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Making a List, and Checking It Twice...

Tom Carr
President of CHOA



As summer fades into fall the days become shorter and leaves start to change colour. Our summer holidays are over and we find ourselves wondering where the time went. The children are back in school, the parents are back to work, and it's time to finish off all the outdoor projects before the "rainy season" is upon us again.

As I sit at my office desk contemplating which "To Do List" item I should tackle next I'm reminded of the theme for this issue of the Journal, checklists. Checklists have probably been with us ever since man has been putting "pen to paper." My own personal introduction to them came many years ago when, as a small child I heard the words of a Christmas carol saying ".....he's making a list, and checking it twice....." Of course I always tried very hard to be nice, especially close to Christmas.

As adults checklists take on a whole new meaning for us, particularly when it comes to strata property management.

They help us organize our days, prioritize our activities, manage our time and achieve our goals. I personally make use of numerous types of lists in the day to day running of my business.

Since I became President of CHOA this past April the board of directors and staff have participated in several planning exercises to develop goals and objectives for the

future growth of CHOA. These exercises involved developing lists of ideas, thoughts and suggestions at brainstorming sessions, and then organizing them into workable groups that would form the basis of a strategic plan for CHOA's future development. The object of the exercise is to provide CHOA with a plan that will enable us to manage our growth and ensure that our members always enjoy high levels of service and satisfaction.

Recent reductions in services by government and their related agencies have left a consumer services void that CHOA is now looking to fill. In order to do this effectively we must access the services needed, plan out the services we can provide, establish a budget for the funds required to provide these services and then obtain the necessary funding to make it all happen. As you can well imagine we have gone through many lists these last few months as we have put our plans together. With funding grant applications now pending we hope to soon be a position to provide our services to all those who need them.

Your strata also goes through many lists, they include lists of maintenance items, repair lists and perhaps most importantly volunteer lists. Every strata, no matter how big or small it might be needs willing volunteers to make things happen. My wife and I have volunteered for numerous things since we moved into our townhouse and have found it to be a great way to meet our neighbours and to make the whole complex a better place to live. So next time the opportunity arises in your strata make a list, and check it twice to see how you can help make a difference. ▲



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Committee Operations and Development



Tony Gioventu
Executive Director, CHOA

Committees may perform a valuable role in a strata corporation. They can ease the burden of responsibility from the strata council, increase the involvement from the ownership and assist in the implementation and long term planning of the strata corporation.

A common example of a committee is a landscaping or garden committee. To understand the structure of the committee, we first have to understand the structure of the corporation. The strata corporation is the collective interests of all the owners. They all have an undivided interest in the common property assets and facilities of the corporation, thereby, they also have an interest in how those areas are maintained and operated. Each year the strata corporation approve an operating budget which in turn establishes the strata fees for the coming year. Additionally the strata corporation may also pass a special levy or resolution for monies to be spent from the contingency reserve fund for additional projects that do not normally occur each year. Once those amounts have been approved, the elected strata council have the obligation to proceed with the maintenance and repairs of the common facilities, property and assets of the corporation, in accordance with the approved budget or special expenditures.

Take for example an approval of a budget of \$25,000.00 for landscaping. In a large townhouse complex this may be a common amount for annual maintenance. What to do with those funds becomes the decision of the strata council if the expenditures are not stipulated in the budget, or this is where the opportunity of a committee could play a role. If the council elects to approve a committee, the procedure is set out in Standard Bylaw 20 of the Strata Property Act.

Delegation of council's powers and duties

20 (1) Subject to subsections (2) to (4), the council may delegate some or all of its powers and duties to one or more council members or persons who are not members of the council, and may revoke the delegation.

(2) The council may delegate its spending powers or duties, but only by a resolution that

- (a) delegates the authority to make an expenditure of a specific amount for a specific purpose, or
- (b) delegates the general authority to make expenditures in accordance with subsection (3).

(3) A delegation of a general authority to make expenditures must

- (a) set a maximum amount that may be spent, and
- (b) indicate the purposes for which, or the conditions under which, the money may be spent.

(4) The council may not delegate its powers to determine, based on the facts of a particular case,

- (a) whether a person has contravened a bylaw or rule,
- (b) whether a person should be fined, and the amount of the fine, or
- (c) whether a person should be denied access to a recreational facility.

