

CONDO NEWS

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CCI Vancouver Chapter

Includes:

***Civil Resolution Tribunal Updates
Legal Corner***

***Business Partner and Professional Members Directory
and CCI Vancouver Services at a Glance***

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WINTER 2017

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- ▶ The Benefits of Proactive Maintenance
- ▶ Unlicensed Vehicles on Common Property
- ▶ Why Do Misconceptions About Reserve Fund Planning Persist?
- ▶ What You Need to Know About Being a Landlord in BC
- ▶ Financial Literacy – The Annual Operating Budget



PRESIDENT'S MESSAGE

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What a winter it has been!

We are so often the envy of much of the country because of our usually mild winters. Well, we have had more snow in 6 weeks than we have seen in the past 6 years. However “snowmageddon”, combined with a shortage of salt never before experienced in the City of Vancouver, did not deter our board from staying on task.

Our board, which grew exponentially at our last annual general meeting, has been busy putting the final touches on all of the remaining seminar and lunch and learn events, taking steps to finalize our Condo 101 educational course, working on rolling out the CondoSTRENGTH program, re-vamping and refreshing the look and feel of our newsletter and hosting an amazingly successful seminar about human rights and strata corporations. Our board had received feedback from seminar attendees in 2016 asking that we consider putting on this seminar sometime in 2017. Our education committee immediately went to work and very quickly put together a panel of three legal experts to talk about the importance of human rights when dealing with owners, occupants and tenants who live in strata corporations. Ordinarily we anticipate 45 to 60 individuals attending our seminars and so a ‘smaller’ venue was booked to accommodate our expected registrants. Two weeks before the seminar we had over 100 people registered which meant scrambling for a new venue. On Saturday February 18th we had over 180 individuals in attendance. We were overwhelmed by the sheer number and by the quality of our presenters: Elaine McCormack, Stephen Hamilton and Sat Harwood. We could not have pulled this off without the hard work of the education committee and our volunteer board members. A big thank you is also owed to all of our sponsors without whom we could not have put together such a polished event and to our members, in particular FirstService Residential and Assertive Northwest Strata Management who were responsible for upward of 75% of the people who attended the seminar.

2017 looks like it will be a year to remember. It certainly started off that way and the CCI Vancouver board hopes to see 2017 as a benchmark year for years to come.

Jamie Bleay – President CCI Vancouver ■



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WINTER 2017

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CIVIL RESOLUTION TRIBUNAL UPDATES

By Lisa Frey,
Gowling WLG (Canada) LLP

Robert C. McLaren v. The Owners, Strata Plan LMS4440, 2017 CRTBC 9

Mr. McLaren owns strata lot 3 in a three-unit strata complex; strata lot 3 is the coach house built next to a duplex. In 2016, the owner of strata lot 2 relocated a lattice fence to enclose the entire portion of the yard designated on the strata plan for the exclusive use of strata lot 2. This impeded Mr. McLaren's access to that portion of the yard.

Mr. McLaren argued that this change should not be permitted without his approval, since: (i) a 2003 resolution had granted him use of a certain area which was now enclosed by the fence; (ii) the owner of strata lot 2 should not be able to change the use of common property without $\frac{3}{4}$ approval (s. 71 of the Strata Property Act); and (iii) the strata corporation had previously passed an "Owners Agreement" which stated that "owners may not act unilaterally. Strata written approval is required."

In making its determination, the tribunal found that: (i) the resolution designating him the use of that area was never registered and did not override the designation on the strata plan; (ii) s. 71 of the Act applies to the actions of the strata corporation - not to the actions of an owner upon limited common property; and (iii) the resolution regarding unanimous decision making did not override the bylaws, since it expressed no intention to do so and the procedure to amend the bylaws was never followed.

The tribunal carefully examined the bylaws of the strata corporation. They specified that where limited common property is "used by strata lots which are located in the same building" is being altered, an owner must obtain written approval from only those strata lots which are located within the same building (but not the approval of owners of strata lots located in another building but form part of the same strata plan). The tribunal felt that the intention of this bylaw was to allow the two owners in the duplex to make decisions regarding their limited common property without the interference of the coach house owner, and therefore upheld the right of the strata lot 2 owner to move the fence. ■

Chapel v. The Owners, Strata Plan VIS 1517, 2017 CRTBC 5

This is a dispute between the owner of Unit 7, a converted farmhouse, and his strata council about who is responsible, on what timeline, and the extent of repairs needed to Unit 7.

The tribunal found that Mr. Chapel's complaints about the strata corporation's repair and maintenance obligations were founded. Under the bylaws, the strata corporation was responsible for all these obligations and the delay of several years was found in fact to be unreasonable. To remedy the situation, the tribunal ordered that special levies be imposed to pay for the repairs of Unit 7 (including \$15,000 for painting, \$10,000 for soffit repair, \$5,000 for a porch, and \$30,000 for a perimeter drain system).

Some of the work was identified by the depreciation report and other was confirmed necessary by third party contractors. These documents were helpful evidence in establishing that the strata corporation's delay in attending to them was unreasonable. ■

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LEGAL CORNER

STRATA CASE LAW IN BC

Case Law 1

The Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corporation, 2017 BCSC 71

This is a complex legal matter, and here follows a lot of “legalese” – but if you live in a Strata where you have to pay to park in your own building, this case may mean you can stop paying that bill!

This action concerns the enforcement of certain positive covenants contained in an easement registered against land in regards to the parking facility in a large multi-use complex in Burnaby, British Columbia.

The easement purports to require the plaintiff to pay an annual base rate, plus a percentage of all “operating expenses” for the use of the parking facility invoiced by or on behalf of the defendant.

The Crystal is a large development consisting of a retail complex, an office tower, a residential tower, a hotel, some community facilities and a parking lot. It is made up of seven air space parcels.

On March 17, 1999, the ASP Agreement was registered as an easement at the Land Title Office. This registration pre-dated the incorporation of the plaintiff.

The agreement set out payments of basic costs, portions of all taxes, and all operating costs incurred by the developer to maintain the parking as a business.

The agreement contemplated an assumption agreement to be signed by the newly created Strata Corporation that it would take on the responsibilities set out in the agreement to pay the various parking fees and costs. This did not happen.

By Phil Dougan,
Access Law Group

The evidence appeared to show that the Strata owners would never be able to pay off the base amount (which was based on a fixed cost of the development of the parking area) because the interest accruing on the fixed amount increased the repayable amount each year.

