voice from the... strata-SPHERE®

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Recent Changes to the Strata Property Act & Regulations

Depreciation Report, CRF & Information Certificates

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C.D. WILSON LAW CORPORATION

The strata community is talking about the major amendments proposed by Bill 8 in late 2009. Some amendments to the *Strata Property Act* (the "Act") and *Regulations* have now become law by Order in Council No. 623 as of December 13, 2011. Depreciation reports are now mandatory. Also, amendments regarding contingency reserve fund ("CRF") contributions were declared into law. Future amendments were also adopted addressing disclosure requirements to the information certificate (Form B). These changes will raise disclosure standards and make the preparation of this document more onerous. Although there will be additional administration, it is likely warranted for the protection of the public over the long run.

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Form B, Information Certificate Amendments

Section 59 of the Act requires the strata corporation to provide an information certificate (in the prescribed form – Form B) to an authorized person within one week of a request. This document provides a snap shot of the strata corporation operations at a moment frozen in time - being the date of the certificate. The certificate requires disclosure of many things including, the strata fees, agreements, special levies, budget excesses, bylaw amendments, court proceedings, work orders, number of rentals and other valuable information as at the date noted on the certificate. This is an important document for prospective purchasers and others. It is binding on the strata corporation and the person that reasonably relied on the certificate.

Section 59(4) of the Act is amended effective December 13, 2011 to add that the most recent depreciation report, if any, be attached to the certificate, along with the rules of the strata corporation, the current budget and the owner developer's Rental Disclosure Statement. The Form B itself will be amended to include the additional requirement to attach the most recent depreciation report, if any, effective March 1, 2012.

Effective January 1, 2014, s. 59(3) of the Act will be amended to require strata corporations to disclose which parking stalls and storage lockers, if any, have been allocated to the strata lot. Also effective January 1, 2014, the Form B itself will be amended to include a section requiring specific information relating to parking stalls and storage lockers, if any, allocated to the strata lot.

Strata Corporation Records

Section 35(2) of the Act has been amended to require the Strata Corporation to retain copies of depreciation reports and repair and maintenance reports of major items in the strata corporation, including engineers' reports, risk management reports, sanitation reports and reports respecting any items required to be contained in a depreciation report. This requirement is new and was adopted into law on December 13, 2011.

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Depreciation Report (s. 94, SPA, Regs 6.2 (1) & (2))
Depreciation reports or reserve fund studies are mandatory in other provinces. As of December 13, 2011, this is now the law in British Columbia as well. Strata corporations with less than five strata lots are exempt. Other strata corporations will be required to either obtain a depreciation report or waive this requirement by a ¾ vote of owners at a general meeting by a certain date. The date applicable to many strata corporations will be by December 13, 2013. This date could vary and legal advice should be sought on this issue. This provision gives strata corporations two years to comply with the new requirements. Thereafter, depreciation reports will be updated every three years.

Although unclear at this stage, the requirement to waive the depreciation report by ¾ vote of owners will likely be an annual requirement. It is not clear what happens if the ¾ vote is unsuccessful. If the ¾ vote is unsuccessful or if it is not held, then the strata corporation will inferentially be required to obtain the depreciation report. The next question becomes, "How long does the strata corporation have to obtain the depreciation report?" The answer is unclear, but it is likely eighteen months. The answers to these questions will become clear as customary practice unfolds or minor legislative amendments are implemented.

Strata corporations and their advisors should closely review these changes, since the provisions adopted into law contain different wording as compared with the previous wording.

Regulation 6.2(1) has been repealed and replaced. Deprecation reports were previously defined as a document to assist a strata corporation in determining the appropriate amount for the annual contribution to the CRF. This definition has been removed.

The new Regulation 6.2(1) outlines what a depreciation report must contain, including *all* of the following in compliance with regulation 6.2(2):

(a) a physical component inventory and evaluation;
(b) a summary of repairs and maintenance work for common expenses respecting items that usually occur less often than once a year or that usually do not occur;
(c) a financial forecasting section;
(d) the name of the person who prepared the depreciation report, including their qualifications, their E&O insurance and their relationship to the strata corporation;
(e) the date of the report; and,
(f) other appropriate information or analysis.

There are mandatory requirements imposed on the physical component inventory and evaluation, as follows:

(a) The physical component inventory must be based on an on-site visual inspection. Any deprecation report prepared without a physical attendance and survey will not meet the minimum statutory requirements.

(b) The report must include a description and estimated service life of the common property, common assets and other property for which the strata corporation is responsible over *30 years*.