Once the corporation has approved the amount of \$25,000.00 for landscaping, the decision process begins. Before you start the checklist of obligations how are you selecting members of the committee? Who is on the committee? Who is eligible? Do your bylaws have any stipulations for the committees? If the committees hold

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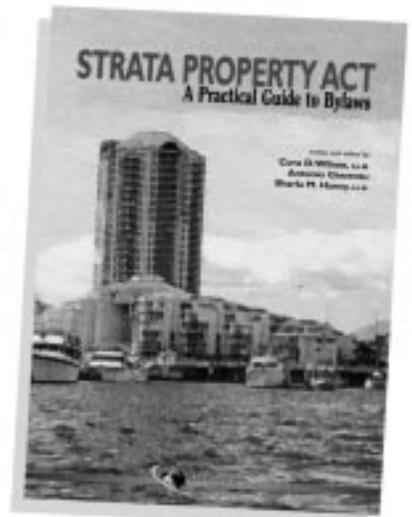
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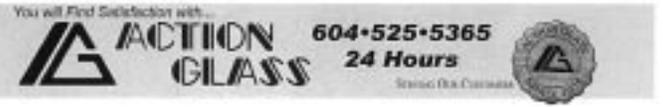
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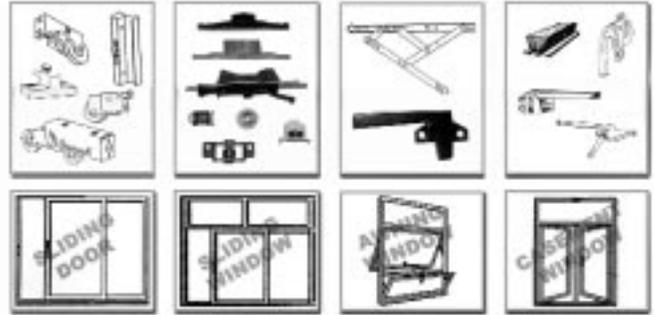
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meetings, does the council set any guidelines? Time, location, notifying the owners? What about minutes of the committee meetings?

Now comes the task of what to do with the \$25,000.00 landscape budget and how to instruct the committee.

1. Is the council supervising this contract or has council delegated these duties to a committee?
2. Who is performing the contract work? Is it resident owners, or is the work being contracted?
3. What is the breakdown of the costs? Is there a percentage of allocation for maintenance? A portion for replacement of plants and materials? Any upgrades to landscaping?
4. Who is responsible for administering the contract? Is the work tendered each year? Who performs monthly reviews? Who is the supervisor of the contractors or volunteers?
5. If there is a problem with the landscaping who is the contact person?
6. If the duties have been delegated, what authority is the committee granted? Supervision? Budget allocations? Alterations? Maintenance and repairs?
7. What system of reporting is undertaken? Financial reports, maintenance reports, or alteration requests?
8. Does the council require a monthly report from a representative of the committee? If so, in what form?
9. What obligation does the committee have for long term planning and budget planning for subsequent years?

For council or committees that are undertaking implementation of budgets or special projects, these are all critical questions to be answered before the undertakings can begin. If your committee is reviewing a contract for recommendation to the council it is important to remember that the council will sign for the contracts and consider whether the contract for servicing or construction and goods should undergo a legal review prior to completing the agreement. ▲

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The Homeowner Protection Office (HPO) is a provincial Crown corporation established to increase consumer protection for homeowners and improve the quality of residential construction in British Columbia.

The HPO's program areas include: licensing residential builders including building envelope renovators and monitoring the third-party home warranty insurance system; conducting research and education initiatives in the area of building science; and administering financial assistance for owners of leaky homes. The following advisory is the first in a series to assist owners' of leaky homes through the repair process.

The HPO ensures consumer protection for owners of leaky homes through the licensing of building envelope renovators and requiring mandatory third-party warranty insurance on building envelope renovations. Here's what you need to know:

Make sure your repair contractor is a Licensed Building Envelope Renovator. As of September 30, 2000, any contractor who performs a qualifying building envelope renovation must be licensed by the HPO. (See above for further details on buildings that do not qualify.)

The Licensed Building Envelope Renovator who repairs your building will arrange for third-party warranty insurance on repairs that meet the requirements of the Homeowner Protection Act Building Envelope Renovation regulations.

The warranty insurance arranged by the Licensed Building Envelope Renovator must meet the requirements of the Homeowner Protection Act. The minimum coverage includes 2 years on labour and materials. If 60 per cent or more of the cladding surface on a face of the building is replaced, a 5-year warranty on water penetration is also required.

In order to obtain the necessary building permit to start the repair work, your Licensed Building Envelope Renovator's license and a commitment for warranty coverage from an authorized home warranty insurance company must be in place. In geographic areas where building permits are not required for such building envelope renovations, the commitment of licensing and warranty insurance must still be in place prior to the commencement of the renovations.

As proof of a commitment for warranty insurance your Licensed Building Envelope Renovator, the building envelope consultant, the insurance policy holder and the third-party insurance provider, will complete a HPO Building Envelope Renovation Schedule. Your strata corporation or housing cooperative will be provided with a copy of the completed schedule prior to applying for a building permit or commencing renovations. This form is your confirmation that a Licensed Building Envelope Renovator is completing the repairs and the mandatory warranty has been arranged for the proposed building envelope repair.

