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BC STRATA AND CONDOMINIUM LAW NEWSLETTER

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Postal Strike Recommendations

Many strata corporations are currently preparing notice packages for distribution. Currently the rotating postal strike has had very little impact on postal delivery. How do we ensure that a full blown strike doesn't cause problems for official strata notices sent by mail?

Whether notice goes out for an annual or special general meeting, for bylaw enforcement, or as a notice of intention to file a lien for unpaid strata fees; regular postal mail remains a reliable and efficient way to legally provide owners with notice under the *Strata Property Act*. Most other methods of providing notice attract concerns which are avoided by using regular postal mail addressed to "the owners" of a strata lot.

Regular postal mail delivered to "the owners" of a strata lot at the strata lot address is a valid means of delivery as long as owners haven't requested delivery of notices to a provided email address, fax number or postal address outside the strata plan.

- [Reminder #1: 20 days notice is required wherever the Strata Property Act specifies "at least 14 days" as the notice requirement and the notice method used contemplated deemed delivery 4 days afterwards in section 61 of the Act]
- [Reminder #2: Registered Mail isn't valid for delivery under the Strata Property Act]

Importantly, notices sent by postal mail are deemed delivered 4 days after they are sent. Currently, the postal strike is a rotating strike which might delay, but won't halt delivery by mail. As long as that remains the case - Section 61 will still deem delivery 4 days after notice is sent (satisfying legal requirements) - and the total notice period of 20 days will likely allow successful delivery of notice in advance of the meeting (satisfying practical and fairness concerns).

However, our recommendation is (where possible) to provide 5-10 additional days notice of general meetings where a full postal strike is potentially looming. Remember the minimum notice periods under the Act are minimums, and as long as an additional 10 days notice doesn't render your AGM overdue - the extra time has multiple benefits:

1. If a full postal strike does start within the extra days, then the Strata Council has time to consider and implement alternate delivery methods under section 61 of the Act, if necessary.
2. If a full postal strike commences after the extra days - it is likely that notices will have been delivered successfully.
3. If anyone doesn't receive notice in a timely way because of the postal strike, the strata corporation isn't to blame and has taken reasonable extra steps to minimize the impact of the strike on distribution of notices.

This last point is important because section 47 of the Act allows that a failure to give notice to a person entitled to receive notice doesn't invalidate the results of a meeting as long as the strata corporation gave notice in accordance with the requirements of the Act and made a reasonable attempt to give notice in accordance with section 45 of the Act.

The curative provision in section 47 reads as follows:

47 Failure to give proper notice of an annual or special general meeting to a person entitled to receive notice under section 45 does not invalidate a vote taken at the meeting as long as the strata corporation made a reasonable attempt to give the notice in accordance with that section.

Case law on the subject suggests that Section 47 only triggers if there was a reasonable attempt to provide notice in accordance with the requirements of section 45 and 61 of the Act. Mistakenly attempting notice by a method not contemplated in the Act, won't qualify.

If a full strike does occur - then strata councils will need to consider alternative methods of delivery contemplated under section 61 of the Strata Property Act - however none of those alternative methods are valid if the owners of a strata lot have requested notice be sent to a mailing address outside of the strata plan. If postponing a meeting isn't possible - it may be necessary to reach out to those owners to obtain express consent to email notices due to the postal strike. If only a postal address has been provided for an owner that is outside of the strata plan, the only alternative method available during a postal strike is to hand a

copy of the notice to the owner, in person. This is awkward if the Strata Council cannot easily confirm who all of the owners are, or where they may be located.

If the address is within the strata plan, there are several alternative methods available:

1. Leaving it with the person;
2. Leaving it with an adult occupant of the person's strata lot;
3. Putting it under the door of the person's strata lot;
4. Putting it through the mail slot or in a mail box used by the person for receiving mail;
5. Faxing it to a fax number provided by the person; or
6. Emailing it to an email address if the person has specifically provided an email address for the purpose of receiving notice.

Notices provided to owners during a full-blown strike (including but not limited to any notice of bylaw complaints, notice of arrears, or notice of annual or special general meetings) will need to be handled in one of those ways. No strata corporation should rely on deemed delivery by mail pursuant to section 61 of the Strata Property Act when the strata council is aware that attempted postal distribution of notices simply isn't going to result in delivery of notice. Strata councils will need to make the decision of whether to postpone sending out notices, or provide notices to owners by a different method as permitted under section 61 of the Strata Property Act.

Complicated or impossible circumstances may require a bit of legal advice to navigate notice requirements where a meeting cannot properly be postponed.

What Happens When Strata Fees Go Up? Volume II

How quickly the law can change!

As mentioned in our last newsletter, there was a non-binding CRT decision which had suggested that retroactive strata fee adjustments were not permissible. Subscribers may also recall that I mentioned that the decision may not be followed by a Court of competent jurisdiction capable of providing guidance to the province as a whole. I didn't realize how quickly that CRT decision would be overturned.

On September 20, 2018 the Honourable Mr. Justice G.C. Weatherill of the B.C. Supreme Court specifically referenced and effectively discarded the CRT decision in Haddow. The Court acknowledged that the purpose of the Act is to ensure that properly assessed owner contributions to the operating fund are able to cover expenses for the fiscal year to which the budget relates. Mr. Justice Weatherill emphasized that the annual budget sets a fee schedule for the entire fiscal year - not just for the months which follow the AGM.

The Court validated the practice of requiring a strata fee adjustment following the AGM when the strata fees change.

I'm informed that Mr. Justice Weatherill's decision has been appealed - which will take some time to resolve. The final result isn't certain of course, but what a great reminder that the law isn't static.

Fischer & Company

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