were held together by shared values, ethnicity, religion, history and culture.

Modern strata living is quite different. Diversity has become one of the defining values of Canadian society and this diversity is represented in the villages that are our strata corporations. In many cases owners do not know their neighbours and they may have little in common with them. While we continue to respect the democratic guidance of the majority, that control has been modified by the provisions of the *Human Rights Code*.

Before 2003 Strata Corporations did not worry too much about the impact of the *Human Rights Code* on the running of their village. There were relatively few applications made to the Tribunal and most residents of the village felt that as long as they did not pass bylaws that expressly discriminated on the basis of physical or cultural characteristics, the *Human Rights Code* was not something that should cause them many sleepless nights.

Much has changed in the past four years. My review of the activity before the Human Rights Tribunal suggests an increasing trend of applications by strata owners who perceive that they suffer discrimination as a result of events at the their stratas. I am not suggesting that these applications are without merit, only that the Human Rights Tribunal is increasingly seen as the appropriate place for strata owners to seek redress for their concerns.

The complaint process before the Human Rights Tribunal can be lengthy, and the cost of legal services to defend against a complaint can be significant. The simple fact that a claims is brought may leave long lasting bitterness and divisions within the strata that continue to place strain on relationships long after the allegation of Discrimination has been dealt with. It is my view that if Strata Owners, Strata Councils, and Management Agents are sensitive of their obligations under the *Human Rights Code* they may be able to avoid many of the Complaints.

The *Human Rights Code* contains the following provision:

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

Tribunal decisions to date have made it clear that this section applies to Strata Corporations.

The Tribunal has also taken a liberal view of the meaning of a "service" provided by the Strata Corporation. Almost anything the Strata Corporation does in performing its obligations under the *Strata Property Act* or its bylaws falls within the definition of "service."

The Human Rights Tribunal has significant powers to deal with the discrimination. In addition to ordering an end to the offending behaviour or situation, it can order the offending party to make changes to its practice or policy and to take active steps to accommodate the Complainant. It may order the offending party to pay damages to the complainant to compensate for injury to his or her dignity, feelings or self respect.

James J. Klassen is a lawyer practising in Abbotsford. His preferred area of practice is in the area of Strata Property Law and he has for many years advised strata corporations, strata councils, strata owners and strata management companies with respect to their rights and obligations, and has represented them in courts and arbitration proceedings.

The cases before the Human Rights Tribunal fall into two major groups. The first is with respect to allegations of express discrimination, usually at the hands of the Strata Council or its Management Agent. In these situations the complainants perceive discrimination directed expressly at them because of their personal nature, situation or characteristics.

The second main group of complaint is perhaps more subtle. It is a complaint that the bylaws or rules of the Strata Corporation have a discriminatory effect upon the complainant because of his or her particular situation. These situations are judged by the effect of the bylaw, regardless of whether there is any intent to discriminate. Usually this arises as a result of a disability suffered by an owner. A building security system that requires an elderly disabled person to go to the front door to admit visitors may be discriminatory. A bylaw that prohibits the installation of hardwood flooring may be discriminatory to someone with a severe allergy to carpet materials. The manner in which parking spaces are allotted may discriminate against a person with mobility restrictions.

There is a general trend to enlarge the definition of "disability" to include personal problems that may not previously have been considered to be a disability. Obesity or addiction may, in appropriate circumstances, be considered a disability.

This is not to say that the Strata Corporation must accommodate everyone who complains of anything. Each case will turn on its own facts. It is important that the honest concerns of strata owners be given careful consideration. It is not enough to say, "well that's just too bad, we have our bylaws and there is nothing we can do for you." If a bylaw or policy does in fact have the effect of discriminating against an owner on account of a disability there may be a requirement to accommodate that owner in the application of the bylaw.

I suspect we are only at the early states of the influence of the *Human Rights Code* on stratas. I expect there will be more decisions from the Human Rights Tribunal in the next couple of years that may give some additional guidance in this area. In the mean time owners, councils and management agents would do well to be aware of their obligation to conduct the affairs of the village with an eye on the requirements of Code. Strata councils and management agents must be sensitive to legitimate complaints and needs of owners when proposing bylaw changes or enforcing existing bylaws. Where an allegation of discrimination is raised it may be appropriate to seek legal advice at an early stage as there are a wide range of factors that influence whether not it may be necessary to accommodate the concern, and how that accommodation should be undertaken.

All involved need to honour the diversity of the village. The harmony of the village will be better preserved by respecting the differences and dealing with complaints before they become characterized as discrimination and brought before the Human Rights Tribunal.

How Green is My Condo?
Making Your Condo Green

Brian Palmquist, MAIBC MRAIC BEP CP LEED AP
MORRISON HERSHFIELD LTD.

A Seattle area developer recently asked our help in obtaining LEED® certification for a large residential commercial complex. Why? Because a LEED® certified project would attract at least 3% higher rents and be worth at least 6% more than competitive projects that were not LEED® certified.

Another client asked us to analyze the costs of maintaining and renewing their Greater Vancouver cohousing project over the next 25 years. The kicker – they wanted us to identify for each item needing maintenance or replacement the greenest alternative available.

Existing multiple residential units and those under construction to-day should be expected to last at least 50 years. Whether they last that long is largely a function of how the strata or property management company maintains and improves the real property assets during their lifetime. This is the essence of making a green condo.

Every time the common areas of your building, or your own unit, are maintained or improved, you have an opportunity to 'green' your asset. In fact, the LEED® certification system in Canada is quickly evolving into a system that allows a building to register for LEED® at any stage of its life, from initial planning concepts through design, construction and operations – the emerging standards look for 'raising the bar' to a greener standard, followed by continued improvement over the life of the building.