The following issues arise in this action:

[40]

- (i) Are any of the provisions under clause 7.5 of the ASP Agreement enforceable easements?
- (ii) Is the ASP Agreement enforceable as a pre-incorporation contract?
- (iii) Are the easements under clause 7.5 of the ASP Agreement enforceable against the plaintiff because of its conduct?
- (iv) Has there been a breach of good faith by the plaintiff?

... continued on page 6

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Case Law 1

... continued from page 5

None of the subsections requiring payment or maintenance are easements and no other subsection of clause 7.5 is registered as a charge on the land.

[44]

As was also explained in *Nordin*, it is an essential characteristic of an easement that it does not place on the owner of the servient tenement any obligation to act. Obligations to act or to pay can only be imposed by a positive covenant, which will not run with the land. Notably, the Court of Appeal states the following at para. 34 in *Nordin*:

[34]

Neither class of easement, however, involves the imposition of a positive obligation upon the servient tenement holder. As Sara states in *Boundaries and Easements*, supra, at pp. 160-161: It is an essential characteristic of an easement that it does not place on the owner of the servient tenement any obligation to act. Such an obligation can only be imposed by a positive covenant, the burden of which will not pass with the land. As a result the owner of the servient tenement has no obligation to maintain a right of way or, as the law is generally understood, to keep in repair a building in respect of which there is an easement of support.

Apart from the anomalous position of fencing easement, if a person wishes to place a positive burden on the owner or occupier of neighbouring land, he must do so by covenant which (as it is not a restrictive covenant) will not run with the land. Since the abolition of manorial incidents, therefore, it is impossible

to burden land (as opposed to the landowner) with any positive obligations owed towards the neighbouring land. (emphasis added)

In *Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19 at para. 25, the [45] Supreme Court of Canada confirmed that positive covenants such as an obligation to pay cannot run with the land.

It noted that rule is founded on the principle that at common law a person cannot be made liable upon a contract unless he or she was party to it.

The payment obligations created by clause 7.5 are positive covenants [46] created before the plaintiff existed. They purport to bind the Developer, the City of Burnaby and the Bank of Nova Scotia who were the signatories of the ASP Agreement. There is no contract between the Developer and the plaintiff wherein the plaintiff formally adopted any obligations contained in the ASP Agreement. According to the common law rule, this covenant does not run with the land and the plaintiff is not bound by it.

In *Amberwood Investments et al. v. Durham Condominium Corporation* [48] No. 123 (2002), 58 OR (3d) 481(C.A.O.) [Amberwood], the Ontario Court of Appeal considered the enforceability of positive covenants. The court reviewed in detail, the English common law rule against positive covenants running with the land and found that the common law rule was binding authority in Ontario and that Durham Condominium Corporation 123 was not obligated to pay for the maintenance costs as they were unenforceable positive covenants.

I conclude that the positive obligations set out in clauses 7.5(d), (e), (f), (g) and (i) of the ASP Agreement do not run with the land and are not enforceable against the plaintiff who was not a party to the ASP Agreement.

... in order for pre-incorporation contract to be enforceable, the [63] parties' conduct must establish an intention to be bound through a new contract containing identical terms.

The plaintiff did not enter into the ASP Agreement. Registering it as an easement did not make the ASP Agreement into a new contract on the same terms to which the parties showed, through their conduct, an intention to be bound. There is no privity of contract and so the plaintiff cannot be bound by the obligations contained in the ASP Agreement.

I find that the ASP Agreement is not a pre-incorporation contract.

The plaintiff did not enter into the ASP Agreement. If it had been presented with such an agreement to sign after it incorporated, I find it unlikely it would have agreed to it if they understood all the terms. The plaintiff cannot be tricked into adopting the ASP Agreement.

I find that the plaintiff has not, by its conduct or through its bylaws, adopted [91] the positive covenants of the ASP Agreement.

So – in other words, if the Strata did not intentionally sign up for a parking contract; it does not need to pay to park on its own property. ■

LEGAL CORNER

STRATA CASE LAW IN BC

Case Law 2

Chow v. The Owners, Strata Plan NW 3243, 2017 BCCA 28

For more than 20 years, everyone in this Strata in Richmond assumed 6 particular parking spaces were common property for 'visitor parking'. The Developer had said as much in the Disclosure Statement; the City had required as much in its Zoning application process. The parking spaces had 'visitor parking' signs on them, the bylaws were enforced as though these spaces were common property; realtors bought and sold many units assuming these were common property spaces.

Except, no one had looked at the Strata Plan! On the plan itself, the spaces were designated as limited common property for the use of the units beside the spaces. These owners eventually figured this out and claimed the spaces for themselves.

The Supreme Court found in favour of the owners, saying that unless the strata plan was changed by way of a unanimous vote (which would probably be impossible unless the owners gave up their claim) the Strata and the Court had no jurisdiction to take LCP rights away from owners.

At appeal, the Strata argued that first and foremost, the designation of the LCP space was a mistake, and only the plan said the spaces were LCP; every other document and every other person involved with the property assumed the spaces to be common property for visitor parking.

Even the surveyor who had signed off on the plan swore an affidavit saying he had made a mistake! The Court of Appeal said the key question was whether a mistake had been made or not. With all the evidence except the plan suggesting the intention of the Developer and the presumption of all owners, the Court of Appeal appears to have said, clearly there was a mistake, and presumably therefore the Court can 'fix' the mistake. The Court of Appeal though has remanded the claim back to the Supreme Court for reconsideration.

The case may settle, but in light of the Court of Appeal ruling, it is perhaps highly likely that the plan will be considered to have been prepared in error, and the LCP be ordered to be reassigned as common property.

This would confirm that like other land title records, if there is an error in the record, the 'slip rule' provisions of a number of enactments allow a court or the Land Title Office to fix a mistake. ■