(c) The regulations require that the following items must, where *practicable,* be addressed in the depreciation report: building structure, building exterior, including roof, roof deck, doors, windows and skylights, buildings service systems including electrical, heating, plumbing, fire protection and security, common amenities and facilities, parking facilities and roadways, utilities, including water and sewage, landscaping, including paths, sidewalks, fencing and irrigation, interior finishes, including floor coverings and furnishings, green building components, balconies and patios. This mandatory list is broad and all encompassing.

(d) All common property and limited common property for which the strata lot owner is responsible to repair and maintain must be identified. Who is responsible to repair and maintain windows, doors and balconies has historically been the subject matter of controversy and debate. This will likely continue into the future. However, what is clear is that the repair and maintenance obligations will have to be addressed prior to completion of a depreciation report, since the issue of who is responsible (owner or strata corporation) will have to be determined. Many strata corporations should consider a bylaw review to address and clarify repair and maintenance issues.

Regulation 6.2(3) mandates the criteria for financial forecasting. It must include:

(a) The costs projected over a 30 year period for anticipated maintenance, repair and *replacement* items set out above, beginning with the current or previous fiscal year.

(b) The factors and assumptions used to calculate the costs must be described, including interest rates and rates of inflation.

(c) A description of how the CRF is currently funded.

(d) The current balance of the CRF minus any approved expenditures that have not yet been taken from the fund.

(e) A minimum of 3 cash-flow funding models for the CRF.

Regulation 6.2(4) requires an analysis of the cash-flow funding to meet the deprecation report expenditure requirements using one or more of the CRF, special levies and financing.

Regulation 6.2(5) addresses payments out of the CRF where the contribution is based on a depreciation report. The requirements for payment out of the CRF are the same now as before the amendment. CRF expenditures do not have to be for the purposes of the depreciation report. The expenditure can be for any purpose consistent with the fund or to pay for common expenses that

Recent Changes... *continued from page 3*

usually occur less often than once a year or that do not usually occur. A ¾ vote of owners at a general meeting is still required to authorize a payment out of the CRF (s. 92, Act).

Qualified Person

There has been a lot of debate regarding who should be qualified to prepare a depreciation report. A "qualified person" is defined as "a person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation's common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation's bylaws or an agreement with an owner and to prepare a depreciation report that complies with subsections (1) to (4)" (Reg. 6.2(6)).

This is a broad definition. The intent of the legislature was to allow the strata corporation to have flexibility in selecting the person best-suited to analyze its unique property.

Undoubtedly several people will view the depreciation report as a business opportunity. It is important that the strata corporation only hire qualified persons to prepare this important document. Strata corporations should consider amending their bylaws to clarify "who" is a qualified person to prepare the report.

The list will likely include engineers, accountants, professional reserve analysts, appraisers and other professionals. This issue will likely constitute an industry debate for years to come.

Contingency Reserve Fund ("CRF") Contributions

The statutory guidelines and customary practice for minimum contributions to the CRF remain the same. The cap has been removed, which is a positive move forward.

As before, a strata corporation must determine annual contributions to the CRF in compliance with the regulations (s. 93, Act). Many regulations have been repealed and replaced with new provisions effective December 13, 2011.

CRF Contribution for 1st AGM

The following summarizes the new regulations dealing with CRF contributions at the 1st annual general meeting ("AGM") of the strata corporation:

1. If the amount in the CRF at the time of the 1st AGM is less than 25% of the estimated operating expenses set out in the interim budget (the "Developer's Budget"), then the CRF contribution must be at least 10% of the operating budget approved at the 1st AGM (Regulation 3.4(a)). The funding requirements are essentially the same as before.
2. If the amount in the CRF at the time of the 1st AGM is at least 25% of the estimated operating expenses set out in the Developer's Budget, then contributions to the CRF are discretionary and *may* be made as part of the annual budget approval process after consideration of the depreciation report, if any (Regulation 3.4(b)). This permits *all* contributions to the CRF by a simple majority vote of owners at an AGM. The regulations prior to amendment contained a ceiling that required a ¾ vote to make contributions to the CRF that exceeded 100% of the operating budget. The requirement for a higher threshold vote of owners once this ceiling has been met has been deleted. This is a welcome amendment to the regulations.

CRF Contributions after the 1st AGM

The Regulation dealing with CRF contributions after the 1st AGM has been repealed. Again, customary practice will continue as before. The amendments remove the requirement for a higher threshold vote to approve contributions once a ceiling has been met and take into consideration the depreciation report.

The replacement regulation is summarized as follows (Regulation 6.1):

Regulation 6.1(a) requires mandatory CRF contributions in certain circumstances. If the CRF amount at the end of the fiscal year after the 1st AGM is less than 25% of the total operating budget for the fiscal year that just ended, then the mandatory annual contribution is calculated as the lessor of (i) 10% of the operating fund for the current fiscal year, and (ii) the amount required to bring the CRF to 25% of the total amount budgeted for the contribution to the operating fund for the current fiscal year.