There are two ways you as one individual strata unit owner can make a difference:

1. In your own unit
2. On the common property of the strata

Greening your own home

You will likely engage in maintenance and renewal activities within the confines of your own unit that are susceptible to 'greening', including:

- Periodic maintenance
  - cleaning of bathrooms, kitchens, floors and windows (inside)
- Periodic renewal
  - Repainting walls
  - Replacing flooring, plumbing fixtures, appliances, kitchen and bathroom surfaces

The key opportunity for 'greening' in relation to periodic interior maintenance and renewal is simply the selection of the materials. Think about each material's life cycle:

- Someone had to make it
- You applied it more or less often
- After you applied it, it reacted to the environment inside your home

The first criterion, **the material manufacturing process**, is both difficult and simple to evaluate. Basically, if a material is toxic, chances are its manufacture was toxic for the workers making it and the environment they worked in. It makes no sense to maintain your home at the expense of your own health or the health of anyone else. Even a few years ago, there were some types of cleaners and coatings that had no apparent healthy alternatives. To-day, there is virtually no category of paint, coating, cleaner or protective agent that does not include environmentally appropriate options at the same price point- yes, there are cheap, low emission paints and carpets!

Brian Palmquist is an architect and a LEED Accredited Professional who co-manages the green professional practice at Morrison Hershfield Ltd., an engineering and management company that provides a variety of sustainability services from its seven Canadian offices, including Vancouver, Victoria and Nanaimo. In his spare time, he is trying to convince the City of Vancouver to permit the construction of 'green granny flats' behind existing single family homes. He can be reached at sustainable@morrisonhershfield.com

It is worthwhile consulting public agencies such as CMHC (Canada Mortgage and Housing Corporation) and Health Canada, private nonprofit societies such as the Suzuki Foundation and the Light House Sustainable Building Centre, and focused publishers such as New Society Publishers on Gabriola Island.

The second consideration, **frequency of application**, parallels the architectural dictum *less is more*. If you are able to properly maintain real property with less frequent applications of healthy, better quality materials, you will be consuming less, creating less potential contaminants and having more positive impacts on the environment. A paint that contemplates recoating in five years is better than a paint with a three year life.

The third criterion, **how materials react with the environment**, is longest lasting and potentially most insidious. We have all heard of instances where residents, occupants and complete strangers have had adverse reactions to seemingly innocuous materials, cleaners, coatings, etc. The information about hypersensitivity is now fairly well developed, with much leadership from B.C. Books such as *Your Home, Your Health and Well Being* by Rousseau et al. have been instrumental in describing the effects of 'off gassing', where materials emit potentially harmful vapours long after they have been applied. Again, low emissivity materials are readily available for most materials and price points.

When it comes to replacing appliances and fixtures, the less is more dictum again applies – less energy and less water. Spurred by consumer demand, virtually all equipment you might find in a condo unit is now readily available in models that consume far less energy and water than even two years ago, again, at whatever price point you seek.

Greening the common property

Assuming your strata or property management company is as diligent with common property as you are in your own unit, they will probably engage in both regular maintenance and periodic renewal activities, such as:

- Periodic Maintenance (hopefully at least annually, more often if specific site circumstances merit):
  - Cleaning windows, doors and cladding
  - Cleaning balconies, deck and patios
  - Landscape maintenance
  - Cleaning gutters
- Periodic Renewal:
  - Repainting (3-5 years)
  - Recaulking (3-5 years)
  - Resealing (such as masonry surfaces – 3-5 years)
  - Roof replacement (15-30 years)
  - Window glass replacement (10-20 years)
  - Window unit (glass + frame) replacement (15-30 years)
  - Parking garage roof waterproofing replacement (15-20 years)

For maintenance, the same general criteria apply as for interior work - look for materials and methods that were made in a healthier fashion, need less frequent replacement and have less post-installation impacts on the environment. They are available.

A few special things to consider:

- Consider using solar energy to pre-heat hot water in buildings with central boilers. The payback period for solar hot water has plummeted in the past couple of years and there are companies qualified to retrofit these systems in many buildings.
- When renewing deck coatings and waterproofing as well as painting and caulking, remember that low emissivity products are readily available and that unlike new construction, people are living on the construction site, so extra care in material selection is warranted.
- It's easy and inexpensive to connect rain barrels to many existing roof drainage systems, with the dual benefit of capturing rainwater for reuse and reducing storm water runoff.
- When re-roofing sloped roofs, consider materials like metal that will more readily capture rain water for later reuse.

Harvesting the low hanging fruit

The environmental movement has spawned many phrases, including 'low hanging fruit', or ideas, materials, systems, etc., that are easier to achieve but have significant impacts. The concept is crucial, because fully embracing a more environmentally appropriate life style can be exhausting. It's okay to start by harvesting the low hanging fruit in your existing home environment. You, your home and the environment will be the better for it, and just as you see more fruit when you remove the low hanging fruit that covered it, and are more satisfied by what you harvest when you have reached a little higher, so to with your home.

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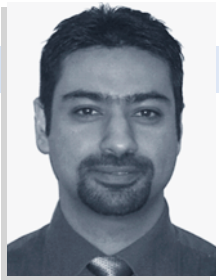


Reserve Fund Studies - A Tool for Stratas to Plan for Their Future Needs

Shakir Rashid, P.Eng, Manager, Vancouver Office
CHATWIN ENGINEERING LTD

The basic premise upon which all Strata Corporations are founded is that they have a responsibility to maintain common property. *The Strata Property Act* states that the strata corporation is responsible for establishing a contingency reserve fund (Part 6, Div 1, (92)) for expenditures that occur less frequently than once a year. Many Strata Corporations do not accumulate adequate funding for major repairs or maintenance, which can result in the strata having to defer maintenance and/or having to collect funds through special assessments. Being wary of special assessments, new purchasers of existing condo units, as well as existing owners, are requiring greater assurance that their condo fees will provide sufficient funds for major repair and replacement as building components age. A tool that can be used to provide this assurance is a Reserve Fund Study.