By Phil Dougan,
Access Law Group



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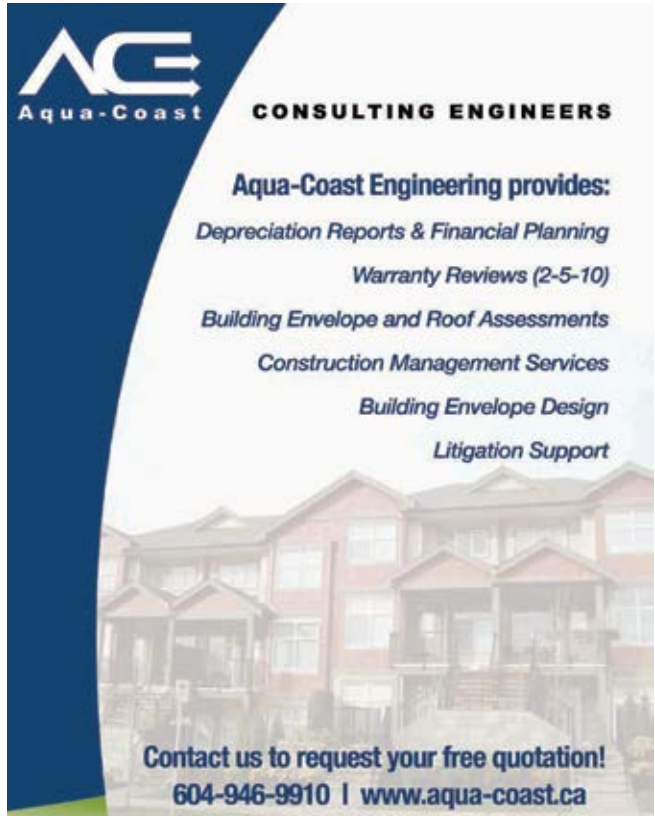
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British Columbia

The Owners, Strata Plan NW422 v. Khlybov (British Columbia Supreme Court) **Winding up of strata corporation**

The strata corporation and several owners applied for winding up of the corporation and sale of the property. Out of 21 owners, 20 voted in favour. One owner did not show up. The Court noted that “nobody was opposed” and granted the requested order. Pursuant to section 52 (3) of the Strata Property Act, the Court also treated the one owner as having no vote, and therefore declared the vote “unanimous”.

Ontario

Hadani v. Toronto Standard Condominium Corp. No. 2095 (Ontario Small Claims Court) **Owner responsible for damage due to water escape from owner’s washing machine**

Water escaped from the owner’s washing machine, causing damage to the unit below. The corporation repaired the damage and recovered the repair costs by lien against the owner’s unit. The owner sued for return of the lien amount - \$16,599.68. The claim was dismissed. The Court held that the lien was registered “reasonably and in good faith”; and dismissed the owner’s claim.

[Editorial Note: I have two concerns about this decision: 1) There seems to have been no analysis of whether or not the owner negligently caused the damage. The fact that the owner’s washing machine was determined to be the source of the water does not necessarily mean that the owner was negligent; 2) There was also no discussion, in the decision, of insurance. If the damage (to the unit below) was damage to the standard unit, both owners would be entitled to the protection/coverage afforded by the condominium corporation’s insurance; and responsibility for any deductible portion of the loss would then depend upon section 105 of the Condominium Act and any “insurance deductibles by-law” of the corporation.]

Court Document: Hadani v. Toronto Standard Condominium Corp. No. 2095 (Ontario Small Claims Court)

1589680 Ontario Inc. v. Toronto Standard Condominium Corporation No. 1441 (Ontario Superior Court) **Owner permitted to continue claims for intentional interference, nuisance and conspiracy against condominium corporation and its directors**

The plaintiff owned three retail units in the defendant condominium. The units were leased to tenants. The plaintiff brought claims against the condominium corporation and its directors as a result of the corporation’s alleged refusal to allow the plaintiff’s tenants to access and use certain areas of the common elements. The plaintiff alleged that the actions of the condominium corporation and its directors constituted “wrongful interference with the intention of causing damage to the plaintiff”, “nuisance”, and “conspiracy to cause injury to the plaintiff”.

The defendants brought a motion to strike out the claim on the ground that it disclosed no reasonable cause of action. The Court dismissed the motion and the claims were accordingly permitted to continue. In relation to the allegation of conspiracy, the Court said:

The pleadings state that conspirators agreed to and it was the objective to cause financial injury to the plaintiff by disrupting the businesses of the plaintiff’s tenants. Why they would wish to do so is unknown but in my opinion the alleged agreement to harm the plaintiff is sufficient to plead conspiracy.

Court Document: 1589680 Ontario Inc. v. Toronto Standard Condominium Corporation No. 1441 (Ontario Superior Court) ■

FROM THE STRATA EXPERTS

A Condition Check: The Benefits of Proactive Maintenance

Recently, I was called to meet with a business colleague who was constantly worrying about the 'next thing to go wrong' in her home. Especially, she was stressing about the coming winter season – given her past 'history' with one thing after another failing, beginning to leak and / or some 'unknown' component of the home going wrong.

She mentioned her concerns about the roof, their deck, the water heater, a 'stink' in the attached garage and a persistent interior leak.

Once we arrived, we went straight to the roof and uncovered some flashings which may become a problem – unless 'tuned-up' – as well as accumulated roof moss (which can become a cause of leaks, unless removed), blocked gutters & roof drains and also a plumbing stack which had become leak-prone.



We referred her to a competent roofer for proactive corrective action.

Next, the deck was reviewed. It showed some 'soft' areas beneath the vinyl membrane – obvious wood-rot underway. Poor detailing was noted from the last installation and repairs were immediately recommended for safety. Stepping back for a moment, then, showed only the exposed sections were a problem, while the covered adjacent areas seemed as good as new. This led to a discussion and a money-saving thought to only replacing what was actually failing and tying the new vinyl membrane to the existing portion remaining with a chemical 'weld', which would bond the two surfaces together and work just fine – money well-saved !

Upon request, a competent decking contractor was referred for this.

The water heater-check was done next and it was immediately observed this had begun to leak already; a quick call brought about a replacement just in time to avoid a total loss of the hot water and there was no interior damage. A recommendation for a drain pan to be placed beneath the new water heater was made to improve that installation – as well as for seismic (earthquake) restraint straps to be added. Experience was brought into this review for the benefit of the client, with obvious good results.

The 'stink' in the attached garage was sourced to be a likely improper installation of a wash-up sink (missing P-trap on the drain connection & sewer gas entering as a result).

FINALLY resolved!

And finally, a localized wet spot in the basement was investigated and traced to some pin-hole leaks and resulting seepage at a section of old copper piping. The same plumber was



Engineering Consultants

By Glenn Duxbury,
Duxbury & Associates
Building Inspection and
Consulting Ltd.



quite able to take care of this, as well as the garage 'stink', too. Bottom line: a good, regular condition-check can highlight issues about to become a BIG problem and also put to rest uncertainty and stressful worries! A check-up on your home or building on a regular basis – just like an annual medical check-up for you and your family – is always a wise choice.

This client was so relieved and happy with her wise decision to hire us for this overview that she readily volunteered a glowing written testimonial. She is now worry-free and happy... ■

Glenn Duxbury started his Inspection and Property Consulting business 15 years ago and brings 12 years of experience working with stratas. His team puts attention-to-detail, customer care and service ahead of profit. Focusing only on their clients best interests, they offer detailed, factual information allowing peace of mind to make well informed real estate decisions.