Regulation 6.1(b) provides that if the amount in the CRF at the end of *any* fiscal year that has just ended is equal to or greater than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, then additional contributions *may* be made as part of the annual budget after consideration of the depreciation report, if any.

Prior to this amendment, a strata corporation was not required to contribute any monies to the CRF once the CRF reached 25% of the total annual budget. The contributions are still permissive using this formula, but the formula has been amended slightly to take into consideration the depreciation report requirements.

The legislative goal was to improve accountability. Strata accountability is becoming increasingly important since according to the ministry responsible for housing, strata properties now make up more than half of the taxable properties in more than a dozen British Columbia municipalities. It is anticipated that the number of stratas in British Columbia will continue to grow as the province's population increases.

Additional amendments to the *Strata Property Act* and regulations are expected into the near future. The most notable proposed amendment relates to the introduction of audited financial statements.

Strata corporations, managers, engineers and other persons involved in strata governance, management and administration are encouraged to keep up to date by participating in ongoing industry training and educational programs. Also, strata corporations should consider bylaw amendments to address the ongoing amendments to the legislation.

The Depreciation Report – Being Sensitive to Owners' Money

By Christopher Wright, P.Eng., M.A.S.A.

On December 13, 2011, the Province of British Columbia enacted the new "Strata Property Act" regulations that mandated the requirements of Strata to develop "Mandatory Depreciation Reports".

What does that mean? Should our Strata Panic? How will my strata payments change?

In the past, many strata corporations operated on the basis that there was a small contribution to a capital reserve fund that covered most small to medium replacements. The initialization of the monthly contribution by the developer/builder, however, has not resulted with a high enough contribution level to build a healthy contingency reserve, but was more focused on selling an affordable home. Consequently, there may be a false sense of security that the monthly strata contribution is sufficient, or that moderate increases are enough for all of the strata corporation's future needs.

When strata corporations finance their operating budget most of the amenities they are operating will have a finite lifespan, where the cost to replace the item may be 6 to 10 times the cost to maintain/operate it. Financial pressure is felt at levels where even small to medium items require funding to replace them, yet there are typically 2 to 5 large expenditures that dwarf these costs. These historically have caught unprepared strata corporations off-guard, forcing a polarization of opinion, anger, and despair among neighbours - as the only way to pay for it was through special levy.

Christopher Wright is the Manager of Building Science Division of Chatwin Engineering Ltd. He has experience with strata councils to collaborate on approaches to funding capital replacements that suit Owner needs, and a strong understanding of construction costing for the renewal of existing building enclosures.

A special levy for major repairs or replacements can involve each owner handing over tens of thousands of dollars within a few months. The stress and suffering related to special levies was revealed during the 'leaky condo crisis', where homeowners and even governments felt the financial pain of raising significant amounts of money in a very short amount of time. Mandating the Depreciation Report seeks to keep this from happening again as our residential building stock ages.

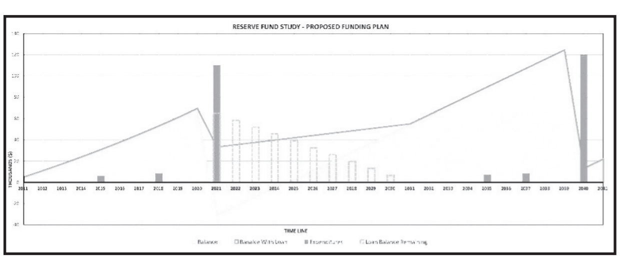
The Depreciation Report will generate replacement costs for property that will redefine cash flow and expenditures for everyone, not only your strata corporation. Each strata corporation that commissions the Report will see for the first time a realistic cost for its first large expense, such as a roof or window replacement, which is anticipated say within 5 years, 15 years or beyond 15 years. The volunteers on Strata Council will be charged with the responsibility to work with professionals to develop a resilient but sensitive capital reserve fund plan that its membership can live with, adopt, and update the way they see fit.

In 15 to 30 years, the steady state target or 'cruising altitude' of the capital reserve fund ideally should be to clear these major expense peaks, where increases in monthly contributions relate more to inflation. This new form of property value reflects sound financial planning and improves trust in the housing market as owners and buyers rely on more predictable strata expenses as they budget for their families.