A Reserve Fund Study is a detailed assessment of the common building components and systems for the purpose of establishing the funding to be reserved each year to meet future major repair and replacement costs of the common building elements. The study consists of a comprehensive condition survey of all common building elements which can include the exterior building envelope assemblies, roof assemblies, fenestration, structure, interior finishes within common areas, plumbing, HVAC systems, electrical and elevators. The study identifies what components may need to be repaired or replaced within the next 25 or 30 years and estimates the costs of repair or replacement of that component.

The components forming the common elements can be divided into two categories, namely:

- Components requiring major future repairs or full replacement at the end of their economic service life, such as roofing material, windows and/or sealed glass units, deck membranes, etc.
- Components with an "indefinite" life expectancy in relation to the life expectancy of the development, such as the building structure.

Components requiring major future repairs or full replacement at the end of their economic service life can be predicted with reasonable accuracy and budgeted for in the reserve fund planning. Components with "indefinite" life expectancy can reasonably be expected not to deteriorate to the extent where replacement is required during the life of the building and therefore, only a percentage is budgeted into the reserve fund to allow for the possibility of targeted repairs that maybe required during the service life of the building.

A Reserve Fund Study can assist the Property Manager and/or the Strata Corporation in developing a long term capital budget plan for their building(s). The study will help budget the amount of money that should be added to the reserve fund, and will calculate the amount in terms of monthly contributions. A properly completed reserve fund study and contribution plan eliminates any surprises for future expenditures and will ensure that proper funds are always available for necessary capital projects.

Shakir Rashid, P. Eng., Manager of the Vancouver Branch of Chatwin Engineering Ltd. Mr. Rashid has worked with numerous Strata Corporations and property managers in providing professional engineering and consulting services in the field of Building Science. Mr. Rashid's extensive experience ranges from condition assessments, building envelope remediation projects, building reviews, and litigation support.

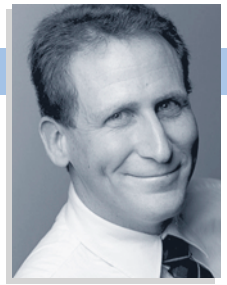
A Reserve Fund Study must be carried out by a qualified professional and should take into consideration the following information:

- The operation and maintenance budget for the property.
- Estimated costs for repairs or replacements of common element building components and systems.
- Predicted interest and inflation rates.

Original Reserve Fund Studies should generally be updated every 3 – 5 years to ensure that changes in market conditions are accurately reflected in the fund contributions and to ensure that the predicted life span of the common element components and systems is reasonably accurate.

Negative feedback related to Reserve Fund Studies from condominium owners has generally been that they are reluctant to contribute to a fund from which they may not receive a benefit, as they view owning a condominium as a short term investment. However, we are seeing that more and more potential buyers are interested in condominiums that have set aside funds to deal with future major repairs and replacement costs, in order to reduce the likelihood of being surprised by a future special assessment.

Energy Use in Buildings



Leslie B Peer, Ph.D., P.Eng., BEP, LEED AP
READ JONES CHRISTOFFERSEN LTD.
www.rjc.ca

Energy use in buildings is an important consideration for building owners, operators, and is becoming more of a focus for building regulatory officials. Residential and Commercial buildings in Canada are responsible for approximately 35% of all energy consumed, as reported in August 2006, this was some 2.64 Exajoules of energy. This is the energy equivalent of approximately 420 million barrels of oil. The input energy breakdown is shown in Table 1.

Energy Source	Input Energy	Percentage of Total
Natural Gas	1.25 EJ	47.4
Distributed Electricity	1.02 EJ	38.6
Petroleum	0.26 EJ	9.8
Biomass & Other	0.11 EJ	4.2

Table 1: Energy Input to Canadian Buildings

Including the production of electricity, of which approximately 45% in Canada is derived from sources which pollute the air (largely coal), energy use in buildings is a significant producer of green house gas emissions and other air pollutants. Energy costs are rising, and expected to continue to rise. BC Hydro has an application into the BC Utilities Commission to increase its rates, and is expected to encourage a switch to smart metering with a rate structure designed to curb energy use habits.

The Sustainable Development Technology Council of Canada recently reported that, not only is energy use in Canada the highest in the world, energy use in buildings, on a per square meter basis, is high, and continuing to grow, as is the total area of buildings built. Energy use in buildings is an important consideration for building owners, operators, and is becoming more of a focus of building regulatory officials: BC's Building Code is expected to undergo a process of sequential amendments, and the Model National Energy Code may be used to legislate improvements in energy consumption.

An initiative from Europe, that may be seen here before too long, involves rating buildings on an individual basis for their energy consumption, similar to the Energy Use tickets on Canadian appliances. In the UK it is now mandatory to have an energy audit completed and an 'Energy Performance Certificate' in place that rates the energy efficiency of the building before the sale of any home.