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Condo News, Winter Issue 2017

FROM THE STRATA EXPERTS

Unlicensed Vehicles On Common Property Of A Strata Corporation: Why Should Third Party Legal Liability Coverage Be Purchased?

From the owner of the vehicle's perspective, once a motorized vehicle is unlicensed, you have no insurance coverage of any kind unless you have an Unlicensed Vehicle Policy. There is no coverage in your homeowners policy or a business policy that you may have. Without this policy you leave yourself exposed by owning an item that could cause an injury to someone or damage the property of others. If someone accusing you of negligent acts related to an unlicensed vehicle that caused an injury or damage sues you, you will find yourself with no coverage for legal defense costs. If you are found responsible for injuries or damage, you will have no coverage to pay for any awards made against you.

From the Strata Corporation's perspective, they are responsible for managing and maintaining the common property and common assets of the Strata Corporation for the benefit of the Owners. If an unlicensed vehicle is stored on common property, the Strata and its Council have a legal obligation to ensure that all appropriate precautions are taken to protect the interests of all owners. In our opinion, one of these precautions should be a requirement that the Owner of the vehicle carries liability insurance.

If an unlicensed vehicle is being stored on common property and it causes an injury or damage, there is a very real possibility that both the Owner of the vehicle and the Owner of the property that the vehicle is being stored on, namely the Strata, would be sued jointly. With no liability insurance on an unlicensed vehicle, the likelihood of recovering costs from the Owner of the vehicle is not very good. It is then very possible that the Strata, and their insurance policy, will have to respond. If a claim is made against the Strata's insurance this will affect the loss record, which could result in increased premiums and/or deductibles. In short, there could be additional costs for all owners that could possibly have been avoided if unlicensed vehicle liability coverage had been in place.

Insurance

By Grace Wang,
HUB International Coastal
Insurance Brokers



An Unlicensed Vehicle Policy is available through any ICBC agent. If the owner of the vehicle is only interested in obtaining liability coverage, the premium is quite reasonable. You can purchase \$1,000,000.00 of coverage for a three-month period for \$35.00. Higher limits of coverage and shorter, or longer, policy terms are available. ■

Grace Wang is an Account Executive with HUB International Insurance Brokers' Strata Division, located in Burnaby, BC. Grace joined HUB International in 2014, and has been in the insurance industry since 2012.

As an Account Executive, Grace is responsible for developing and placing insurance coverage for both new and existing strata clients.

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FROM THE STRATA EXPERTS

Why Do Misconceptions About Reserve Fund Planning Persist?

A reserve fund's position is not unlike a person's net worth – although measuring it involves specific knowledge and a few more careful calculations.

While reserve fund planning is part of a strata council's budgeting process, Depreciation Reports (DRs) factor into all stakeholders' decision-making process.

Predictable reserve fund expenditures are infrequent, yet common asset deterioration occurs every day. Reserve fund contributions are not a gift to future owners.

As owners enjoy a development – and gain real-estate value – they pay their fair share of a development's common asset deterioration on a fiscal-year basis.

Regular contributions are to be between the legislated floor amount, and the Real Estate Institute of Canada (REIC) Certified Reserve-fund Planner (CRP) benchmark approach's optimised ceiling amount.

Benchmarking is a process of recurring analysis that provides value by using an efficient method for comparing performance. It builds on past results measured in a standard manner to help guide risk-management decisions.

Using a standard measure of current requirements, a strata council's choice for resulting contributions fairly accounts for an owner's share of deterioration, without reliance on $\frac{3}{4}$ vote special levies.

Benchmarking improves funding adjustments by analysing expenditures and contributions over the long-term. It allows strata councils to determine how much liquidity they need on a fiscal-year basis, while investing the rest of reserve fund monies.

The REIC has been promoting standardised benchmarked reserve fund planning across Canada since the 1990s. Using the CRP approach ensures that liabilities are fairly distributed to all owners, regardless of their occupancy profile. Having two developments properly use it means that two lots in two developments can be compared on the same footing by all stakeholders.

Reserve fund current position and future standings measurement deviations are undesirable. These persist in light of professional habits that focus on industry averages rather than on development specific performance. These practices do not benefit developments nor stakeholders.

Some deep-rooted erroneous beliefs derail the reserve fund process, and lead to deviations in its products. Thinking that only engineers are equipped to conduct reserve fund reports, or that only they can undertake larger development reports has serious implications for all stakeholders.

Reserve Fund Planning

By Jean-François Proulx,
M.Sc., CRP, RI
Constructive Condo
Reporting Corp.



If this were true, reserve fund reports would only exist to establish the value of assets at a point-in-time, using generic prescriptive current costs – regardless of construction inflation, investment income, and the actual performance of components.

Current costs must be realistic to be reliable for calculating current requirements. Yet many engineer reserve fund reports are based on Class D estimates, while even Class A estimates – within 5 to 10 percent of Quantity Surveyors new construction costs – derail reserve fund planning by taking the focus away from a development's actual major repair and replacement renewal costs.

Current cost estimates are best used to compare options when deciding where to invest capital. They are about return on investment more than the on-going performance of common assets once construction is completed.

Current costs have more to do with taxation; insurance premiums; and new construction, than with fiscal-year based common asset risk-management over the life of aging developments. Stopping at current costs cuts reserve fund planning short by miscalculating the amount of monies owed to a reserve fund to cover owners' share of common asset depreciation.

... continued on page 12

Misconceptions ... continued from page 11

The fixation on current costs explains why many people say: “I don’t know why they call them depreciation reports?”, or why some reports extend a projection to 45 years, demonstrating a lack of knowledge about benchmarking – a capital asset plan is not a reserve fund report.

Net worth and current requirement calculations both offer a financial snapshot at a point-in-time, and provide a budgeting direction based on multiple fiscal-year analysis. Fiscal-year based reserve fund requirements are the best tool for determining the fair imposition of draws on owners, and the rightful allocation of these monies.

The CRP functional approach is about what a development owns; its current reserve fund’s financial position, and its future fiscal-year standings. It is about scheduling less-than-yearly major repairs and replacements – based on what these expenditures are likely going to cost in the future – to determine how much to have owners put aside one fiscal-year at a time.

How are the needs of each development, phase, or section properly determined? After updating a component inventory’s tally of one-iteration renewal costs for each component – before expenditures are scheduled – benchmarked current requirements are calculated based on the actual performance of components in the field.