How do we get there from here? Besides the special levy, the traditional response of the Depreciation Report is to adopt the "contribute then withdraw" or "save before you spend" approach, which for underfunded strata corporations or for large expenditures in the near future, would require extremely high annual contributions to the reserve fund just to get a positive balance after the item's renewal. Previous owners whom enjoyed the old roof did not pay, current owners subjected to this large expense were required to pay it all, while future new owners after the expense might enjoy the upgrade/renewal without having paid for it. Further, following the 'big first peak', the contribution burden might be reduced as the next big peak can be paid for more slowly. This 'best practice' approach may be suitable for some strata corporations better financially positioned. However, for many strata corporations it does not allow for fairness to all owners or a more gradual or predictable monthly contribution.

In 2005, Ontario provided a 10-year grace period before mandating the 'best practice/cruising altitude' model. British Columbia has done things a bit differently: In addition to the 'contribution/withdrawal approach' and special levies, BC has given the ability for the strata corporation to borrow through a construction loan format at moderately higher interest rates than what might be afforded through private borrowing of this impending large expense. Borrowing models through the strata corporation are developing and are recognized by a growing number of lending institutions, where the amount borrowed is only for the unpaid amount of the special levy, allowing those with the funds to pay without interest or pay through separate financing with lower interest, and allowing those without funds to pay on a much longer time scale. Challenges include risk that financial lenders at the time the loan is needed will not be in a position to lend favourably, and that a second similar loan for another expense is not available unless the first loan is paid or assumed. The strata corporations and banking communities throughout the province will need to build on their existing relationships and forge new ones as they assess this borrowing possibility.

For this initiative to be successful in the short term, fairness toward today's owner is needed when financing early expenses before the necessary reserves are built up. While not ideal, alternate approaches allow owners to consider more consistent and lower contributions at the onset of the program.



Your condo will increase in value. After many years of Mandatory Reserve Fund Studies, Ontario can attest to this. Ron Dank, lawyer for Simpson Wigle LLP in Hamilton, Ontario says:

> *"As a result, units that are being sold in [Strata] corporations that have conducted a Reserve Fund Study and have built up adequate reserves are selling faster and at higher prices while those in condominiums that have not conducted Reserve Fund Studies are, generally, selling slower and at lower prices."*

Strata corporations need to carefully select and interview the professional performing their mandatory Depreciation Report to ensure that the approach to funding the capital replacement is "**Best For Them**" and not necessarily "**Best Practice**".

Depreciation Reports

John Hofman, Project Engineer
READ JONES CHRISTOFFERSEN

Recently introduced amendments to the *Strata Property Act* in British Columbia provide an opportunity for Strata Corporations to apply Depreciation Reports and Reserve Fund Studies as a tool for protecting their investment in the common property.

Common property components of multiunit strata buildings are comprised of a myriad of materials, assemblies and systems. In this context, an applicable comprehensive asset management approach would be defined as a program including the planned and budgeted maintenance, repair and replacement/renewal of a Strata's common property. The goal of asset management is to optimize the total lifetime operating cost of building components. This is accomplished by balancing the service life of building components with respect to their maintenance/repair and replacement/renewal costs.

Maintenance and minor repairs must be performed at appropriately scheduled intervals for all common property components if they are to perform as intended and achieve their full service life potential. These activities are not without cost; however, they provide the benefit of optimizing or extending service of the components while helping avoid premature failure and associated service disruptions.

Planning and budgeting for regularly anticipated maintenance and repair of major common property items is the purpose of a Maintenance and Repair Plan.

While maintenance will help optimize performance and service life, it must be recognized that no building material, assembly or system will last forever. Eventually, replacement or renewal of common property components will be required to sustain a function and habitability of a building. Planning and budgeting for the anticipated service life replacement or renewal of major common property items is the purpose of a Depreciation Report. It forms the basis in quantifying the appropriate amount for the annual financial contribution to a contingency Reserve Fund. Replacement or renewal activities include major projects that are not anticipated on a year-to-year basis; typically occurring over five, ten, fifteen, twenty-five, etc. year periods.

A sound asset management approach, including both a Maintenance and Repair Plan (MRP) and a Depreciation Report/Reserve Fund Study would facilitate the maintenance of components performance and optimization of the lifetime operating costs of their buildings.

In a Depreciation Report, the major building components, appliances, equipment, finishes and other attributes associated with common property are listed. It applies to the building exterior, interior and the site. The list compiled should be flexible enough to allow for changes such as those resulting from maintenance, past repairs and selective replacements. There are a number of ways such lists can be presented; for example, a list of common property components that are likely to be replaced within the next 25 years (roofing) or a list of components that may need to be repaired or replaced within the service life of the building (masonry cladding), generally lasting well in excess of 25 years. There are several choices to be made throughout the development of a depreciation plan that will require the input of the Strata Ownership.