Upgrades to Buildings

Some Canadian small buildings and houses are amongst the best insulated and most airtight in the world, with few countries having construction standards that equal our R-2000 initiative. Despite that, in light of current energy use levels, and future economic, regulatory, and environmental factors it is expected that improvements to existing building construction that reduce energy consumption will increasingly become a part of Canadian Owners' interests. Examples of such measures include the following:

- Installation of solar thermal or heat pump sources for primary heat delivery in homes
- Increasing air tightness of homes to reduce uncontrolled losses of conditioned air to the exterior
- Increasing use of ventilation systems with heat recovery to reduce cost of conditioning make-up air
- Improved air tightness, thermal, and solar shading efficiency of windows, skylights, and doors
- Improved overall insulation of building walls and roofs.

Performance measure	Current Standard Values	Best Available Technology
Residential Wall Thermal Conductivity	Effective U=0.42 W/m^2.K	Effective U=0.15W/m^2.K
Window thermal conductivity	U=2.4 W/m^2.K	U=0.7W/m^2.K
Window Shading Coefficient	SC=0.5	SC=0.15
Wall Airtightness	Leakage < 0.35 l/m^2.s	Leakage < 0.1 l/m^2.s
Roofing Albedo (reflectivity)	Albedo = 0.1 to 0.3	Albedo > 0.7

Table 2: Sample specifications for normal and high performance building envelope components.

Leslie Peer is a Principal in the Restoration and Building Enclosure Group at Read Jones Christoffersen Ltd in Vancouver. He studied structural engineering at University of Toronto and engineeering physics at Cambridge University, and has been consulting for 15 years in the fields of materials engineering, façade engineering, and enclosure design. His current practice consists of a wide variety of construction and renovation projects involving building enclosure design, rehabilitation of structures, specifications for durability, and promoting sustainable design practices related to enclosure design. Recent projects include the Telus William Farrell building renovation, the UBC Life Sciences Building, the Gulf Islands National Park Operations Centre, and the Hillcrest Olympic Curling facility, all of which have or are expected to achieve LEED gold or platinum status during construction.

Read Jones Christoffersen Ltd. is one of Canada's pre-eminent engineering firms with offices in Victoria, Vancouver, Calgary, Edmonton, and Toronto. The company specializes in providing 'cradle to grave' consulting services for building structures and facades.

In addition to reversing the trend to higher energy use per unit area in buildings, it is also possible that Canadians may choose to live in smaller building areas again as the cost of operating houses increases relative to income. In any event, there is an expected need for the large stock of Canadian housing to undergo cyclical improvement in energy efficiency over the next 30 years. Any Strata Council contemplating capital improvements to their buildings should definitely consider installing the most energy efficient systems possible during the work, since the marginal cost of improving air tightness and insulation levels in walls and windows, or of a more efficient boiler are very small when carried out during a larger project. For instance, imagine the difference in cost of tearing off and re-installing all the exterior siding on a building to add insulation, versus the material cost of purchasing a few extra inches during a renovation.

Conclusion

There is a need for our nation to become more energy efficient and reduce its CO_2 production levels. A large part ($1/3^{rd}$) of those improvements need to take place in our building stock so we are probably going to hear a lot about energy efficiency measures the next few years as energy prices, our provincial government and utility companies begin exerting their influence upon our lifestyles. Building owners are therefore encouraged now to take a long view on energy use and make improvements to their buildings when it is most cost effective, lest they have to make them later when it is more painful. Any initiatives taken by building owners will be good for our environment, reduce household expenditures, and will ultimately will be good for resale value of properties, therefore they should become forefront in our long term planning.

A Decade of Fire Safety
Where Do We Go From Here?

Don Nicholas, Co-Owner
STERLING FIRE & SAFETY SERVICES LTD.

Ten to fifteen years ago, words like minimum safety standards, code compliancy, and fire alarm upgrade weren't as widely used as they are today. Existing buildings of the time had maintained their fire alarm systems, most of which were 20 to 30 years old already, quite well over the years. They were inspected and tested annually and repaired when necessary. Due to this, a sense of safety and security was assumed, even though the level of safety never increased over those years. Many of these older systems did not incorporate smoke or fire detection and were not able to produce adequate decibel levels to ensure timely evacuation.

The fire alarm systems of today have come a long way from those of 20 – 30 years ago. The level of technology offered by most basic systems is able to meet today's minimum code requirements. Due to the various new building codes and standards; the requirements for hospitals, care facilities, and high rise buildings, to name a few, can be incredibly complex. However, most condominium and apartment style buildings fall into the minimum code requirements, offering owners the largest variety of technology to choose from.

The authorities are utilizing the combination of fire alarm technology, fire safety planning, and building code standards to upgrade the safety standards in older buildings. While the latest codes and standards are being enforced in older buildings through fire alarm upgrades; many new buildings of today require full sprinkler systems, as well as, fire alarm systems to meet the current codes. Although the thought of upgrading can seem quite daunting, in reality, if taken step by step, it can be easily achieved.

There are a number of steps from start to finish in the process, but we feel that these are:

Use of Technology – you don't have to go with the most complex system for your upgrade. This will only increase your costs and reduce your choice in annual service companies down the road. Most basic systems will give you everything you need for the best price.

Get Second Opinions – get a number of quotes. This will give you the best cross-section of technologies, services, and safety planning offered. Get referrals from other Strata's who have been through the process already. Find out what worked for them and what they would have changed.

Although much has changed in the past ten years, the goal remains the same: to provide a high level of safety for owners and residents alike. Fire Departments realize that these safety levels can be easily achieved by the use of current technologies and fire safety planning. It is the older systems, which offer the least amount of safety, that are being asked to upgrade. It is important that owners take a proactive role in fire safety planning to maintain these high standards. My grandfather always said "Plan for the worst and hope for the best." I feel that this is still true today.