Planned expenditures are then projected over a legislated time-horizon, so that decision-makers can better manage their current fiscal-year risk, based on calculated future fiscal-year adjusted cumulative current requirements – or standings.

Projecting scheduled expenditures is sophisticated work. Yet using current requirements analysis provides a budgeting improvement over passive reactions; over relying on shifting past operating budgets, and over changing market values.

Some engineers want us to get further away from the CRP approach, and propose the adoption of the American Society for Testing and Materials (ASTM)’s approach to costing, lifecycle analysis, and reporting.

None of these deviations are necessary. The guidelines of the Association of Professional Engineers and Geoscientists of BC (APEGBC) state that the REIC’s Technical Bulletins are their first guideline documents.

While the Architectural Institute of British Columbia (AIBC) endorses engineer guidelines, the Appraisal Institute of Canada (AIC)’s reserve fund guideline does not explicitly state that the CRP approach is the standard, nor does it mention current requirements analysis.

Lack of awareness and existing habits may explain why reserve fund reports are different, why many rely on black-box software solutions, and why others migrate to the non-CRP compliant United States community association reserve fund planning methods.

The language in these guidelines focuses on the product – reserve fund reports – rather than on the reserve fund planning process, which is not taught to engineers or appraisers during their years of study.

Once the benchmark inventory lists a component, it is part of a reserve fund’s benchmarked current requirements calculation. These are used to determine the owners’ fiscal-year contributions to the reserve fund.

Consider a three year old development needing windows replaced in 35 years. By stopping the analysis at current costs, requirements would be miscalculated as

A 16 Years Old Development With Sections				
	CORPORATION	Residential	Joint	Commercial
25% of last Fiscal-year’s Operating Budget Floor	\$37,291	\$12,429	\$21,075	\$3,787
Share of Total	100%	33%	57%	10%
Current Costs for Components in the Inventory	\$2,679,030	\$1,415,584	\$1,054,199	\$209,247
Share of Total	100%	53%	39%	8%
Projected Total Expenditures Over 30 Fiscal-years	\$4,244,637	\$1,846,748	\$2,003,450	\$394,439
Share of Total	100%	44%	47%	9%
Current Fiscal-year Reserve Fund Position	11%	14%	7%	5%
Current Requirements Calculated Ceiling	\$1,256,371	\$475,947	\$680,240	\$100,184
Share of Total	100%	38%	54%	8%
Ceiling Optimised Annual Regular Contributions	\$168,499	\$87,970	\$68,773	\$11,756
Share of Total	100%	52%	41%	7%
Total Contributions in Next Fiscal-year	\$112,920	\$5,870	\$94,250	\$12,800
Share of Total	100%	5%	83%	11%
Next Fiscal-year Standings after Reserve Fund Planning	15%	15%	15%	15%

Engineering has a crucial place in reserve fund planning and DRs. CRP reports recommend the acquisition of specialist reports – and incorporate all relevant findings.

Yet there is little in reserve fund planning and reports that is to be engineered. DRs’ physical analysis leg must incorporate trades and specialist engineers’ findings, but developments need reserve fund planning’s other leg – the financial analysis – to be just as long.

this component would be excluded, since the scheduled expenditure is beyond legislated projections.

A DR's projection is less important than the benchmark or the economic lifespan of a development. The CRP approach accounts for the windows' renewal in the benchmark analysis – no surprise ¾ vote special levy suddenly appears in the future.

Misconceptions also partly rest with real estate appraisers. The AIC's guideline respects some of the CRP standards. Both require the full disclosure of unit quantities and costs – which are nevertheless missing from many DRs.

When the market value of a development is needed for insurance

purposes – or for municipal tax purposes – appraisers' costing is based on comparable nearby properties. Their process and products are generic; needed quickly; third-party cost based, and have market-value at its core. This outlook has little to do with reserve fund planning.

While these professionals' work is geared to economic choices, these choices are typically developers' and buyers' economic choices, not owners. Their focus is on the present, not on adjusted cumulative needs from fiscal-year to fiscal-year, once the developer and consultants are gone.

This explains why – along with unrealistic costing – construction inflation is rarely considered effectively in non-CRP compliant DRs. Misrepresenting inflation – or the historical interest income rate of

return on the monies in the reserve fund – often has these reports peg both at 2 percent, thus eliminating a large part of the analysis.

Just as with net worth assets and liabilities calculations, reserve fund planning inflation, interest, and escalation rate calculations must be realistic to be useful.

Ignoring these deviations matters less when the focus is on distinguishing short-term choices. But they derail reserve fund planning's required focus on depreciating assets.

The CRP approach recalculates all variables with every assignment. It updates the analysis by basing the

... continued on page 14



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- Mitali (Council President)

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Misconceptions ... continued from page 13

scheduling of expenditures on the performance of the common assets. It relies on benchmark analysis to produce a reserve fund's current requirement ceiling, and its associated optimised ceiling contribution amounts.

Limiting the analysis to average prescriptive current costs means that depreciation is excluded, a site-visit irrelevant, and risk-management unlikely. Without a realistic reserve fund benchmark and fiscal-year adjusted current requirements to account for a development's common assets, stakeholders are misled as to the true-cost-of-ownership.

To ensure that a development's finances are on the right path; to draw reserve fund

contributions according to a nationally recognised approach, and to make sure that decision-makers are meeting their fiduciary responsibilities, reserve fund planning reports must include CRP current requirements analysis. We all depend on it. ■

J.-F. Proulx is the President of Constructive Condo Reporting Corp. He has worked as a trade, contractor and consultant to construction, engineering and appraisal firms – fostering depreciation report divisions along the way, as well as providing warranty reviews, specification writing, and other services.

He believes that best-practice reserve fund planning can elevate all stakeholders'

standards, improve strata living, and lead to better personal and condo/strata financial decision-making.

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FROM THE STRATA EXPERTS

LandlordBC Landlord Registry™ **What you need to know about being a Landlord in British Columbia**

To be successful in any industry, it is important to understand the rules and regulations that govern your business. Regardless of how many units you own, as a landlord you are operating a rental housing business. LandlordBC is the industry association that represents owners and managers of rental housing in British Columbia and our goal as an association is to professionalize the rental housing industry. We do this through the education, support, and resources that we provide to our membership and the broader rental housing industry.

Many of the disputes and common issues faced by landlords can be avoided from the outset by following some basic best practises. These include utilizing the proper tenancy documents (including an application for tenancy, a robust tenancy agreement, and condition inspection report), conducting proper reference and credit checks on your prospective tenants, and taking the time to learn and understand not only your roles and responsibilities as a landlord, but also the roles and responsibilities of your tenants.

