

## **Chapter Two: The Framework of Residential Construction — Continued**

### **XI. Management Companies and Strata Councils**

There are approximately 840,000 strata lots in the province, making this form of property ownership very significant.

Proper maintenance is an important element of multi-family, residential buildings. However, in the research and submissions presented to this Commission, there is no evidence to suggest that improper maintenance procedures are an element in creating the leaky condo crisis. In fact, in addition to testimony provided by building envelope specialists and other professionals, the most definitive survey undertaken in 1996 identified design and construction as the two main factors responsible for water penetration.

Strata Councils and property managers have explained to the Commission that, upon initial reports of leaks or water damage, they have attempted to tackle the problem immediately. Few had expected such a horror story related to inadequate or faulty design, poor construction materials, and workmanship. Further, they have found that initial suggestions by some developers, builders, engineers, and their warranty program, to apply remedial caulking and exterior maintenance programs as a solution, was ineffective. The buildings began to self-destruct within a few months.

Condominium property managers operate at the direction of and report to the elected strata council. Payment for services is on a fixed-term/fixed-fee contract basis. The services provided to a multi-unit residential building by a well-qualified property manager should not be underestimated. There is a need to ensure minimum standards of business practices and professional acumen. While many in the property management industry have construction-related backgrounds and experience, it is useful to consider ongoing professional development. This should deal with fiduciary responsibilities for the management of finances, ongoing maintenance and repair standards, and plans for long-term repairs and long-term replacement of common property features.

	<b>Recommendation #52: All property management firms for condominium buildings be registered immediately with the Homeowner Protection Office.</b>
--	--

	<b>Recommendation #53: All property management firms for condominium buildings be licensed by the Homeowner Protection Office, pending discussion with the industry on the most appropriate form of education, training, and qualification.</b>
--	---

*"... as this strata (council) now starts, you've got a completely neophyte group of people on the strata council, floundering around, as someone mentioned, there's no manual, there's no way to orient yourself. People are walking through rooms saying gee, I wonder what that pipe does, and I wonder what that control thing was, and, by the way, where are the plans, what is the maintenance schedule that we should be following?"*

*Jack Stevens, Condo Owner*

**Recommendation #54: All strata councils be trained in the responsibilities of property management, if they choose not to employ the services of a management company. A log book be maintained to ensure the maintenance responsibilities are fulfilled on a continuous basis.**

The Commission has been advised that the *Condominium Act* has been in the process of major revision for several years. It has involved considerable public consultation, including a discussion paper (1990), discussion draft (1994), and a pamphlet on several important issues (1997). The last major revision of the Act was in 1977. This established the fundamental rules for the daily operation of condominiums, including governance procedures, financial and property matters, and by-law creation and enforcement.

As the discussion and quantitative information shows in Chapter One, and as the residential construction activity in the province over the last 15 to 20 years indicates, condominiums have become an increasingly popular form of property ownership. It is also an important source of affordable family and retirement housing.

It is generally agreed that the current Act is difficult to understand. This is a problem for people who rely on it to determine their rights and duties. Many provisions create power imbalances among municipalities, developers, strata corporations, individual owners, landlords, and tenants. Increasingly, the Act must regulate more diverse types of strata complexes, requiring greater flexibility for strata corporations.

It is not the intent of the Commission, nor is there sufficient time, to review in detail the proposals for the new legislation. However, in the context of submissions made at the Inquiry, it is necessary to outline and emphasize important changes that should be made. We understand that the majority of these suggestions are compatible with the legislative redrafting, which is being taking place within the Ministry of Finance.

Participants at the hearings outlined the many difficulties involved in obtaining from the developer, necessary documents in order to respond effectively to problems, including water damage.

**Recommendation #55: That amendments be made to the *Condominium Act* to ensure a complete set of records be transferred to the management company or strata council at its first meeting, to facilitate the effective maintenance of condominium structures. These records should include:**

- (i) any plans required to obtain a building permit;**
- (ii) all documents indicating actual location of pipes, wires, and other infrastructure;**
- (iii) the names and addresses of all major contractors and sub-contractors;**
- (iv) all warranties, service manuals, and manufacturers' documentation relating to the common property and common assets; and**
- (v) maintenance manual, renewal plans, and procedures specific to each multi-family building.**

Under the current Act, strata corporations are required to disclose information with respect to a strata lot. This information is disclosed to owners and purchasers, by means of a Section 36 Certificate.