Don & Kathleen Nicholas, Co-Owners of Sterling Fire & Safety Services Ltd. Don and Kathleen have been in the fire safety industry for almost 20 years. They provide General Contracting services for all aspects of fire alarm upgrades and fire safety planning. They can be reached at (250) 478-9931 or sterlingfire@vicbc.com.

Nothing is Free, Especially the Fee

Martin J. Gevers, P. Eng. BEP
LEVELTON ENGINEERING LTD.

When designing repairs of building problems or providing services to new developments, we are often faced with clients seeking the lowest-apparent cost. Unfortunately they then end up with something quite different than they were hoping for, leading to a 'project flop'. Had the homeowner known the recipe for a successful project, they might have followed it by making better choices and ended up getting what they wanted for the real price they knew it was going to cost at the outset.

When a home owner goes to the retail store to buy a large screen HD TV, furniture or cabinets for their home, he or she generally feels that the shopping has been a success if they have bought the item they wanted and they haven't spent more than they budgeted for. They are proud of their tangible new asset and show neighbours and friends that they are happy with what they bought. The same goes for most purchases of goods and services. When they have found someone to mow the lawn, paint the house or clean the house for a good (low) rate they are generally proud of having made a good deal with someone to get what they want.

We are all consumers and we have grown up with the idea of trying to obtain as much as we can with as little investment as possible. We have learned along the way, however, that this can back-fire on us when we buy inferior goods that might have been inexpensive, but turn out to provide us with nothing more than frustration, wasted time in the return line-ups and an overflowing trash can; not to mention a bruised ego or back-slide on our self-confidence as a clever business person.

Martin Gevers has been involved in wood frame as well as hi-rise concrete and steel construction, performing trade work, management and professional engineering services for over 34 years. He developed and taught the Building Science diploma program at BCIT where he was an instructor and program head. He also developed and taught the first technical module of the Building Envelope Education Program designed to qualify professionals as Building Envelope Professionals through the Architect's Institute of B. C.

So how does this relate to obtaining services to renovate, repair or remediate a home? Let's first examine ingredients in this product: they are design, materials, and labour.

When shopping for a repair or construction design, a lowest price can mean; lowest intended scope of work (a partial repair), low involvement in the design (contractor is guided mostly by his own judgment), or low involvement in field services (many things are not reviewed for conformance to the design). Each one of these scenarios provides a dangerous environment for serious problems to grow. If the root of the problem isn't addressed in the scope of the design wherever it exists on the complex, the problem being addressed can return and if it does, we will be going through the whole exercise of frustration again, only next time at twice the cost.

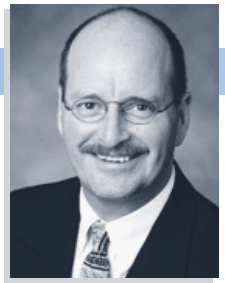
We receive requests for design proposals that suggest that we leave the details until we get to site, for the purposes of reducing the design costs by maybe 25%, which might mean a savings of $10,000. It is only later that the client learns that the field reviews in this scenario can grow by much more than the amount saved, and meanwhile everyone, (including the Owner) is disgruntled and living in fear of the unknown, which is the final cost of the project, (engineering and construction). Obviously hiding the true costs of engineering to get to the end by bargaining for a scant design and working it out in the field isn't a good idea. The design should be complete enough for an experienced professional contractor to complete the job, or very little will be known about the job cost and schedule until, it at last, it is finished and no-one is happy.

The most expensive part of the consulting is the field services, which often utilizes a major portion of one or more staff at a consultant's office for a long time. If everyone knows what they are doing, work will move along and field reviews will be brief compared to reviews when contractors are poorly informed.

On one project, a consultant indicated that he wasn't going to invoice the Owner for his services until he felt the job was completed and it hadn't 'gone south', because he thought that he was only liable for project in the amount of his fee. This is contrary to the Code of Ethics and Conduct of most professional associations. A doctor wouldn't be off the hook for malpractice if he just said, "Sorry, that'll be free; I screwed up." Incomplete service can result in damages that far outweigh the fee. The level of responsibility isn't proportional to the fees billed. The proper standard has to be met regardless of fees charged.

Obviously the most expensive part of a repair or renewals or any construction project is the contractor's bills, which represent the labour and materials to put it all together. Going cheap on design or field services can really make a difference on how cost-effectively the materials and the labour are utilized.

So, when confronted with a repair, renewals, remediation or renovation project, first determine the necessary scope of work from a thorough investigation; then determine roughly what that scope of work will cost and then make sure that the scope of work is well-detailed on the drawings and reviewed in the field. Only this way can you expect the project to end up being and costing what you envisioned and budgeted for at the outset. Design decisions aren't like T.V.'s; it does no good to return them if they don't work.



Depreciation Reports – Should Your Strata Corporation Prepare One?

Jamie Bleay, B.A. LL.B
ACCESS LAW GROUP

When the *Strata Property Act* (the "Act") came into force in this Province, many of us quietly hoped that strata corporations would embrace section 94 of the Act, which says:

> **"94** (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.
>
> (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."

