



Fischer & Company

Law Corporation

#202 - 1447 ELLIS STREET KELOWNA, B.C. V1Y 2A3
TELEPHONE: 250-712-0066 FAX: 250-712-0061

www.fischerandcompany.ca

BC STRATA AND CONDOMINIUM LAW NEWSLETTER

March 2016

Strata Basics and Tips

Collecting Every Owner's Contributions

Matthew D. Fischer

Strata corporations often run lean budgets because the *Strata Property Act* requires that the budget be based on estimated expenses and owners typically expect that the strata fees will not exceed what is required to operate a strata corporation properly. Fortunately, the *Strata Property Act* has very strong mechanisms for collecting owner contributions; including the ability to place a lien and even compel the sale of an owner's strata lot to recover the amount owing.

However, the *Strata Property Act* is very specific about the required process as well as what charges can be included in a strata corporation's lien for unpaid contributions. Making a procedural mistake or trying to include charges which are not permissible can invalidate a lien and leave the Strata Corporation unable to collect even the valid charges. Further, be aware that the new *Limitation Act* will prevent recovery of amounts claimed as soon as 2 years after the arrears accrue; unless a qualifying formal proceeding is commenced (registering a lien is not enough).

It is also important to ensure that the amounts owing are properly accounted for, recorded and provable. Bankruptcy, foreclosure, and estate issues can also complicate collections. Check back on our website and future newsletters for a forthcoming guide to strata

collections basics.

Our firm provides a range of options from low-cost lien registration, to full collections services for more complex or contentious collections matters, or for those strata corporations whose past practices require correction.

Legal Pitfalls

The Cost of an Invalid Strata Lien

Taeya C. Fitzpatrick

In the case of *Terry v the Owners, Strata Plan NW 309*, 2016 BCSC 237, the Strata Corporation and the owner had a long-standing history of disputes regarding amounts owing to the Strata Corporation. In 2000, the Strata Corporation had registered a lien, collected those amounts and then discharged that lien in December of 2003. A lien discharge form certifies that full payment has been received.

Subsequently a new lien was registered in 2008 for the sum of \$18,000, but it wasn't clear from the demand letter how the Strata Corporation arrived at that figure. The letter simply claimed generally that strata fees, special levies, interest and legal fees were owing. However, it was clear that amounts which accrued prior to the 2003 lien discharge were included and interest charges for amounts prior to the 2003 lien discharge were also likely included. The Court found that the pre-2004 amounts and interest on those pre-2004 amounts were in proper amounts to include in the 2008 lien.

As a result, the Court declared that the 2008 lien was invalid and ordered the Strata Corporation to discharge the lien at no cost to the owner. Because of deficient records, the Court also ordered the Strata Corporation to provide a detailed accounting to the owner showing all charges and payments made, back to the last \$0 balance.

Lastly, the Court confirmed that the owner would not have to contribute to the Strata Corporation's costs of defending the Petition pursuant to section 169 of the *Strata Property Act* and ordered that the Strata Corporation refund any portion of legal costs that had been improperly charged to and paid by the owner.

This case is in a line of cases that show that the collections requirements under the *Strata Property Act* are very strict and can have serious consequences for Strata Corporations which do not follow those procedures properly, or where the Strata Corporation's records are not properly maintained.

A Problem With Poor Bylaw Drafting

Taeya C. Fitzpatrick and Matthew D. Fischer

In the case of *The Owners, Strata Plan NW 1859 v. Tan*, 2016 BCPC 0057, the Strata Corporation pursued an owner for \$845.43 which resulted from a minor water leak from the owner's unit into the unit below. It isn't clear from the decision of the Court why the Strata Corporation had taken the necessary steps to repair the interior of the first floor unit, but the Strata Corporation went to Small Claims Court to recover the cost it had incurred from the unit above.

