



Fischer & Company

Law Corporation

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BC STRATA AND CONDOMINIUM LAW NEWSLETTER

May 2017

Website Update and other News for Fischer and Company

Our website has been updated at www.fischerandcompany.ca and now includes an archive of past newsletters as well as an expanding selection of resources, such as explanations of strata basics.

May 1 2017 marked Mr. Fischer's 15th full year as a lawyer and member of the Law Society of British Columbia. Further, this November, Fischer and Company will be celebrating 10 years of service to the strata community in Kelowna and beyond. Thank you for your continued support! To mark these milestones and as a public service to the strata community, Mr. Fischer is preparing an open letter to the provincial government to respectfully critique portions of the Strata Property Act which are not as clear, practical or functional as they could be.

In addition, we have had some changes to our team. We would like to welcome Karen King back to the Firm. Karen is a paralegal with considerable experience assisting with bylaw preparation, and other projects. Taeya Fitzpatrick left our team in December to join a firm with a strong emphasis on Wills, Trusts and Estates. We wish her well in her future endeavors and now begin the process of finding a solid candidate to replace her.

Matthew Fischer's Teaching Schedule

Mr. Fischer will be continuing to serve as an instructor and faculty member for a variety of courses this year. Currently, the following are scheduled:

Continuing Legal Education Society

Mr. Fischer was honoured to accept an invitation to rejoin the faculty for the CLE Strata Property Update on June 22, 2017, and to prepare a paper. Primarily geared towards continuing education for lawyers who practice in the area of strata law, it is a pleasure and an honour to be involved with this innovative and engaging program.

The Condominium Home Owners Association

The Spring seminar series is coming to town.

Mr. Fischer will be presenting on the subject of alterations, alterations bylaws; the risks and pitfalls surrounding improper approvals, improper withholding of approval; and the consequences of failure to disclose obligations related to alteration agreements to strata lot purchasers.

Mr. Fischer will be presenting at the following sessions:

Kamloops May 24, 2017

Vernon May 25, 2017

Kelowna, May 26, 2017

Penticton, May 27, 2017

More information and schedules are available [here](#). Sign up soon as CHOA courses tend to be fully booked.

Professional Association of Managing Agents

Mr. Fischer was pleased to rejoin the education committee for the Okanagan, and is enjoying working with other committee members to plan an engaging and informative program for strata and rental management licensees this fall. More information will follow.

Updates to Our Bylaw Templates

Our 2017 Bylaw Templates are now ready for use, and represent a considerable advancement over our previous templates and any standard bylaws. These are really a

next-generation set of bylaws. Our newly developed bylaws represent a comprehensive reorganization and redraft with features including (as examples):

1. A more natural, consistent and intuitive organization, with similar provisions located in close proximity – For example, all repair and alteration provisions are now located in one consistent Part of the bylaws.
2. An easy to reference Index.
3. Improved bylaws dealing with day to day issues such as decisions made between council meetings, practical quorum provisions, access to strata lots in emergencies or scheduled inspections, and comprehensive provisions related to alterations, insurance claims, indemnities and other common issues.
4. Updates to reflect legal changes, including a basic but mandatory privacy policy, human rights exemptions, options for dealing with short term vacation rentals and other developments.

We are continuously adapting our bylaw templates to make improvements and reflect changes in the legal landscape. The new format will facilitate future revisions, and make it easier to update bylaws in the future. If your strata corporation would like a no-obligation estimate of the cost of having us prepare bylaws using our new templates, please email us.

Civil Resolution Tribunal Update

We've now been directly or indirectly involved in more than a dozen proceedings in the new Civil Resolution Tribunal. We'd like to take this opportunity to share some observations about the process so far:

- We've assisted with drafting many claims and responses. We've also successfully applied to be able to formally represent parties on multiple occasions.
- Although it isn't always possible or necessary to have a lawyer formally represent a party in the Tribunal; it is always acceptable to have legal assistance in preparing documents and submissions.
- Quality and persuasiveness of the initial filed claim or response and subsequent document organization are key to success. Although the process can be successfully navigated without a lawyer for simple disputes - there are serious benefits to having some preliminary and as-needed advice and assistance.
- The facilitation stage is useful for reaching a resolution of a dispute, but is also helpful for preparing the parties for the adjudication stages which follow.
- Expect delays - The facilitation process was already backlogged by several months before the Tribunal was just granted expanded jurisdiction to handle all small claims up to \$5000, in lieu of provincial small claims court, effective June 1, 2017.

- Objectively urgent matters can sometimes be expedited, and there is a process for ensuring that any claim involving a potential loss of one's home (for example) is expedited through the facilitation process.

The Civil Resolution Tribunal has now produced several dozen published decisions, which are all available on their **website**. The quality of the decisions has so far been very good in terms of ease of comprehension, correctness and depth of understanding reflected.

We remain critical of the decision to prohibit legal representation by default, and hope that the legislature will change that to the model successfully used in Provincial Court for decades: Lawyers are allowed, but recovery of legal expenses isn't permitted.

Owner Developer Penalties - Holding the First Annual General Meeting Late

When it comes to Owner Developer penalties under the Strata Property Act, there has been historical reliance on section 17 of the Act and how it applies to the late holding of the first AGM by the Owner Developer. In a **2015 decision** of Mr. Justice Rogers, the B.C. Supreme Court found that the penalty for the late holding of an AGM did not apply unless the owners first take steps to call an AGM when the Owner-Developer fails to do so in a timely way. The decision was **appealed to the BC Court of Appeal** however the decision was upheld.

What this now means for strata corporations is that even if an Owner Developer is dramatically late in holding the first AGM, no penalty is payable to the Strata Corporation unless one or more owners first take the initiative and take steps to call the late AGM themselves.

Fischer & Company

Fischer & Company, located in the heart of the Okanagan, Kelowna, has provided a wide range of legal services to individuals, strata corporations and management companies in Kelowna, the Okanagan, and throughout the entire Province of British Columbia, since 2007. For more information on our Services Offered, to review our online Strata Basic Tips or New updates, or to see how we can assist you with your issue, please visit our website at **www.fischerandcompany.ca**

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