After all, given that strata corporations were required, by section 3 of the Act, to manage and maintain the common property and common assets for the benefit of the owners, it seemed to make sense that strata corporations, especially those constructed in the 70's and 80's, would want to ensure that their contingency reserve funds were build up beyond the minimum requirements provided for in the Act and in the Regulations so that there would be sufficient money in the bank when it came time to replace worn out components such as roofs, interior carpeting, elevators, heating/cooling systems etc. or to undertake major repairs. Having sufficient money in the bank when it came time to make these expenditures would enable strata corporations to avoid having to raise money from their owners by way of one or more substantial special levies or by drastically increasing monthly common expenses. The logic behind section 94 of the Act and section 6.2 of the Regulations seems to be aimed at avoiding, to the greatest extent possible, the dreaded cash calls that owners have come to detest and, in many instances, veto. The regulation says:

> **"6.2** (1) For the purposes of section 94 of the Act, a depreciation report prepared to assist a strata corporation in determining the appropriate amount for the annual contribution to the contingency reserve fund may estimate the repair or replacement cost for, and the expected life of, each of the items set out below, if applicable to the strata corporation, and any other items that the strata corporation considers should be included:
>
> (a) the electrical system;
> (b) the heating system;
> (c) the plumbing system;
> (d) the elevators;
> (e) the exterior walls;
> (f) the roof;
> (g) carpeting and furnishings;
> (h) interior and exterior painting;
> (i) parking facilities and roadways;
> (j) recreational facilities.
>
> (2) The strata corporation's annual contribution to the contingency reserve fund relating to the repair or replacement of each of the items referred to in subsection (1) may be determined according to the following formula:

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.

$$\frac{\text{estimated cost} - \text{past contribution}}{\text{expected life}}$$

> (3) For the formula in subsection (2):
> **"estimated cost"** means the estimated cost to repair or replace;
> **"past contribution"** means the amount already contributed to the contingency reserve fund in respect of an estimated cost;
> **"expected life"** means the estimated number of years before the cost of repair or replacement is likely to be incurred.
>
> (4) A strata corporation must comply with section 3.4 or 6.1, as applicable, whether or not a depreciation report to assist in determining the appropriate amount for the annual contribution to the contingency reserve fund is prepared.
>
> (5) If a strata corporation contributes to the contingency reserve fund based on a depreciation report, the contributions in respect of an item become part of the contingency reserve fund and may be spent for any purpose permitted under section 96 of the Act."

Are strata corporations taking advantage of section 94 and doing up depreciation reports? Based on discussions I have had with numerous property managers and strata councils, there are very few strata corporations that have prepared depreciation reports. The main reasons that I have heard for not having them prepared are as follows:

1. The cost to have the report prepared is too expensive;
2. There is nothing wrong with the building; and
3. Why should an owner contribute toward a report and the cost to add to the contingency reserve fund when they might sell and move out before the work is done.

From my perspective, a depreciation report or, as they are sometimes referred to in other Provinces, reserve fund studies, makes good fiscal sense. Strata corporations, many of which have appraised values upward of $40,000,000.00, need to be proactive when it comes to managing and maintaining their common property and common assets over the life of their building(s). By developing a long-term plan that addresses the foreseeable maintenance and repair costs of a strata corporation, cash calls, while not completely eliminated, can be more readily planned and budgeted for. I would urge owners and property managers alike to look at a depreciation report not as something that is optional and another financial burden; rather to look at is as a mechanism that will provide benefit to current and future strata lot owners and which will significantly improve the overall value and financial viability of a strata corporation.

CWB Strata Solution Account for Condominium Associations and Property Management Companies

Russ Burke, Assistant Vice President and Branch Manager
CANADIAN WESTERN BANK

Canadian Western Bank is a western based, full service chartered bank committed to providing personalized service to our clients and offering high yield returns for short and long term investment products.

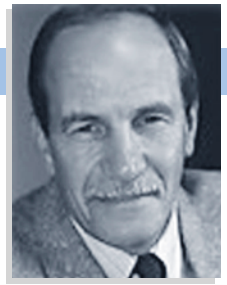
The Strata Solution Account is designed to meet the needs of Property Management Companies and Condominium Associations alike. This account combines the flexibility of a Floating Rate Redeemable Term Deposit with an Organization operating account. The Strata Solution Account provides a high rate of interest on balances $10,000.00 and over. Our operating Organization Account operates as a chequing account with competitive service fees. It provides a high rate of interest on balances over $3,000.00. Additional features include customized business cheques, telephone and CWB direct Internet Banking.

With our CWBdirect Internet Banking service you may review your monthly statements and cancelled cheques on-line, as well as pay bills, transfer funds and create stop payments. Add in our Customer Automated Funds Transfer (CAFT) service for electronically collecting your monthly strata fees and you have a very valuable package of banking services at your fingertips!

Our team at Canadian Western Bank consists of experienced, skilled individuals with an energetic dedication to meeting our customer's diverse, individual needs and we guarantee immediate personalized efficient service. Your calls will be answered by a real person in the branch. No Voice Mail, No Line-ups, No hassle. Just prompt service with a smile.

Strata Rentals

Dale Harder, Property Manager
DIVERSIFIED PROPERTIES LTD.



Dale Harder began his career in property management with Diversified Properties Ltd. in 1986. He is licenced with the Real Estate Board Council of British Columbia and has a broad range of experience in managing both residential and commercial properties.

Strata Lot Rentals

One of the uses of a residential strata lot that may, at times, cause confusion and disputes is whether or not strata lot owners can rent their strata lots. The short answer is yes unless otherwise restricted. However any rental restrictions must be included in the Strata Corporation's bylaws. Listed below are some of the dos and don'ts of renting a residential strata lot.

Developer Rentals

The developer of a Strata Corporation may rent one or more strata lots or specifically designate strata lots for rent after buyers acquire them provided that he files a Rental Disclosure Statement with the Superintendent of Real Estate prior to the first strata lot being offered for sale. The developer must give a copy of the filed Rental Disclosure Statement to each prospective buyer before he or she purchases a strata lot. The Rental Disclosure Statement informs the buyer of the following:

1. The number of strata lots to be rented.
2. The length of time the strata lots may be rented.
3. Whether there is any bylaw that restricts the rental of strata lots and if so, the wording of the bylaw.

