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BC STRATA AND CONDOMINIUM LAW NEWSLETTER

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An Important Note on Strata Collections During the COVID-19 Public Health Emergency:

There is often the occasional owner who has difficulty paying strata contributions due to difficult personal circumstances. Despite any personal sympathy one might have for difficult circumstances, strata council members have a duty to ensure that owners pay their assessed share of common expenses to avoid putting an unfair burden on the other owners. Provincial laws assume that it is a fundamental duty of owners to make their assessed payments. The Strata Property Act grants BC strata corporations very strong and fair collections tools to ensure that each strata corporation can collect each owner's fair contributions to fund the strata corporation's obligations.

This can be more challenging for strata councils when there is a community-wide issue which makes strata fees and other contributions more challenging for a broader segment of society. Economic downturns or disruptions affect more people and can be stressful for everyone, but don't usually change the recommended approach to collections activity.

If you need more information on the basics of strata collections, you can reference them on our website: <http://www.fischerandcompany.ca/strata-basics/>

However, this spring is not business as usual. We are currently in a nearly unprecedented period of economic and social disruption caused by a pandemic which just happens to be concurrent with an insurance crisis. The results of which are:

1. Many people are facing disruption, reduction or termination of their employment and other income. Many businesses will struggle, and there is a potential for longer term

- disruption to employment.
2. Stock markets, real estate markets and other investments are volatile and many people are worried about their savings and investments.
 3. Insurance Premiums are increasing dramatically – causing a corresponding increase in strata fees.
 4. Many Strata Corporations are facing further increased strata fees or special levies intended to bring up the repair and maintenance standards or fund remediation of plumbing, roofing or other long-neglected repairs; to try to avoid further insurance claims, premium or deductible increases or potential denial of insurance renewals.

Nobody knows how long these issues will persist or how disruptive they will be – but some strata corporations may face significant numbers of owners in arrears. This situation requires some flexibility, but some resolve as well. It is essential that owners be strongly encouraged to pay promptly, and that the debts to the strata corporation be promptly secured by placing a lien.

Legal guidance will be required to navigate this process in this unusual crisis, so get advice on your strata's particular circumstances. However consider the following guidelines for collection of strata fees and special levies:

- Actually forcing anyone from their home presently by applying for a court-ordered sale in this moment would be unseemly and isn't necessary or even possible at present. That step will almost certainly have to be deferred in all but the most extreme circumstances. The Courts are not currently hearing non-urgent applications during the public health emergency. That may change swiftly, but those ultimate steps must currently be postponed.
- That said, strata corporations need to ensure that debts are secured by placement of a lien. If owners cannot be encouraged to pay strata fees or a special levy by informal request made right after the due date passes, a lien should be filed promptly with a lawyer's assistance. As long as the process is correctly adhered to, all of the reasonable legal expenses associated with placing and enforcing a lien are fully recoverable from the owner in arrears.
- The timeline for lien placement should not be extended beyond normal recommended practices because insolvencies are likely to increase. The more dire an owner's circumstances, the more likely they are to seek insolvency protection, and the more important it is to promptly secure the debt by correctly registering a lien.
- For large special levies or long-standing strata fee arrears, liens should also be placed as promptly as the required notice process can be properly fulfilled.
- If a limitation expiration is approaching, it is still possible to file a proceeding to protect the amount owing. Then the Court process can be paused until a return to relative normalcy permits the proceeding to continue. The running of limitation periods has been temporarily suspended, however it isn't clear how long that suspension will endure.
- The Strata Council should not expressly allow a particular owner "time to pay" or other personal payment arrangements without obtaining legal advice first. Agreeing to deferred payment or payment arrangements has the potential to be unlawful, or

- can have legal consequences including prevention of placement of a lien or can even require that a strata corporation relinquish an existing secured position.
- The Strata Council may wish to consider postponing or reducing non-essential expenses in anticipation of possible cash-flow issues arising from the potential for multiple owners to fall into arrears.

One can be personally sympathetic to the plight of owners in distress, but council members have a duty to protect the interests of the strata corporation as a whole and to prevent one owner's inability to pay from unfairly burdening the other owners. Burdening other owners isn't consistent with the Act and can potentially cause a cascade effect on those who were prepared to pay their share, but could not (and should not be asked to) subsidize other owners.

Fischer and Company is proud to have been leaders and pioneers in bringing collections issues to the BC Court of Appeal and clarifying the recoverability of legal expenses reasonably incurred in lien placement and enforcement. We frequently advise strata councils on how to handle collections efforts ranging from routine to extremely challenging. We are here to help as needed during this crisis and always.

Managing Common Facilities During the COVID-19 Public Health Emergency

Every Strata Council should be considering the need to manage common areas to ensure that owners, residents and guests are complying with safe and sanitary practices, and mandatory social distancing. A strata corporation may face potential liability if they don't do enough to protect residents and guests.

Consider the following examples councils should discuss (among others):

- Increased vigilance about sanitizing frequently touched surfaces such as railings, handles and elevator buttons which can be contaminated with the COVID-19 virus. Current evidence suggests that the virus can survive for extended periods on such surfaces and can potentially be transmitted that way if residents are not careful and vigilant about hygiene while passing through common areas.
- Closing and locking access to non-essential common areas such as gyms, common rooms, playgrounds and swimming facilities for the duration of the public health emergency.
- Restricting occupancy of lobbies, elevators, shared laundry rooms, and other essential common areas.
- Consider whether you need to pass rules and/or post signage or notices to communicate these temporary measures.
- Being accountable and transparent with ownership in minutes and otherwise as to the measures taken and the reasons for them.

Review your Rules and Bylaws to see what authority council has, and get legal advice if you are concerned about your authority to take necessary steps. Legal advice may also be required to ensure that the steps taken by council are justified, lawful and fair, and accord

with other obligations. Council should avoid direct confrontation with owners who are not abiding by social distancing protocols, and may want assistance with enforcement of bylaws and rules.

The Condominium Home Owner's Association has maintained it's own list of COVID-19 updates here:

<https://www.choa.bc.ca/whats-happening/>

This link is particularly useful for more detailed recommendations on topics relating to common areas:

<http://www.ncceh.ca/sites/default/files/COVID-19%20Precautions%20for%20Multiunit%20Residential%20Buildings%20-%20March%2031%202020.pdf>

Fischer & Company

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