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# BC STRATA AND CONDOMINIUM LAW NEWSLETTER

April 2019

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### Upcoming Learning Opportunities

#### The Condominium Home Owners' Association 2019 Strata Education Program

Mr. Fischer is pleased to be teaching an interesting session on Bullying and Harassment within a strata context. We hear about all kinds of improper or improperly motivated conduct in a strata context - and will have practical suggestions as well as legal options for dealing with these common problems.

The course will be offered in multiple local cities between May 6 to May 10. A second date has been added for Kelowna to address high demand. For more information about locations, attendance, membership, and other scheduled sessions, follow the link:

[Link](#)

#### The Professional Association of Managing Agents

For strata management licensees who are PAMA members, the morning of Friday April 12, 2019 has been set aside for a mock-council meeting to cover basic and very advanced issues which can arise. This sponsored event is part of a well-received, entertaining and very informative series. Mr. Fischer has been assured that breakfast is provided. Please register now so that we can finalize preparations based on accurate numbers. For more information about the topics covered, and for scheduling and registration information,

follow the link:

[Link](#)

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### **Quick Legal Updates**

Where a bylaw contravention necessitates formal legal steps; a Strata Corporation's actual, reasonably incurred legal expenses can be fully recoverable as part of a properly conducted bylaw enforcement process. The Owners, Strata Plan NWS 3075 v. Stevens (2018 BCSC 1784)

The BC Court of Appeal has confirmed that a resident claiming a familial assignment of owner's rights and responsibilities; must prove that they have entered into a qualifying tenancy. This case effectively suggests that a person claiming any statutory special right or privilege from a strata corporation has to provide sufficient documentation to prove their entitlement and technical qualification. Jay v. The Owners, Strata Plan NW 3353 (2019 BCCA 102)

The BC Court of Appeal has also issued a decision which makes any appeal of a BC Civil Resolution Tribunal Decision more difficult. In Allard v. The Owners, Strata Plan VIS 962 (2019 BCCA 45), the highest court in the province overturned permission to appeal a CRT decision while highlighting the importance of deference to findings of the CRT, and especially the principle that the CRT is supposed to be a less expensive form of adjudication. A concerning aspect of the decision is the finding that a relevant consideration that the appeal should not proceed was (in part) because the matter was only important to one of 45 owners - the appellant. Given that the right of appeal of a CRT decision has been repealed for new proceedings, it isn't clear how significant this decision will remain.

The long-awaited appeal decision regarding the distinction between rentals and short term licenses has arrived. Only it left the most important issue completely unresolved. The B.C. Court of Appeal determined only that "For present purposes, it is unnecessary to interpret the meaning of the word "rentals" in the SPA and that exercise is best left for another day". They resolved the dispute in another way, which is understandable, but nonetheless disappointing for the strata community which really needed some clarification of the many issues which arise from the fact that the Strata Property Act was drafted entirely without consideration of how (or even whether) the references to "rentals" apply to short term "licenses of occupation". Current case law in lower courts has made a distinction between rentals and licenses - leaving an enormous gap in the legislation.

An unusual decision from a Court Registrar included a decision that expenses related to placement and enforcement of a lien could not be recovered from an owner in arrears because the Strata Council had not provided notice of an intention to collect; an extra

step beyond what is required by the Strata Property Act. The key appears to have been the Strata Council's past practice of providing informal notice of arrears before taking more formal steps, and the fact that only legal expenses remained unpaid by the time the matter was adjudicated. The Owners, Strata Plan NW 2089 v. Ruby (2019 BCSC 143)

### **What Can You Ask of Your Strata Manager?**

Strata Management Licensees have a wide range of duties and delegated responsibilities. They carry a heavy burden with respect to providing their client strata corporation practical guidance and administrative support, along with competently managing the strata corporation's day to day communication, finances and operations. They are also under pressure from their brokerage to efficiently represent multiple strata properties.

A Strata Manager's responsibilities are governed by the terms of their strata management contract, the express and lawful delegation of authority they are provided, as well as the Strata Corporation's bylaws and approved resolutions. They are also bound by the provisions of the Real Estate Services Act, the Strata Property Act, privacy legislation, and various other legislative schemes.

A good Strata Manager should have a strong combination of interpersonal, organizational, time management, technical and legal knowledge and skills, along with an effective network of professional contacts.

That said, I **very** frequently observe council members demanding too much of their Strata Managers. As examples:

- Expecting the Strata Manager to make important decisions which should properly be made by the strata council or voting ownership.
- Casually asking the Strata Manager to contravene the Strata Property Act or other binding laws, usually for the sake of expediency.
- Forcing the Strata Manager to take part in factional disputes between owners, or expecting them to take sides.
- Expecting the Strata Manager to provide legal, engineering or other advice or services for which they are not qualified or responsible - including drafting complex resolutions, bylaws and legal instruments.
- Demanding that the Strata Manager perform substantial work outside their scope of services specified in the management contract without agreement or additional compensation.
- Unreasonably requiring immediate attention to objectively non-urgent tasks.

I recommend an occasional dialog between council and management to ensure that everyone's expectations are in accord, and to make sure that the strata council is doing its part to avoid overburdening or obstructing the Strata Manager in their work. Do not dismiss your manager's concerns, recommendations or requests without

careful consideration and sound advice.

One more observation: I tire of seeing Strata Managers being unfairly discredited or disregarded based on age or gender. Whether knowingly or unknowingly, some council members don't take their strata management licensee seriously if the manager doesn't visually reflect a specific and biased expectation. I don't think I'm being too presumptuous in reminding myself and others to be fair and respectful in assessment and treatment of others - even (especially) when we disagree.

Assess your Strata Manager based on their performance, capabilities and effectiveness, and if you do have a concern about how they are serving the strata corporation - don't be afraid to speak to their managing broker. In the case of serious concerns, the Real Estate Council of British Columbia can help a strata council assess whether anything is awry through their **complaint process**. They also have an anonymous **Tipline**. Although those resources shouldn't be used for trivial or improper purposes, they are available to be used in appropriate circumstances.

Strata Management Licensees have extensive training and re-licensing requirements. They are also increasingly in demand, so treating a good strata manager poorly may have adverse long term effects for your strata corporation.

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#### 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](http://www.fischerandcompany.ca)

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