One important issue that came up in the case arose when the owner of the upstairs unit disputed the claim for recovery on the basis that she had moved and the Strata Corporation's notices and demands for payment were not received by the owner. The Court noted that the owner had failed to provide the Strata Corporation with a change in address as required by the bylaws and the failure to receive any notices was a result of the upstairs owner's failure to do so. The Court noted that an owner generally has an obligation and is responsible to provide the Strata Corporation with a change in address. If the owner fails to do so, a Strata Corporation is normally entitled to send notices to the old address, regardless of whether or not the mail is actually delivered, received or even returned.

The Strata Corporation also sought to rely on a bylaw to recover its legal expenses based upon a 'legal costs' indemnification bylaw. However, the Small Claims Court Rules specifically prohibit costs recovery other than Court disbursements. Although there are cases where the Small Claims Court has allowed recovery of legal expenses owing under a contract and payable as a debt, in this case the Strata Corporation failed to convince the Judge that the bylaw qualified for that kind of special order. As a result the Strata Corporation only recovered the \$845.43 and was not granted any recovery of its legal expenses in pursuing the owner.

Reading the bylaw, the judge's decision should not be surprising. The bylaw barely mentions "legal costs" as an apparent afterthought, and there is nothing in the bylaw which suggests that actual legal expenses are intended to be recovered as a debt. With a properly drafted bylaw and a proceeding in the correct venue, the result likely would have been different.

Legal Update

New Water Sustainability Act

Taeya C. Fitzpatrick and Matthew Fischer

Bill 18 – *Water Sustainability Act* came into effect on February 29, 2016. Click [here](#) to view the full version.

The *Water Sustainability Act*, like its name suggests, updates the Province's laws on water resources, will regulate the use of groundwater, and will strengthen the Province's water management in response to the current and evergrowing demands for water use.

Stata Corporations should be aware of the following key points:

- Nearly all use of aquifer groundwater and streams is regulated and requires a licence, except for domestic use (not including multi-family apartments, or irrigation of lawns or irrigation of a "garden" exceeding 1,000 square meters);
- There are transitional provisions, and retroactive licenses are available with priority of use granted based on date of first use;
- Application fees are waived for certain categories of applications received before March 1, 2017;
- Perimeter drainage of buildings, drainage wells, sumps, French drains, curtain drains etc require authorization unless:
 - That water is not used for any purpose, and
 - The water is safely discharged without risk of harm to the environment, public safety, and/or other property;
- Changes to areas in and around streams are restricted and may require approval, involvement of a habitat officer and/or an engineer;
- It is a criminal offence to make a change requiring authorization without that authorization; and
- There is a requirement to use and protect water efficiently and beneficially, and to avoid environmental contamination.

Any Stata Corporation which currently has any form of interaction with a body of water or aquifer under provincial jurisdiction, or which has issues with drainage, or uses that drainage water for any purpose; should seek and obtain legal advice, or otherwise confirm whether further action is required to comply with the new *Water Sustainability Act*.

Fischer & Company

Fischer & Company, located in the heart of the Okanagan, Kelowna, has provided a wide range of legal services to individuals, stata corporations and management companies in Kelowna, the Okanagan, and throughout the entire Province of British Columbia, since 2007. Fischer and Company is comprised of two lawyers, Matthew Fischer and Taeya Fitzpatrick, and a dedicated support team.

For more information on our Services Offered, to review our online Stata Basic Tips or New updates, or to see how we can assist you with your issue, please visit our website at www.fischerandcompany.ca

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. FISCHER AND COMPANY, the author and related entities will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person. This publication may include links to other websites (external links to third parties) that are independently owned and operated by other organizations – FISCHER AND COMPANY does not assume responsibility for these third-party websites and is not responsible for any external website or content.

Copyright © 2016 Fischer and Company Law Corporation, All rights reserved.
You are receiving this email because you opted in at our website or through our newsletter sign up sheet.

Our mailing address is:

Fischer and Company Law Corporation
202-1447 Ellis Street
Kelowna, BC V1Y2A3
Canada

Add us to your address book

Want to change how you receive these emails?
You can **update your preferences** or **unsubscribe from this list**

The MailChimp logo is displayed in a white, cursive script font, centered within a dark gray rectangular box.