

RECENT CHANGES TO THE STRATA PROPERTY ACT & REGULATIONS

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DEPRECIATION REPORT, CRF & INFORMATION CERTIFICATES

The strata community is talking about the major amendments proposed by Bill 8 in late 2009. Some amendments to the *Strata Property Act* (the "Act") and *Regulations* have now become law by Order in Council No. 623 as of December 13, 2011. Depreciation reports are now mandatory. Also, amendments regarding contingency reserve fund ("CRF") contributions were declared into law. Future amendments were also adopted addressing disclosure requirements to the information certificate (Form B). These changes will raise disclosure standards and make the preparation of this document more onerous. Although there will be additional administration, it is likely warranted for the protection of the public over the long run.

Form B, Information Certificate Amendments

Section 59 of the Act requires the strata corporation to provide an information certificate (in the prescribed form – Form B) to an authorized person within one week of a request. This document provides a snap shot of the strata corporation operations at a moment frozen in time - being the date of the certificate. The certificate requires disclosure of many things including, the strata fees, agreements, special levies, budget excesses, bylaw amendments, court proceedings, work orders, number of rentals and other valuable information as at the date noted on the certificate. This is an important document for prospective purchasers and others. It is binding on the strata corporation and the person that reasonably relied on the certificate.

Section 59(4) of the Act is amended effective December 13, 2011. Now, the following documents must also be attached to the information certificate: the most recent depreciation report, if any, the rules of the strata corporation, the current budget and the owner developer's Rental Disclosure Statement.

Section 59(4) of the Act will be effective March 1, 2012. The Form B itself will be amended to include the additional requirement to attach the most recent depreciation report, if any.

Effective January 1, 2014, s. 59(3) of the Act will be amended to require strata corporations to disclose which parking stalls and storage lockers, if any, have been allocated to the strata lot. Also effective January 1, 2014, the Form B itself will be amended to include a section requiring specific information relating to parking stalls and storage lockers, if any, allocated to the strata lot.

Strata Corporation Records

Section 35(2) of the Act has been amended to require the Strata Corporation to retain copies of depreciation reports and repair and maintenance reports of major items in the strata corporation, including engineers' reports, risk management reports, sanitation reports and reports respecting any items required to be contained in a depreciation report. This requirement is new and was adopted into law on December 13, 2011.

Depreciation Report (s. 94, SPA, Regs 6.2 (1) & (2))

Depreciation reports or reserve fund studies are mandatory in other provinces. As of December 13, 2011, this is now the law in British Columbia as well. Strata corporations with less than five strata lots are exempt. Other strata corporations will be required to either obtain a depreciation report or waive this requirement by a $\frac{3}{4}$ vote of owners at a general meeting by a certain date. The date applicable to many strata corporations will be by December 13, 2013. This date could vary and legal advice should be sought on this issue. This provision gives strata corporations two years to comply with the new requirements. Thereafter, depreciation reports will be updated every three years.

Although unclear at this stage, the requirement to waive the depreciation report by $\frac{3}{4}$ vote of owners will likely be an annual requirement. It is not clear what happens if the $\frac{3}{4}$ vote is unsuccessful. If the $\frac{3}{4}$ vote is unsuccessful or if it is not held, then the strata corporation will inferentially be required to obtain the depreciation report. The next question becomes, "How long does the strata corporation have to obtain the depreciation report?" The answer is unclear, but it

is likely eighteen months. The answers to these questions will become clear as customary practice unfolds or minor legislative amendments are implemented.

Strata corporations and their advisors should closely review these changes, since the provisions adopted into law contain different wording as compared with the previous wording.

Regulation 6.2(1) has been repealed and replaced. Deprecation reports were previously defined as a document to assist a strata corporation in determining the appropriate amount for the annual contribution to the CRF. This definition has been removed.

The new Regulation 6.2(1) outlines what a depreciation report must contain, including *all* of the following in compliance with regulation 6.2(2):

- (a) a physical component inventory and evaluation;
- (b) a summary of repairs and maintenance work for common expenses respecting items that usually occur less often than once a year or that usually do not occur;
- (c) a financial forecasting section;
- (d) the name of the person who prepared the depreciation report, including their qualifications, their E&O insurance and their relationship to the strata corporation;
- (e) the date of the report; and,
- (f) other appropriate information or analysis.

There are mandatory requirements imposed on the physical component inventory and evaluation, as follows:

(a) The physical component inventory must be based on an on-site visual inspection. Any deprecation report prepared without a physical attendance and survey will not meet the minimum statutory requirements.

(b) The report must include a description and estimated service life of the common property, common assets and other property for which the strata corporation is responsible over *30 years*.

(c) The regulations require that the following items must, where *practicable*, be addressed in the depreciation report: building structure, building exterior, including roof, roof deck, doors, windows and skylights, buildings service systems including electrical, heating, plumbing, fire protection and security, common amenities and facilities, parking facilities and roadways, utilities, including water and sewage, landscaping, including paths, sidewalks, fencing and irrigation, interior finishes, including floor coverings and furnishings, green building components, balconies and patios. This mandatory list is broad and all encompassing.

(d) All common property and limited common property for which the strata lot owner is responsible to repair and maintain must be identified. Who is responsible to repair and maintain windows, doors and balconies has historically been the subject matter of controversy and debate. This will likely continue into the future. However, what is clear is that the repair and maintenance obligations will have to be addressed prior to completion of a depreciation report, since the issue of who is responsible (owner or strata corporation) will have to be determined. Many strata corporations should consider a bylaw review to address and clarify repair and maintenance issues.