Strata Corporation Bylaws

As per Section 141 of the *Strata Property Act,* the strata corporation can pass a bylaw that either prohibits or limits the number of strata lots that can be rented and/or the time for which they may be rented. The number of rentals may be ascertained either by an actual amount (e.g. 10 strata lots) or a percentage (e.g. 10% of the total strata lots). Any bylaw that limits the number or percentage of strata lots that may be rented must include the procedure to be followed by the strata corporation in administering the bylaw. However the strata corporation must not do the following:

1. Screen the tenants.
2. Establish any screening criteria.
3. Demand the right to approve tenants.
4. Require the insertion of terms in a tenancy agreement.
5. Restrict the rental of a strata lot (unless the number of rented strata lots has reached the quota as is indicated in the bylaws).

Rental Exemptions

The *Strata Property Act* does however provide several exemptions from rental restrictions. They are as follows:

1. **Exemption for Family Members** – A bylaw that prohibits or limits rentals cannot prevent an owner from renting a strata lot to a member of his or her family. Section 8.1 of the Strata Property Regulations defines a family member as:
   a) A spouse of the owner.
   b) A parent or child of the owner.
   c) A parent or child of the spouse of the owner.

   A spouse is defined as "an individual who has lived and cohabited with the owner, for a period of at least 2 years at the relevant time, in a marriage-like arrangement, including a marriage-like relationship between persons of the same gender."

2. **Hardship Exemption** – An owner may apply in writing to the strata corporation for an exemption from a rental restriction bylaw on the grounds that it causes a hardship to the owner.

   While the *Strata Property Act* does not define the term "hardship", an example might be of an owner who is being transferred to a different job location, who intends to move back into the strata lot at some future time and therefore does not want to or is unable to sell the strata lot, but cannot afford to continue to pay the mortgage and monthly assessments without rental income.

   The strata corporation must give its reply in writing within 2 weeks of the receipt of the application. If they fail to do so, the exemption is automatically allowed.

   While the Strata Corporation cannot unreasonably refuse the owners request, it can, however, impose a time limit on the rental term.

3. **Grandfather Exemption** – Generally speaking, if a Strata Corporation passes a bylaw that restricts rentals, at a minimum every strata lot is immune from the new bylaw for at least 1 year. However, if a strata lot is designated for indefinite rental in a Rental Disclosure Statement and if the developer or first buyer still owns the strata lot, the strata lot is immune from the rental restriction for as long as the developer or first buyer owns the strata lot.

Responsibilities of Strata Lot Owners

Any strata lot owner upon renting his or her strata lot must give the prospective tenant a copy of the strata corporations bylaws and rules together with a Notice of Tenant Responsibilities by means of Form K, the prescribed form required under the *Strata Property Act,* Section 146. The tenant must sign the Form K and the owner must present a copy to the Strata Corporation within 2 weeks of the beginning of the rental period.

If the strata lot owner does not comply with this responsibility, the tenant is still bound by the bylaws and rules, however, upon learning that the strata lot owner has not complied, the tenant may, within 90 days of learning so, give notice to end the tenancy agreement by giving notice to the strata lot owner. If the tenant so ends the tenancy agreement, the strata lot owner must pay the tenant's reasonable moving expenses to a maximum of 1 month's rent.

Conclusion

As noted above, the renting of strata lots is more involved that renting an apartment or single family dwelling such as a house. However, when following the prescribed rules as laid out in the *Strata Property Act* and the Strata Property Regulations, many strata lot owners have successfully done so and have thus provided quality housing to the rental market.

Conflicts in Stratas – Past, Present and Future

Sharon Kelly, MA
SHARON KELLY CONSULTING SERVICES INC.

Strata disputes have existed since strata corporations were first created - they are community driven. Looking back ten years, the legislation in place was the *Condominium Act*, a totally different Act then our current *Strata Property Act* (SPA). Under the 'old' Act, owners who had a dispute with the strata corporation (or vice versa) would often initiate arbitration. At the time, the appointed arbitrator needed to own a strata lot. It is important to note that there was and continues to be no requirement for an arbitrator to be properly trained. Individuals with little or no experience can be appointed if the parties agree. Under the old Act owners would often approach a friend, a real estate associate or neighbour in another strata corporation and ask them to arbitrate. Being inexperienced, those approached, usually with the best of intentions, would meet with individuals privately and discuss the dispute before any hearing had taken place. This was a huge breach of natural justice. There were cases where a strata manager arbitrated a dispute in a strata they managed, not considering its inappropriateness. These earlier arbitrations usually had one specific issue, hearings were less than one day and legal counsel did not represent parties.

At the same time, there were arbitrators who acted professionally, conducted their arbitration hearings fairly and wrote good enforceable decisions (Awards). In these circumstances, the parties were generally happy with the outcome and felt the arbitrator considered all the facts carefully in making a decision. The Arbitrator's Award was binding on the parties subject to Judicial Review. As the number of strata communities increased there were more disputes. In 2000, the *Strata Property Act* (SPA) was introduced. One of the many changes in SPA was that an arbitrator did not need to be an owner of a strata lot to be appointed. This opened the door for non-strata owners to arbitrate disputes under SPA and generally speaking increased the professionalism of those who arbitrated. SPA also established a procedure of prescribed forms for initiating arbitration and reply.