In January 2017, LandlordBC launched the Landlord Registry™. This registry and the accompanying I Rent It Right™ e learning tool have been designed to professionalize the rental industry throughout BC. This is a registry for good landlords and we are encouraging landlords to treat their rental units as a business. Whether you have one investment property or a multi-unit residential building the expectations and rules laid out by the Residential Tenancy Act are the same and by enrolling in the I Rent It Right™ program, landlords, building managers, and rental property managers are provided with rudimentary information that is vital to a successful tenant/landlord relationship.

The course accustoms landlords with the Residential Tenancy Act and covers the basics that every landlord needs to know. By addressing questions related to tenant screening, privacy, understanding the paper work associated with a tenancy, and how to correctly end a tenancy, landlords can mitigate the risk associated with renting their property. 99% of landlords, like 99% of tenants are good people who want to operate a successful business – LandlordBC's Landlord Registry™ was designed to help housing providers achieve that goal.

The registry is very easy to use. Landlords throughout British Columbia complete a two hour online course (this can be completed all at once, or in a few different sittings). Following the course work, landlords complete a test and once they achieve an 80% grade they are registered and receive an "I Rent It Right™" certificate. Registered landlords will be part of a database renters can search when they are looking for a rental housing provider. For landlords, the certification is a marketing tool – recognition of competency. The registry also offers a tool they can use as an ongoing resource to help answer questions, navigate potential issues, and settle disputes.

Associations & Organizations

By Kimberly Lachuk,
Director of Member
Engagement,
Landlord BC



The cost of the registry is \$39.00 plus GST. This cost includes the e learning course, competency certificate, and three year listing on the registry as an accredited landlord.

The rental housing industry houses over 30% of British Columbians. Rental shortages in cities like Vancouver, Victoria, Kelowna, and Prince George create less than desirable circumstances for tenants and landlords. LandlordBC is here to help landlords protect themselves through education and assist in creating mutually respectful relationships with their tenants. The Landlord Registry™ provides landlords with the education that they need to succeed, while providing tenants confidence that the person they are renting from has credibility and knowledge. ■

Kimberly Lachuk is Director of Member Engagement for LandlordBC. LandlordBC strives to balance the landlord's rights to operate in a free market with the tenants' rights to access safe, stable housing, as one unified, respected voice for the rental housing industry.

LandlordBC

BC's top resource for owners and managers of rental housing

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FROM THE STRATA EXPERTS

Financial Literacy – The Annual Operating Budget

Financial & Accounting

By Leo Van Wensem,
CPA, CGA,
RHN Chartered
Professional Accountants



The annual operating budget for the upcoming year is a document presented at the annual general meeting each year for approval. If you are a Council member you have worked hard to consider all the anticipated spending for the next year and you are confident that the expenditures proposed are needed to operate the Strata Corporation in the next year. If you are an owner, you are focused on how much more your strata fees are going to be in the next year. A decision has to be made by all the owners, so how do you decide? What should you be considering? This article will discuss how budgets are prepared and how to read the budget with understanding so that a good decision can be made.

Requirements

The Strata Corporation must prepare a budget for the upcoming fiscal year for approval by a resolution to be passed by a majority vote at each annual general meeting (Strata Property Act 103 (1)). The regulations spell out what information must be in the budget:

- (a) estimated expenditures out of the operating fund, itemized by category of expenditure;
- (b) the total of all contributions to the operating fund;
- (c) the total of all contributions to the contingency reserve fund;
- (d) each strata lot's monthly contribution to the operating fund;
- (e) each the opening balance in the operating fund and the contingency reserve fund;
- (f) the estimated income from all sources other than strata fees, itemized by source;
- (g) each strata lot's monthly contribution to the contingency reserve fund;
- (h) the estimated balance in the operating fund at the end of the fiscal year;
- (i) the estimated balance in the contingency reserve fund at the end of the fiscal year.

These are the basic requirements pursuant to the Strata Property Act (SPA) and Regulations but this is not enough guidance to know what should be in the budget and how much money will likely be spent for each line item in the budget.

Preparing the Budget

Before beginning, it is important for Council to have good clear objectives to guide the budget-setting process. This is necessary to avoid long-term problems which often result from having the wrong objectives. For instance, if Council's objectives are having strata fees as low as possible and with no increases, that may well be attainable for several years in a row but will ultimately result in a large, unexpected increase or to a dreaded special levy to fund an operating deficit or undertake special projects necessary because required maintenance was either not done or stalled off in order to keep strata fees at the same level.

The common property being maintained are long-term assets and even though the budget being prepared is for one year, Council should also consider the long-term maintenance of the common property.

From my perspective, simply 'the protection and maintenance of the value of the property' is a great overall objective that should result in:

- (a) a modest, small-percentage fee increase each year;
- (b) some tolerance in the budget for unforeseen issues;
- (c) maintenance projects undertaken when needed;
- (d) annual contributions to the Contingency Reserve Fund in accordance with the depreciation report; and
- (e) special levies only for funding specific projects or enhancing reserve funds needed to address the depreciation report.

Utilities, maintenance and repairs

The next step is to assign values to the individual line items in the budget. For line items such as electricity, gas, garbage, and other utilities, the same as the previous year plus inflation will normally be appropriate. This is called incremental budgeting, where the previous few year's actual numbers are used plus any expected inflationary increase.

For the various repairs and maintenance line items, incremental budgeting is only partially appropriate. Regular routine maintenance that occurs every year can be incrementally budgeted, but any special maintenance projects that might be done less frequently or on an as-needed basis should be budgeted based on estimates of the work to be done. This is called zero-based budgeting where the budget is built up from zero each year based on estimates for the projects Council wants to undertake. To keep strata fees consistent with only inflationary increases each year, less frequent or as-needed projects should be spread over several years. For instance,

if driveways need to be attended to every 2 years, and landscaping upgrades are also required every 2 years, Council could schedule the driveways in the current year and the landscaping next year.

The budget should also include a provision for those bills that tend to come in unexpectedly or that can vary drastically from year to year – things like snow removal, insurance deductibles, and 3 year insurance appraisals.