The components should be quantified based on site reviews and original construction drawings, so that information can be properly mapped and records can be kept for future reference. The primary methods to establish the physical condition of components and their remaining service life are based on site reviews in conjunction with experience and interpretation of the observer(s) and maintenance records provided by the Owners.

The next step in the process involves a report commonly assembled with annotated figures and photographs, summary tables and charts, presenting:

1. An opinion as to the general condition of the major common property components.

John Hofman is a Project Engineer in Read Jones Christoffersen's Building Science and Restoration practice. John has provided consulting services in the evaluation and restoration of existing building envelopes and structures as well as design and quality control for new building envelope systems.

2. A proposed program for the replacement (or repair where applicable) of the major common property components based upon their existing condition, age, and expected remaining service life. This service life can be significantly increased with maintenance activities, as discussed in the next paragraph.
3. Recommendations for an appropriate annual or monthly contribution to establish and maintain the Fund to meet the Strata's future needs based on the proposed repairs and/or replacement program.
4. Cash flow charts in the form of spreadsheets that are based on proposed repairs and/or replacement of items required over a predetermined time frame.

A Building Maintenance and Repair Plan should be a reference guide that briefly describes the purpose and composition of common property components, and a series of corresponding checklists and schedules of activities to help the components achieve their full service life. These checklists operate in parallel with the compiled lists of components developed in a Depreciation Report, and thus are tied in with expectations that are projected in Reserve Fund Studies.

The decision to maintain a component beyond its expected service life or to replace it requires some justification. Maintenance is required to help the component reach its Expected Service Life. As the component reaches the end of its service life, maintenance of the component might not be economically feasible or practical. In these instances, maintaining the component beyond its expected service life could result in higher maintenance costs and there could be increased risks associated or significant inconvenience to the building occupants with failure of the component. Alternatively, decisions might be made to replace components earlier than forecasted to take advantage of energy savings, market pricing, etc. Whatever decision is made it should be understood that the changes have an impact on the projections made in Depreciation Reports, and the report should be revised accordingly.

In a Reserve Fund Study, the requirements are very basic and describe minimum expectations. For the most part, Reserve Fund Studies include the following minimum requirements:

- A component list of common property.
- A statement of condition for each component.
- The estimated probable costs of repairs and/or replacement of each component.
- The life expectancy of each component.
- A financial forecasting section.

It will be interesting to observe how the application of the Depreciation Reports as stipulated in the Act will develop over the next few years in British Columbia. Similar condominium property acts have been in existence for many years in several provinces in Canada. Property managers, real estate brokers, appraisers, accountants, engineers, and others produce Reserve Fund Studies based on their experience. As a result, the quality and content of the reports varies widely and there is little consensus on methodology, replacement costs or allowances, or standards developed for determining the service life of most building components. Strata Corporations should be careful in their selection of a "Qualified Person" as outlined in the Act, to prepare a Depreciation Report.

In summary, Depreciation Reports are a step forward in the proactive planning tools for a cost effective asset management of Strata properties. Understanding some of the concepts and reasons behind the basic steps in the preparation can be helpful when it comes to deciding between repair or the replacement of depreciating property.

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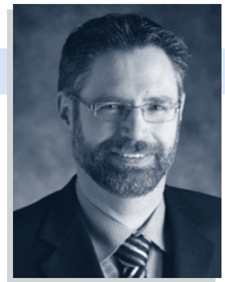

Sex, Religion, and Reserve Funds

Paul Rutten, A.Sc.T., LEED® AP $^{O+M}$,
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Money is a delicate subject, especially at Annual General Meetings. One thing married couples and Strata owners have in common is that they both fight over money more than any other topic.

Most building owners would agree that all buildings require constant maintenance and upkeep, however, opinions vary widely over the extent of repairs required, and when such repairs are needed. Not surprisingly, long-term and short term owners often find themselves at opposite ends of the maintenance and capital renewal issue. Professional property managers recognize this form of "hot potato" is a lose-lose game, as much-needed repairs often go unfunded while major repairs can arrive unexpectedly, leaving owners unprepared and financially stretched. The Reserve or Contingency Fund is the building "nest-egg" that must contain adequate funds to cover the ultimate repair or replacement of high-cost capital items not normally seen in year-to-year operating expenses.

High-cost capital items include (but are not limited to) windows, doors, roof, elevator, parkade gate, heating, ventilation and air-conditioning (HVAC) systems, and balcony membranes. All these items are known to have a limited life and ultimately require replacement or renewal at some point in the future. The Reserve Fund should also contain sufficient money to cover the repair or limited replacement of "indefinite" items, such as the building cladding (rain screen) and portions of the parkade (e.g., waterproofing membrane, damaged concrete).