Regulation 6.2(3) mandates the criteria for financial forecasting. It must include:

(a) The costs projected over a 30 year period for anticipated maintenance, repair and *replacement* items set out above, beginning with the current or previous fiscal year.

(b) The factors and assumptions used to calculate the costs must be described, including interest rates and rates of inflation.

(c) A description of how the CRF is currently funded.

(d) The current balance of the CRF minus any approved expenditures that have not yet been taken from the fund.

(e) A minimum of 3 cash-flow funding models for the CRF.

Regulation 6.2(4) requires an analysis of the cash-flow funding to meet the depreciation report expenditure requirements using one or more of the CRF, special levies and financing.

Regulation 6.2(5) addresses payments out of the CRF where the contribution is based on a depreciation report. The requirements for payment out of the CRF are the same now as before the amendment. CRF expenditures do not have to be for the purposes of the depreciation report. The expenditure can be for any purpose consistent with the fund or to pay for common expenses that usually occur less often than once a year or that do not usually occur. A $\frac{3}{4}$ vote of owners at a general meeting is still required to authorize a payment out of the CRF (s. 92, Act).

Qualified Person

There has been a lot of debate regarding who should be qualified to prepare a depreciation report. A “qualified person” is defined as “a person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation’s common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the Act, the strata corporation’s bylaws or an agreement with an owner and to prepare a depreciation report that complies with subsections (1) to (4)” (Reg. 6.2(6)).

This is a broad definition. The intent of the legislature was to allow the strata corporation to have flexibility in selecting the person best-suited to analyze its unique property.

Undoubtedly several people will view the depreciation report as a business opportunity. It is important that the strata corporation only hire qualified persons to prepare this important document. Strata corporation’s should consider amending their bylaws to clarify “who” is a qualified person to prepare the report.

The list will likely include engineers, accountants, professional reserve analysts, appraisers and other professionals. This issue will likely constitute an industry debate for years to come.

Contingency Reserve Fund (“CRF”) Contributions

The statutory guidelines and customary practice for minimum contributions to the CRF remain the same. The cap has been removed, which is a positive move forward.

As before, a strata corporation must determine annual contributions to the CRF in compliance with the regulations (s. 93, Act). Many regulations have been repealed and replaced with new provisions effective December 13, 2011.

CRF Contribution for 1st AGM

The following summarizes the new regulations dealing with CRF contributions at the 1st annual general meeting (“AGM”) of the strata corporation:

1. If the amount in the CRF at the time of the 1st AGM is less than 25% of the estimated operating expenses set out in the interim budget (the “Developer’s Budget”), then the CRF contribution must be at least 10% of the operating budget approved at the 1st AGM (Regulation 3.4(a)). The funding requirements are essentially the same as before.
2. If the amount in the CRF at the time of the 1st AGM is at least 25% of the estimated operating expenses set out in the Developer’s Budget, then contributions to the CRF are discretionary and *may* be made as part of the annual budget approval process after consideration of the depreciation report, if any (Regulation 3.4(b)). This permits *all* contributions to the CRF by a simple majority vote of owners at an AGM. The regulations prior to amendment contained a ceiling that required a $\frac{3}{4}$ vote to make contributions to the CRF that exceeded 100% of the operating budget. The requirement for a higher threshold vote of owners once this ceiling has been met has been deleted. This is a welcome amendment to the regulations.

CRF Contributions after the 1st AGM

The Regulation dealing with CRF contributions after the 1st AGM has been repealed. Again, customary practice will continue as before. The amendments remove the requirement for a higher threshold vote to approve contributions once a ceiling has been met and take into consideration the depreciation report.

The replacement regulation is summarized as follows (Regulation 6.1):

Regulation 6.1(a) requires mandatory CRF contributions in certain circumstances. If the CRF amount at the end of the fiscal year after the 1st AGM is less than 25% of the total operating budget for the fiscal year that just ended, then the mandatory annual contribution is calculated as the lesser of (i) 10% of the operating fund for the current fiscal year, and (ii) the amount required to bring the CRF to 25% of the total amount budgeted for the contribution to the operating fund for the current fiscal year.

Regulation 6.1(b) provides that if the amount in the CRF at the end of *any* fiscal year that has just ended is equal to or greater than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, then additional contributions *may* be made as part of the annual budget after consideration of the depreciation report, if any.

Prior to this amendment, a strata corporation was not required to contribute any monies to the CRF once the CRF reached 25% of the total annual budget. The contributions are still permissive using this formula, but the formula has been amended slightly to take into consideration the depreciation report requirements.

The legislative goal was to improve accountability. Strata accountability is becoming increasingly important since according to the ministry responsible for housing, strata properties now make up more than half of the taxable properties in more than a dozen British Columbia municipalities. It is anticipated that the number of stratas in British Columbia will continue to grow as the province's population increases.

Additional amendments to the *Strata Property Act* and regulations are expected into the near future. The most notable proposed amendment relates to the introduction of audited financial statements.

Strata corporations, managers, engineers and other persons involved in strata governance, management and administration are encouraged to keep up to date by participating in ongoing industry training and educational programs. Also, strata corporations should consider bylaw amendments to address the ongoing amendments to the legislation.