Contingency Reserve Fund (CRF)

Finally, the appropriations to the Contingency Reserve Fund need to be determined. The Strata Property Act requires if the amount of money in the Contingency Reserve Fund at the end of any fiscal year after the first annual general meeting is less than 25% of the total contribution to the Operating Fund for the fiscal year that has just ended, the annual contribution to the Contingency Reserve Fund for the current fiscal year must be at least the lesser of:

- a) 10% of the total contribution to the Operating Fund for the current fiscal year; and
- b) the amount required to bring the Contingency Reserve Fund to at least 25% of the total amount budgeted for the contribution to the Operating Fund for the current fiscal year.

If the balance in the Contingency Reserve Fund at the end of any fiscal year after the first annual general meeting is equal to or greater than 25% of the annual budgeted contribution to the Operating Fund for the fiscal year that has just ended, additional contributions to the Contingency Reserve Fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the Strata Property Act.

Once the planned and unexpected expenditures and the contributions to the required contributions to the Contingency Reserve Fund are all budgeted, the funding needs to be considered. Start by listing separately and budgeting the estimated income from all sources other than strata fees. As a general rule, I recommend that late fees and bylaw fines should not be budgeted but still should be shown on a separate line.

Operating Fund

Next, the Operating Fund balance should be considered. Pursuant to the Strata Property Act, the previous year's operating fund surplus can be:

- (a) transferred into the contingency reserve fund;
- (b) carried forward as part of the operating fund, as a surplus; or
- (c) used to reduce the total contribution to the next fiscal year's operating fund.

If the Operating Fund is in a deficit position, the deficit must be eliminated during the next fiscal year. The Operating Fund balance can

... continued on page 18



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have a major impact on strata fees because a deficit and any amount not funded by ancillary income (income other than strata fees, such as strata suite rent, parking, interest, bylaw and late payment fees) and the previous year's surplus in the Operating Fund has to be funded by strata fees.

When Operating Fund is in a deficit position

When the previous year's Operating Fund is in a deficit position, Council has no choice but to eliminate the deficit in the next fiscal year either by increasing strata fees or by way of a special levy. I do not recommend eliminating a deficit by transferring funds from the Contingency Reserve Fund as those funds may be needed for emergencies or to prevent a loss.

When Operating Fund is in a surplus position

When the previous year's Operating Fund is in a surplus position, Council can utilize all or portions of the surplus for one or more of the above options allowed by the Strata Property Act. Council can utilize all or a portion of the surplus to do things like:

- (a) transfer to the Contingency Reserve Fund for depreciation report funding;
- (b) keep strata fees the same as the previous year;
- (c) reduce strata fees;
- (d) fund a special project in the year budget without raising strata fees;
- (e) fund large annual expenses that occur early in the fiscal year (eg. Insurance); or
- (f) prevent the operating fund from going into a deficit in the event of unusual or unplanned expenditures.

After considering ancillary income and the previous year's operating fund surplus or deficit, the remainder has to be funded by strata fees. This is a simple mathematical calculation that is allocated to each unit based on unit entitlement.

Unfortunately, a lot of owners base their decision on whether to approve the budget strictly on whether there is an increase in their strata fees. To 'sell' the budget, Council should communicate their objectives when presenting the budget for approval. This will help to rationalize the expenditures and take the focus off the magnitude of the fees. Owners will readily fund a budget that is well thought out and works toward clear short and long-term objectives.

Reading and Understanding the Budget

Below is a sample basic budget proposal that you might see at your Annual General Meeting (AGM). Council has worked hard to

propose a budget that is in accordance with their objectives and now it is up to you to consider the budget, suggest modifications, and ultimately approve or reject the proposed budget.

I have assumed that the AGM is just around the end of the fiscal year and that not all the actual figures are available yet. The 'probable' column is Council's best estimate of what the actual results will look like. If your AGM is a month or so after the fiscal year end, the 'probable' column will likely be labelled 'actual' since all figures for the previous year will be known. Notice the columns included:

- the first column is the previous year's annual budget that was approved at the last AGM;

THE OWNERS, STRATA PLAN NO SAMPLE
PROPOSED BUDGET
FOR THE YEAR ENDED DECEMBER 31, 2017

	2016 Budget \$	2016 Probable \$	2017 Proposed \$
INCOME			
6000 Strata fees	519,355	519,355	519,355
6010 Fines	-	400	-
6015 Interest income	1,000	750	700
6020 Parking	2,000	1,915	2,000
Total income	522,355	522,420	522,055
EXPENDITURES			
GENERAL			
8000 Audit	4,400	4,650	4,700
8010 Insurance/appraisal	46,000	45,223	46,000
8012 Insurance deductible	5,000	-	5,000
8015 Legal	2,500	-	3,000
8020 Management fees	24,336	24,336	24,336
8070 Postage, photocopying and supplies	3,500	3,655	3,700
	85,736	77,864	86,736
BUILDING			
8115 Electricity	39,000	37,500	38,000
8120 Elevator	27,600	30,100	30,000
8110 Garbage and recycling	30,500	30,200	30,500
8125 Gas	42,000	40,206	41,000
8130 Janitorial	36,000	34,565	36,000
8140 Plumbing	5,500	2,416	5,500
8145 Fire system	4,600	5,685	6,000
8150 HVAC	21,000	23,420	32,500
8200 Repairs and maintenance	78,960	76,228	81,500
8210 Water/sewer/recycling	61,000	59,356	61,000
	346,160	339,676	362,000
GROUNDS			
8140 Landscaping	18,000	26,503	22,814
8150 Irrigation	6,800	6,423	6,800
8160 Snow removal	3,000	-	3,000
	27,800	32,926	32,614
Total Operating Fund Expenditures	459,696	450,466	481,350
Appropriations to the Contingency Reserve Fund	50,000	50,000	50,000
Total Expenditures and Appropriations	509,696	500,466	531,350
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES AND APPROPRIATIONS FOR THE YEAR	12,659	21,954	(9,295)
OPERATING FUND BALANCE [SURPLUS (DEFICIENCY)]			
Balance, beginning of the year	(12,659)	(12,659)	9,295
Balance, end of the year	-	9,295	-

- the second column is the estimated actual for the previous year;
- the third column is the proposed budget for the next fiscal year; and
- the fourth column is not usually presented but is included in to indicate the budgeting method used.

So, let's take a look at the budget and make some quick observations:

- strata fees will be exactly the same as the prior year (\$519,355);
- there was a deficit in the Operating Fund at the start of the year (-\$12,659);
- there is an excess of revenue over expenditures in the current year that is large enough to take away the opening deficit and have a modest positive balance at the end of the current fiscal year (\$9,295);
- Council is proposing to carry the current fiscal year positive balance into the next fiscal year (\$9,295);
- Council has budgeted for an insurance deductible, legal fees and snow removal even though there were no expenditures in these categories in the current fiscal year – these expenditures are only if needed;
- There is a fairly big increase to the HVAC and repairs and maintenance categories; and
- The appropriations to the Contingency Reserve Fund are the same as the current year (\$50,000).