Few owners have the knowledge and resources (or time) to affix a reasonable cost and timeline to any of these replacement items. The building engineer is capable of determining the current condition of major building components, and provides a science-based estimate of their remaining useful life. The building engineer affixes a replacement cost for each major item or assembly and projects the cost into the future (with inflation) to estimate probable cost in the year when repair or replacement will be necessary. This "Reserve Fund Study" (RFS) not only projects future costs, but recommends an annual amount that should be set aside by owners to meet all future capital expenditures.

RFS's have now become legislated in many provinces, including BC in December 2011. The RFS provides owners with a well-supported plan for reducing the risk that any owner, present or future, is saddled with an excessive or unexpected financial burden. A healthy reserve fund becomes part of the common assets, and tells potential buyers that the building is well managed and financially prepared for the inevitable. More information on the BC legislation can be found at http://www.housing.gov.bc.ca/strata/regs/OIC-SPA.pdf.

The chronic underfunding of building contingency funds in BC has resulted in enormous financial burdens for many owners. Some owners, particularly those who have deferred maintenance of their buildings, may find the reserve fund process to be onerous and expensive. Too often a reserve fund study reveals that the subject building has been poorly maintained and in dire need of immediate action. This inevitably results in the reserve fund study being heavily front-end loaded, that is, many repairs or renewals that should have been years in the future are now due (or overdue). Owners get the unpleasant double-whammy of having large expenditure due soon, plus large increases in their monthly strata fees to help catch-up the contingency fund to realistic levels.

Stratas now have until December 13, 2013, to obtain a reserve fund study (known in the Act as a depreciation report) or hold a ¾ vote to exempt. This gives owners two years to get their financial house in order and establish some good benchmarks regarding the true condition of their real estate asset. The prerequisite for a successful, adequate reserve fund is comprehensive maintenance.

Paul Rutten is a Senior Design Technologist with Morrison Hershfield Limited in the Buildings and Facilities Division, Victoria, BC. Since 1996, Paul has worked in many aspects of the building science field, including energy management, life safety, ventilation, indoor air quality, and building envelope design and construction. Paul routinely provides depreciation reports, maintenance plans, and warranty reviews for multi-unit residential and commercial developments.

The first step in having a durable, marketable, well performing building is the maintenance plan. Some owners believe that cutting the grass, cleaning the hallways, touch up painting, and fixing things as they break are the limits to necessary maintenance. Unfortunately, nothing could be further from the truth.

The building exterior is exposed to harsh conditions 24/7 and slowly loses its ability to effectively shed water, often with disastrous results. Over time, paint peels, caulking cracks or falls out, and building movement creates cracks and gaps in the building envelope. The building envelope is the primary weather-shedding layer and protects the rest of the structure from water damage. All too often we see building owners who are faced with extreme repair costs that could have been easily avoided with regular, pro-active maintenance.

Two primary factors work against owners who truly wish to maintain building value and performance. First, building deterioration takes a long time, and the results are rarely dramatic over the short term. Building maintenance issues tend to creep up on owners, as changes are often so gradual that they are not readily apparent to the individual who sees the building each day.

Second, owners may not recognize when a serious issue is developing before their very eyes. Is that gap in the cladding OK, or is it letting in water that is damaging structural elements behind? Is that cracked caulking or membrane just an appearance issue, or is it going to lead to the failure of something far more expensive? What is causing that stain on the wall? Again, the building engineer is the owners' best resource for providing an accurate condition assessment and an actionable plan.

RFSs or depreciation reports are the talk of the town for building owners and property managers these days, but it all hinges on comprehensive, regular maintenance. Stratas who have addressed the short-term performance of the building through good maintenance are ready to launch into the next step, the RFS or depreciation report, and ensure long-term performance and value. Stratas that may not have that level of confidence in the current condition of their building should seriously consider having a complete condition assessment performed by a building engineer as soon as possible.

To a potential buyer, buildings that appear to be "out-of-control" from a maintenance and financial planning perspective are avoided like the plague. A building with a realistic condition assessment, a maintenance plan, and reserve fund study tells the real estate market that the building is well managed, regardless of age or current condition. These assessments, plans, and studies also remove subjective interpretation about the building condition and future expenses and allow all stakeholders to focus their time and money on preserving what is most likely their most important financial asset. A reserve fund study with maintenance plan is the first step to ending the battles over money, and bringing some harmony back into the strata "marriage".

Rationalizing Renewal-Ready-Reserve-Regulation

Martin Gevers, P. Eng.
LEVELTON CONSULTANTS LTD.