It was shortly after the introduction of SPA that there was a shift in perspective regarding the suitability of arbitration for strata disputes. Initially, the benefit of arbitration was that it was a timely, efficient, cost-effective approach to resolving a dispute utilizing the services of an independent adjudicator. However, costs for arbitration began escalating with reports of some arbitrators charging over $50,000 for their services. It reached the point where legal counsel saw the courts as a better remedy for resolving strata disputes. Court procedures define a specific process for document exchange, disclosure, etc. while arbitration under SPA has no defined rules of procedure. Currently, while a party can initiate arbitration under SPA, the other party may choose not to participate and stall the process. This is the prevailing course of action recommended by the legal profession regarding strata arbitrations.

In terms of other forms of alternative dispute resolution (ADR) such as mediation, there have been significant inroads over the past 10 years. Mandatory mediation of certain types of disputes has existed in several Small Claims Court jurisdictions since 1999. Since then, many strata corporations have found themselves in a mandatory mediation and have had a good experience. As a result, mediation is more recognized as an alternative for strata type disputes. As well, with the Notice to Mediate in effect for many years, litigants have had the option of proceeding to mediation to resolve issues that are before the Supreme Court of B.C. Many leaky condo disputes have resolved complex issues utilizing the services of an experienced mediator. Legal counsel will often suggest mediation depending upon the nature of the dispute and the circumstances surrounding it. However, SPA really has no provision for introducing mediation in strata communities. The legislation simply provides that an arbitrator must advise the parties about the possibility of a mediated settlement prior to holding the hearing. The Schedule of Standard Bylaws has a provision for a voluntary dispute resolution committee, however this is rarely, if ever used, as owners in general have no experience, or interest, in providing this type of service within their own community. Sometimes the strata manager acts in this role, trying to assist the parties in resolving a dispute, although it is difficult to track the success of strata managers in these types of circumstances.

Sharon Kelly has been active in Alternative Dispute Resolution (ADR) since 1993. She is a roster member of the B.C. Mediator Roster Society and a Provincial Court Civil Mediator. Sharon has experience with both public and private mediations and regularly mediates in Small Claims Court. As a Chartered Arbitrator, Sharon has arbitrated many strata, motor vehicle and construction disputes. Sharon holds a Masters Degree in Conflict Analysis and Management, with a specialization in community conflict. She is currently on the Board of Directors of the B.C. Arbitration & Mediation Institute and is the Chair of the Strata Mediation Pilot Program Advisory Committee.

Disputes in strata continue to include issues such as pets, parking and of course, people! With more people living in strata communities the number of disputes has risen. The difficulty for strata owners and strata corporations is the lack of options available to resolve their disputes. Litigating in Supreme Court of B.C. is often not an affordable option, and yet arbitration can also be expensive depending upon the circumstances. With mediation, you need the parties to be willing to sit down and discuss the issues, and that can be a challenge. Often, when an owner buys a strata lot they are not knowledgeable or prepared for strata living. Many are surprised that bylaws can impact what they can or cannot do within their unit, such as pet bylaws or prohibiting hardwood floors. In many townhouse complexes, an owner assumes that they own the fenced in area and proceed to create their own private golf course or install a gazebo. The breadth of issues in strata is astounding.

Moving from the present to the future, ADR will be more utilized. The value of mediation is that it does not fracture the community through a drawn out litigious dispute, instead it addresses the issues and facilitates outcomes the parties agree to. B.C. Arbitration & Mediation Institute (BCAMI) a professional organization comprised of both arbitrators and mediators provides training for arbitrators and operates ADR rosters. In collaboration with the Condominium Home Owners' Association, they have developed a streamlined, cost effective approach to resolving bylaw disputes through mediation. The Strata Mediation Pilot Program has a roster of skilled strata mediators throughout the Province. Parties have to agree in advance to mediate and complete an Agreement to Mediate. A mediator in their area is appointed and there are strict time guidelines for appointment and for the mediator to contact the parties. Then, a venue is arranged and the mediation takes place in a timely manner. Cost for a 2-hour mediation is $350 plus GST along with any costs for booking a room. BCAMI is tracking the mediations to ensure the program is a success. You can download the forms for this program at www.bcami.com.

There is a need to have a quick, cost effective and timely arbitration as a remedy for owners and strata corporations. Not all disputes can be resolved by mediation and many do no warrant the expense of the court. How can this be accomplished given the current attitude towards arbitration under SPA? The Condominium Home Owners' Association is recommending the establishment of a set of rules and procedures. This would eliminate many of the procedural problems that often bog down and create lengthy and expensive arbitrations. Other ideas include structuring arbitrations to a specific time frame depending upon the nature of the dispute and setting a per diem rate for the arbitrator. More work on this is needed before an effective process for arbitration under SPA can gain acceptance in the strata community.

630 Terminal Ave. N.orth
Nanaimo, BC V9S 4K2
Email: nanaimo@cdwilson.bc.ca

Tel: (250) 741-1400
Fax: (250) 741-1441

C.D. WILSON LAW CORPORATION

BARRISTERS - SOLICITORS

Cora D. Wilson, Lawyer and President, C.D. Wilson Law Corporation. Over 21 years of experience as a Condominium Lawyer. Ms. Wilson currently represents numerous strata corporations wherever they are located in British Columbia. She is co-author of the book "Strata Property Act - A Practical Guide to Bylaws." She is also president and editor of Strata-sphere Condominium Services Inc..

left to right:
Front:
Katherine Grilo,
Cora D. Wilson, Carol Spears
Back:
Cindy Bartlett,
Mary Milner, & Rhona Allan

Missing from photo:
Kelly Bradshaw

Strata Litigation

Construction Litigation (Wet Building Syndrome)

Bylaws

Governance & Dispute Resolution

MAINTENANCE MATTERS

As a strata owner, there is a legal duty to maintain your building – but what should be maintained and how?

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