	<p><b>Recommendation #56: That additional disclosure be provided to purchasers to assist in assessing the health of a strata complex including:</b></p> <ul style="list-style-type: none"> <li>(i) any amount that the owner is obligated to pay in the future for a special levy;</li> <li>(ii) any approved expenditures still to be withdrawn from the contingency reserve fund;</li> <li>(iii) any outstanding notices or work orders against the strata corporation; and</li> <li>(iv) a building history and construction problems, if any.</li> </ul>
--	--

Under the current Act, the strata corporation's duty to keep records and provide owners with meaningful access to information, is unclear.

	<p><b>Recommendation #57: That the <i>Condominium Act</i> be amended to clarify the strata corporation's responsibilities to make and keep records, and to make these documents available to owners in a timely fashion. Record keeping and access provisions should be moved from the by-laws to the body of the Act in order to reflect their importance. As well, all owners should be allowed to attend, as observers, all strata council meetings.</b></p>
--	---

Under the current Act, strata management contracts can be terminated, regardless of breach, by a 75 percent vote of the owners. However, contracts have often been entered into by owner/developers, who may still hold ownership positions in a number of units, making it difficult to terminate a contract. As well, a number of condominium owners and strata councils expressed difficulty in obtaining an effective level of maintenance or response to their request for repairs, when the developer was also the owner of the management company.

*"Our builder (said) ... that the first million dollars worth of damage that began to stack up in the first three years was due to a lack of maintenance. There are two huge ironies here. Our builder was given an architectural design award for our building. He also owns the new maintenance company that looked after our building for the first few years, until our strata council got organized and the suites were sold."*

*Joyce Freeman, Condo Owner*

	<p><b>Recommendation #58: That all property management companies, hired by developers, have an arms-length relationship with the development company, and operate as an agent for the strata council.</b></p>
--	---

	<p><b>Recommendation #59: That the owner/developer act in the best interests of the strata corporation including pursuing all warranty claims, and informing the strata corporation of its right to take legal action, if this duty is not met.</b></p>
--	---

	<p><b>Recommendation #60: That any contracts entered into by the owner developer should terminate automatically at the time of the second annual general meeting.</b></p>
--	---

Currently, the contingency reserve funds of strata corporations are 5 percent of the operating expenses for the current year. A number of presenters expressed a desire to create a greater larger reserves for

unforeseen problems. An absolute increase in reserves is one approach, whereas, a life-cycle costing approach may be preferable because it matches reserves with the estimated timing for replacement.

**Recommendation #61: That the approach for establishing sufficient contingency reserves be reviewed with respect to the most appropriate method for ensuring adequate reserves.**

**Recommendation #62: That owner/developers contribute a contingency reserve fund for the new strata corporation, with a minimum contribution of 5 percent of the estimated operating expenses, as set out in the interim budget.**

Currently the Act makes no provision for raising money in strata corporations through special levies. However, in practice, strata councils facing repairs for leaky condos rely on special levies. Authorizing and regulating this practice will assist in accounting for monies raised in this way, and assist strata corporations in borrowing money. In this way, amounts still owing under special levies could be used as security for a loan.

**Recommendation #63: That the *Condominium Act* authorize and regulate the raising of money for special levies and clarify borrowing options.**

Currently a 75 percent vote is required from 3/4 of the owners, rendering abstentions from meetings as effective "no" votes. As well, in some situations, one owner (often the developer), who holds title to a number of suites, can effectively control by-laws changes, often to the detriment of resident-owners. There should also be an amendment that would restrict the number of votes per owner to one, regardless of the number of units owned in a strata.

**Recommendation #64: That the *Condominium Act* be amended to require 75 percent of the votes cast to make a change in the strata councils by-laws, and that votes be limited to one per owner.**

Under the current system, strata property lines are defined as existing in the middle of the walls. When a failed wall system is replaced by a rain screen system, it can add an additional 3/4". As a result, it is possible that a rain screen wall may not be allowed if the strata property lines are affected by this design solution.

**Recommendation #65: That the *Condominium Act*, as it pertains to property lines, be amended so as to facilitate the most appropriate building envelope renovation system.**

Under current legislation, purchasers' deposits are paid into a trust fund account and unavailable for the developer's use. However, warranty providers offer deposit protection to \$20,000.

**Recommendation #66: That legislation be amended to allow developers to use purchaser's deposit funds for cash flow purposes, when such funds are protected by warranty coverage.**

 [Previous](#) | [Contents](#) | [Next](#) 

---

This electronic version is for informational purposes only.  
The printed version remains the official version.

Copyright © 1998: Government of the Province of British Columbia