Some long-anticipated changes were just made to the laws that affect the way that Stratas plan and fund the upkeep of strata-titled multi-unit residential buildings for 30 years into the future. The changes that Order-in-Council # 623 approved and ordered on December 13, 2011 are available online http://www.housing.gov.bc.ca/strata/regs/OIC-SPA.pdf and they include a number of things that are a matter of Strata Corporation governance. The main focus of these changes include *contingency reserve fund contribution* and need for a *depreciation report* which is described the same way many of us have described a *reserve fund study*. Whatever we call the documentation, we will now have it to budget and plan to keep these homes reasonably functional and current throughout the next 30 years of their design life.

Strata-titled real estate houses nearly a million people in the Province of BC. Some of them have told me that this change in the minimum action that has to be taken to look after a condo is too small, and others have said it's a 'make-work project', and 'more regulation' and more money they can't spend or invest at their own discretion. To owners who just *want* to be realistic and have a clearer view of their home's future needs, these criticisms are irrelevant. We are permitted to prepare and plan even better for the future well-being than the new minimum legal standard imposes. The legislation does reduce the difficulty in agreeing on an approach to planning for future costs within Stratas, because now we all must conform to the minimum standard in Order # 623.

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.

The pains of clients when condos needed a huge fix was not lost on us who have been the bearers of bad news of huge repair bills to stop a home from falling apart due to poor design, construction and/or maintenance. Even setting aside a healthy reserve fund contribution, like 25% of the operating budget, would take too many years to pay for such a disaster. This underscores the catastrophic proportions of those experiences, as well as the lack of awareness of owner's real (actual) equity in their home. It's far better to address the problem *before* it becomes catastrophic, with strategic planning for maintenance and renewals ahead of time.

Today we're changing from reactive to proactive care of condominiums that really only started populating the province's real estate market in the 1980's. In that decade, many developers' dreamy properties became the buyer's nightmare when systemic decay was discovered that couldn't be addressed with maintenance or

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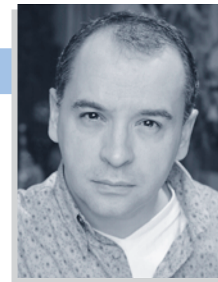
Who is a "qualified person" that will develop the Depreciation Report?



Tony Gioventu, Executive Director
CONDOMINIUM HOME OWNERS ASSOCIATION OF BC

Regulation 6.2(6) sets out a broad definition of who a qualified person is, that will develop your depreciation report.

*(6) For the purposes of section 94 (1) of the Act, "**qualified person**" means any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation's common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation's bylaws or an agreement with an owner and to prepare a depreciation report that complies with subsections (1) to (4).*

In addition to providing a legislated planning tool for renewals, maintenance and financial planning for the strata corporations, the depreciation report imposes on the strata corporation a significant level of liability for accuracy. The report will become a significant document in assessing property asset value and must also be disclosed and provided for in a Form B Information Certificate. The report may be used by insurance providers, mortgage providers and mortgage insurers, and most of all, buyers. This is an official report, and will be used to determine a buyer's qualification's for a mortgage, to establish risk for insurers, and for buyers to determine their future liabilities before they make a decision or make an offer for purchase. Throughout all of these transactions, the strata corporation is exposed to liability with respects to the accuracy and reliability of information in the report.

What is the duty of the person providing the report.
The person providing the report will have a duty to disclose in the report their qualifications, their relationship with the strata corporation and whether or not they carry errors and omissions insurance and a description of that insurance. Their qualifications will have a direct link to their duties under the regulations. They will be required to:

- Provide a physical component inventory of the strata corporation's common property. Common assets, and any limited common property or part of a strata lot that the strata corporation has a duty to maintain, repair and renew.
- Once the inventory is complete they have to provide an evaluation of that inventory by performing a physical inspection of the site.
- The evaluation will have to meet the following conditions:
    - Estimate the service life over 30 years of the components
    - The anticipated maintenance, repair and replacement costs that occur less than once per year over the next 30 years
    - Evaluation of the components (the current condition)
    - Financial evaluation of the factors and assumptions used in estimating the 30 year period
    - A description of how the contingency reserve fund is currently being funded, along with a current balance, minus any expenditures that have been approved but not yet taken from the fund, and
    - At least three cash flow models for the contingency reserve fund relating to the maintenance, repair and replacement over 30 years.

Antonio (Tony) Gioventu, is the Executive Director and Strata Property Advisor for the Condominium Home Owners' Association of B.C. (CHOA). He brings 25 years' experience in management, real estate development, construction, building operations, and strata property legislation to this position.

