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BC STRATA AND CONDOMINIUM LAW NEWSLETTER

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Strata Property Regulation Amendment

The Regulations to the Strata Property Act have been amended to allow far greater flexibility for user fees.

The new provision will allow user fees to be either in a fixed amount, or in an amount determined on a reasonable basis (including but not limited to) basing the user fee on user rate of consumption, recovery of actual operating or maintenance costs, number of users and/or duration of use.

It is specifically intended to allow (for example) vehicle charging stations to charge a more complex user fee based on actual metered use, perhaps in combination with time spent occupying the station.

For any strata corporation with costly common facilities, such as marinas or pools, or utility services which not everyone uses (such as propane for ski resort fireplaces), this change will allow the strata corporation to ensure a fairer allocation of the expenses related to a service to those who actually use the service. This change will have far reaching implications, and may allow for more creative concepts of strata development.

The change is also intended to even allow utility expenses to be handled with greater

flexibility than was previously possible. Beware of charging user fees for expenses such as water and other utility services, as user fees do not enjoy the same protected status as strata fees and special levies, and cannot be the subject of a strata lien.

This change is a very big deal for strata corporations. Unfortunately the change appears to be worded in a way which may enable abuse, as a bare majority of voters at a meeting will be able to ratify a rule passed by council which could completely circumvent the normal rules for division of expenses and result in fracturing of strata finances. For that reason we would have preferred to see this change be associated with a requirement that user fees be set out in the bylaws. How long until someone tries to implement a user fee for elevator rides, and faces the counter argument that a 3rd floor resident always uses the stairs? The standard of reasonableness will get some exercise here.

Drinking Alcohol and Consuming Marijuana on Common Property

In British Columbia, public drinking is prohibited, except that a person may drink liquor in a residence or private place, such as outdoors on their property. Section 73 of the Liquor Control and Licensing Act prohibits consumption of alcohol in places not listed in that section. The listed places include residences and private places among areas where drinking is permitted.

"Public place" is defined in the legislation as "a place, building or vehicle to which the public is invited or has or is allowed access"

A Court might find that the portion of the exterior which is unsecured and adjacent to public roads or sidewalks would be public places, while a common room, limited common property balcony or yard, or fenced in exterior common area are likely to be found to be places where the public is not invited or allowed access.

In support of that view, the ministry has the following in their FAQ:

Do I need a special event permit to serve liquor at an event in the common room of my condo or strata complex?

The common room is considered part of the residence. When the room is booked for a private social function by residents, no special event permit is required to serve liquor. Private functions aside – public functions will require a special event permit.

A common room is not legally distinguishable from other areas of the common property, except by use and by the distinction that exterior areas may be subject to different expectations and may be more readily available to the public, depending upon location, configuration and the bylaws. Because common property is owned communally

(depending upon those factors) it is arguable that an owner or resident may consume alcohol outdoors on some or all portions of common property if there isn't a bylaw restricting alcohol consumption on common property.

A similar issue is expected to arise for consumption of marijuana when it becomes legal for recreational use. However, the Provincial Government has expressed an indication that they will authorize strata corporations to pass bylaws restricting use and cultivation of marijuana within the strata plan boundaries.

So, the bylaws can define what occurs within the bounds of the strata plan. Make sure that the bylaws for your strata corporation match the community standards and owner expectations.

Handover of Documents When Management Changes

Strata Corporations need their records to operate lawfully. Strata management brokerages are generally responsible to keep careful custody of the records of their strata corporation clients and promptly hand over those documents when their contract ends. A Manager's conduct when a contract ends is just as important as their conduct at any other point of the agency relationship.

Strata Management Agency is a role of considerable trust, and failure to hand over documents in a timely and complete manner can improperly prevent the former client from having the benefit of the work done during the contract period. For example, it doesn't matter how well a strata manager maintains mailing addresses and contact information if the Strata Corporation or subsequent manager aren't provided the means to provide official notices once the contract ends.

Failure to promptly hand over documents at the end of a contract in a complete manner has resulted in reprimands and sanctions against multiple strata management licensees in decisions from the disciplinary processes conducted by the B.C. Real Estate Council. (see *Re Carleton*, 2016 CANLII 60741 (BC REC), *Re Ruyter*, 2016 CANLII 60741 (BC REC), *Re Concise Strata Management Services Inc.*, 2016 CANLII 60741 (BC REC))

The Basics are Being Missed - Common Errors For Strata Corporations

In 2017 we presented a brief course through the Professional Association for Managing Agents intended primarily for strata management licensees. The topic included quick reference to very common errors, and methods for correcting them. I've reproduced two of the most common issues for managed and self-managed strata corporations here as reminders, but don't hesitate to get advice if you're not sure or have questions.

1 Too many strata corporations are not providing adequate or proper notice.

Whether sending a notice of bylaw complaint, notice of a general meeting, or a notice of arrears prior to filing a strata lien, the law requires proper notice be provided. That means

notice has to go to the right place, to the right person and with enough time left to comply with the requirements of the Strata Property Act and Bylaws. Improper notice *can* invalidate liens, fines or business conducted at a general meeting. Beware the traps for the unwary:

- Notice to one owner of a strata lot isn't necessarily notice to all of the registered owners of that strata lot.
- The Act may say "at least 14 days" but that usually means 20 days. (Due to the Interpretation Act and the deemed notice provisions for delivery under section 61 of the Strata Property Act) If you don't have a good understanding of the notice requirements - get help.
- According to the Court, Registered Mail isn't Mail. Use the deemed delivery for regular mail under section 61, and don't use registered mail.

We routinely have to fix issues with insufficient notice, which can be more expensive than getting help to do it correctly in the first place.

2 We see a multitude of problems with strata forms

Take strata forms seriously and beware:

- Not all strata corporations realize that the Form B has changed since it was originally designed. You need to be using the current version which includes parking and storage information and other updates. The Form B information also has to be correct. A person may be able to reasonably rely on the information contained there, even if it is incorrect.
- We see all kinds of problems with the Form I for bylaw registration, the resolution used for bylaw approval, the notice and vote process being used for bylaw approval, and the text of bylaws being registered. Serious problems can result - even including liability beyond having the bylaws invalidated.
- Understand how proxy appointment forms work. Don't record the information on the form as if it were a vote on a ballot. The proxy holder gets a voting card or ballot and is able to act like any other voter. Proxy forms cannot be reassigned or left for others to use. If a person isn't named on a proxy appointment form - they cannot act as proxy.
- Withholding a Form F improperly can create liability, but a Form F can and should be withheld if there are legitimate amounts owing - just don't think that withholding a Form F is good security for payment.
- Form G and Form H relating to strata liens need to be perfectly done in terms of process and completion. Including the wrong categories of charges can invalidate the lien, and failing to promptly discharge a lien after full payment can result in liability for the Strata Corporation.

- Beware of making a false certification on any strata form. The Strata Property Act even makes false certification on a certificate of strata corporation a summary conviction offence.

Fischer & Company

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