Approve or not approve – ask more questions!

So, it looks okay and there is no increase in strata fees . . . approved I guess???

Not so fast . . . for me, I need to know more! I want to know Council's objectives when preparing the budget – both in the short and long-term. I want to know why the large increases in the HVAC and repairs and maintenance categories because I want to know if maintenance projects are being done as needed or if required maintenance is being stalled off. I want to know if the \$50,000 appropriation to the CRF is enough to be in compliance with the SPA requirements and fund the depreciation report. I want to know if any special levies to fund the depreciation report are planned. Really, I want to know if this budget protects and maintains the value of my property both in the short and long-term without special levies.

If Council does not state their short and long-term objectives during the budget presentation, ASK! Questions like these are appreciated by Council and by other owners. You need this information to make a sound decision to approve the budget. ■

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Website: www.lumon.ca

Computer Software & Telecommunications

Power Strata Systems Inc.

Azadeh Nobakht
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North Vancouver, BC V7P 2S3
Tel: 604-971-5435
Fax: 604-971-5436
Email: azadeh@powerstrata.com
Website: www.powerstrata.com

Reserve Fund Planning & Depreciation Reports

Constructive Condo Reporting Corp.

Jean-Francois Proulx
232 Tenth Street, Suite 14
New Westminster, BC V3M 3X9
Tel: 778-232-6707
Email: jfproulx@constructivecrc.com
Website: www.constructivecrc.com

Engineering & Engineering Consultants

Aqua-Coast Engineering Ltd.

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5155 Ladner Trunk Road, Unit 201
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BC Building Science Ltd.

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Duxbury & Associates - Building Inspection and Consulting Ltd.

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Email: glenn@glennduxbury-inspections.com
Website: www.glennduxbury-inspections.com

Sense Engineering Ltd.

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Engineering & Engineering Consultants, Depreciation Reports

Morrison Hershfield

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Business Partner and Professional Members Directory

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Financial & Accounting

CWB Maxium Financial Services

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VersaBank

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Website: www.versabank.com

Insurance

BFL Canada Insurance Services Inc.

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HUB International Insurance Brokers

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Website: www.hubinternational.com

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Lighting

Lumenix Inc.

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Restoration & Mould

Phoenix Restorations Ltd.

John Wallis
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Business Partner and Professional Members Directory

... continued from page 21

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Fax: 604-435-4131
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Website: www.svmvancouver.ca

Superior Flood and Fire Restoration Inc.

Mayank Anand
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Strata Management & Real Estate

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Gateway Property Management Corporation

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HomeLife Glenayre Realty Chilliwack Ltd.

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Obsidian Property Management

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Rancho Management Services (BC) Ltd

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Stratawest Management Ltd.

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Waste Management

Waste Management

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Canadian Condominium Institute - Vancouver Chapter

The mission of the CCI Vancouver Chapter is to provide exceptional education for Strata Councils to help build strong and healthy strata communities across BC.

Through membership, Strata Corporations benefit from educational and networking opportunities as well as the experiences of hundreds of other strata council members and industry professionals. Professional members practicing in the Strata industry are able to share their knowledge and experience with others in the industry, Strata Owners and Council Members, acting to better the Strata industry and are able to access all materials published by CCI Vancouver and CCI National. Business Partner members are able to participate in educational programs and seminars, advertise in the Trade Service Directory and Condo News. Strata residents are also able to become involved as Individual Strata Resident Members.

What We Have to Offer

Strata Educational Opportunities for Strata Council Members

- STRATA EDUCATION SEMINARS
(Discount Rate for Members)
- CONDO 101 COURSE (Members Only)
- CondoSTRENGTH PROGRAM (Members Only)
- STRATA OF THE YEAR AWARD (Members Only)
- CONDO NEWS ARCHIVES
- STRATA SERVICE DIRECTORY
- STRATA RESOURCES

Marketing Opportunities for Business Partner Members

- SEMINAR SPONSORSHIP OPPORTUNITIES
- CONDO 101 COURSE SPONSORSHIP
- CONDO NEWS ADVERTISING OPPORTUNITIES
- STRATA SERVICE DIRECTORY ON WEBSITE
(Also Available to Professional Members)
- STRATA SERVICE DIRECTORY IN CONDO NEWS
(Also Available to Professional Members)

TO **BECOME A MEMBER** OR LEARN MORE ABOUT CCI VANCOUVER VISIT OUR WEBSITE: ccivancouver.ca

CCI Vancouver Chapter Upcoming Events:

- ▶ March 28th Lunch & Learn, *Strata Financing*
- ▶ April 27th Evening Seminar, *CRT*
- ▶ May 27th ½ Day Seminar, *Insurance*
- ▶ June (Date TBA) Lunch & Learn, *Restoration*

CONTRIBUTING TO CCI VANCOUVER CHAPTER CONDO NEWS

Strata council members, do you have a unique tale to tell or advice to share with other Strata Councils? Next issue we are introducing a NEW section where you can share your challenges and successes to help and inspire other council members to problem solve and build strong communities.

And, if you offer professional services or products to strata corporations and have a relevant educational-only article, let us know!

CCI Vancouver is now accepting educational-only articles that are useful for strata councils and strata corporations in B.C. for our Spring, Summer and Fall issues of Condo News. Articles submitted by Business Partner and Professional Members should be relevant to your area of expertise in the strata industry. As a valued member of CCI Vancouver we would like to provide you with this opportunity to contribute toward our award winning publication aimed at helping strata councils and strata corporations learn how to be better equipped to perform their duties!

Some details/guidelines are noted below:

- 1) Articles should be in Word format

Business Partner and Professional Members: 1200-1500 words

Strata Council Members: 500-800 words

- 2) Issue Deadlines:

Spring – April 1
Summer – June 1
Fall – September 1

- 3) Please include a high resolution head shot photo of the contributing author(s).

- 4) Author(s) listed should note their organization/company name and submit a short (3-5 sentence) biography or mission statement.

- 5) We ask if at all possible that all articles be original – in that they are not also being submitted for publication at the same time with other industry publications.

Articles can be forwarded to:

The Editor, The Condo News
Canadian Condominium Institute (CCI) -
Vancouver Chapter
P.O Box 17577 PRO The Ritz
Vancouver, BC V6E 0B2
or contact@ccivancouver.ca



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