The skills that will be necessary for the person providing the report are:

- The ability to read and create technical documents, prints plans, drawings
- The education, experience and knowledge to be able to conduct on site inspections of building components and provide a reliable evaluation of their condition and life expectancy
- A knowledge of building systems that in the present or future may require changes or alterations due to building code changes, material defects, product compatibility defects, product availability, and new technologies
- An understanding of the structure of the governance of strata corporations and their legislated obligations for maintenance, repair and replacement of components, with an understanding of the application of strata corporations that have duly constituted sections, air parcel agreements, and multiple strata corporations that share joint facilities
- An understanding of strata corporation financial obligations for annual budgets, contingency reserve funds and special levies

Who do we hire to do the depreciation report?
Several of the following professions include the skills and qualifications necessary to produce a report.

- A person who is a registered professional engineer with or licensed as a non resident licensee of the Association of Professional Engineers and Geoscientists of BC
- A person who holds a certificate of practice within the meaning of the Architects Act of BC
- A person who is a member of the Real Estate Institute of Canada and holds the designation of a certified reserve planner
- A person who is a member of the Appraisal Institute of Canada
- A person who is a member of the Canadian Institute of Quantity Surveyors and holds the designation of professional quantity surveyor.

A designation unto itself is not a complete representation of a person's qualifications or skills. A review of the experience of the person, references, the ability to provide errors and omission insurance, past samples of reports and any other relevant documentation that attests to the knowledge and competency of the person are all a part of finding the right person to conduct your depreciation report.

Rationalizing... *continued from page 13*

targeted renewals. Many were remediated and new ones were built in the 1990's and later, but all of these buildings are complex with many aging sub-components, each with its individual remaining life expectancy.

The finite service life of building components bring up many questions for owners. How long will the roof, siding or other parts last? How much will their replacement cost? Will costs be spread out over time, or am I going to be hit with three major repairs in one year? Can I sleep at night knowing I am prepared for those costs with what our Strata has put into reserve? The questions can only be answered with an inventory of the sub-systems, their condition and remaining life-expectancy. For example, proper budgeting and planning for renewal of coatings, paints and stains can offset the more costly replacement of siding and wood trim. Replacement of some components may require damaging others that don't need to be replaced yet.

The Act describes the "qualified person" to prepare depreciation reports. It's an effort that requires a few specialists and someone who can coordinate that team professionally. The qualified lead person should carry errors-and-omissions insurance. They should be bound to a code of ethics that prevents them from undertaking these assignments in a position of a conflict of interest. The service has to include issuing an accurate and easy-to-understand report containing technical and financial information on which the Strata can rely to look after their building proactively. In comparison to remedial work, this should be a happier experience.

We are in a 25 unit townhouse complex. Can we do our own Depreciation Report?
Technically yes. The regulations do not prohibit a strata corporation from preparing their own depreciation report; however, consider the requirements of the Act & Regulations and the liabilities first. A person (including the consulting firm or group of certified professionals who make the proposal) is going to have to be identified as the provider of the report. If it is the strata corporation providing their own report, then it will be disclosed in the report that the information has been provided by the strata corporation, and/or specific individuals. You will have to disclose in the report who that is and the liability, qualifications and competency of that person. In addition to providing a planning tool for renewals, maintenance and financial planning for the strata corporation, the report also imposes a level of liability on the strata corporation for accuracy. Remember that the report may be used by insurance providers, mortgage providers and mortgage insurers, and most of all, buyers. This is an official report, and will likely be used to determine a buyer's qualification's for a mortgage, to establish risk for insurers, and for buyers to determine their future liabilities, before they make a decision or make an offer for purchase. Throughout all of these transactions, the strata corporation is exposed to liability.

How does the strata manage the liabilities of possible inaccurate information or errors in reporting information? Ultimately, the strata corporation and the person(s) in the strata corporation who do the depreciation report are left with the complete scope of liability with no recourse against a 3rd party. If there is an error, resulting in an action for damages against the corporation, does the strata corporation have any coverage under the directors and officers liability insurance, with respects to having provided this service? Every insurance policy has unique terms, conditions and exclusions, and before a strata corporation ventures into creating and providing the depreciation report, they are advised to contact their insurance broker to determine the extent of coverage under these conditions.
Who makes the decision to provide your own report? Before you perform your own service work, has this been a decision of the strata council or the owners at a general meeting, and are they aware that they are assuming these liabilities before they make this decision? The *Strata Property Act* holds council members to a standard to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances; however, these conditions are not likely that of a volunteer in light of the conditions set out by the regulations. *SPA 31(b)* The Regulations, 6.2 (6) set out the interpretation of a "qualified person" to mean any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation's common property, common asset and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation's bylaws or an agreement with an owner and to prepare a depreciation report that complies with subsections (1) to (4).

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