A public registry of Licensed Building Envelope Renovators is available on the HPO website or by calling the toll-free information line. The information provided in the advisory is general advice only and under no circumstance does it

replace the Homeowner Protection Act and Building Envelope Renovation Regulations.

If you have any questions regarding the requirements for licensing and warranty on building envelope renovations, or any other Homeowner Protection Office program, please call the toll-free information line at **1-800-407-7757** or visit the web site at **www.hpo.bc.ca**. ▲

The following types of buildings are exempt from the regulations:

- buildings with only one or two self-contained dwelling units,
- multi unit buildings having all dwelling units used as rental buildings other than social housing projects,
- hotels and motels,
- dormitories,
- care facilities,
- floating homes,
- repairs carried out by the original builder at no cost to the owner(s) or when there is a cost-sharing agreement between the original builder and the owner(s),
- buildings being repaired under policies of home warranty insurance pursuant to the Homeowner Protection Act, and
- buildings where the total construction costs associated with the building envelope renovation are less than the greater of \$10,000 or \$2,000 per unit in the building.



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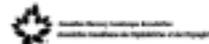
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The next question that must be answered is “are there regulations that identify any common property that can be made the responsibility of an owner to repair and maintain?” The answer is “No”.

Although section 72 (2)(b) was proclaimed into force, it does not and will not have any affect until regulations are drafted which identify the type of common property that can be made the responsibility of an owner. At this time there is no common property identified in the regulations that can be made the responsibility of an owner to repair and maintain. As a result, section 72(2)(b) has no force or effect on Strata Corporations.

At this time, a Strata Corporation cannot enact a bylaw making an owner responsible for the repair and maintenance of common property.

Section 72(2) of the Act does however allow a Strata Corporation to pass a bylaw making an owner responsible for the repair and maintenance of limited common property if the owner has the use of it.

Additionally, it should also be noted that a Strata Corporation can, as part of its approval to permit an alteration to a strata lot or common property, make an owner responsible for the expenses relating to the alterations. ▲

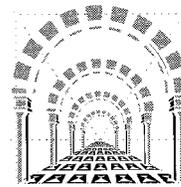
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Recording Meetings

Elaine McCormack
McCormack & Company Law Corporation



What position should a strata council take if an owner asks to voice record a strata corporation meeting, or if an owner simply starts recording the meeting while it is in progress without asking for permission? Also, with the proliferation of video cameras, can owners showing up to strata corporation meetings with video cameras be far behind? How about voice recording council meetings?

An owner may want to record a meeting so that he can review the recording later to ensure that the minutes of the meeting are accurate and complete. Also, an owner may want to record a meeting so that he can prove the council is not treating him fairly. However, when an owner turns on a tape recorder at a meeting, strata council members and other owners can feel intimidated. Owners may be afraid of saying something that is legally “wrong” and may not want to talk at the meeting if their every word is recorded.

How much privacy a person is entitled to in our society is the subject of a proliferation of legislation in Canada, both federal and provincial. However, the legislation is geared towards dealing with the issue of privacy and government record keeping and private communications intercepted by the police.

Everyone attending a general meeting for a strata corporation should be aware that the strata council has an obligation to ensure that minutes of the meeting are kept, including the results of any votes. Therefore, by attending a strata corporation meeting an individual is submitting to a certain amount of record keeping. However, owners may be much more intimidated if they are being recorded than if they know that a strata council member or property manager is taking minutes of the meeting by hand or on a laptop computer.

As an aside, under the Schedule of Standard Bylaws to the Strata Property Act, a vote has to be by secret ballot if an owner requests it, so unless that bylaw is changed by a strata corporation an owner can ensure that how he voted on an issue is not recorded in the minutes.

It is important in a strata corporation to encourage the free exchange of ideas of all of the owners. There, it is my recommendation to strata corporations dealing with the issue of whether to allow an audio or visual recording of a strata corporation meeting to consider passing a bylaw that no audio or visual recording device will be taken into or used at a Strata Corporation meeting without the approval of the majority of eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting. I consider the use of a majority vote to be appropriate because section 50 of the Strata Property Act provides that matters are decided on the basis of a majority vote unless a different voting threshold is required or permitted by the Strata Property Act or the regulations. A bylaw helps in that owners are given advanced notice about how the situation will be dealt with. However, even if a bylaw is not created, section 50 still supports the position that the owners should decide by a majority vote whether a strata corporation meeting can be recorded.

Under the Schedule of Standard Bylaws to the Strata Property Act decisions at strata council meetings are made by a majority vote of the strata council, so the council can decide on whether or not a council meeting can be recorded. However, strata councils should be very careful with respect to voice recording council meetings. Although council minutes must be made available to all owners, it is

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not always appropriate for a council meeting to be recorded. For instance, section 17 of the Schedule of Standard Bylaws in the Strata Property Act lists various types of meetings that no observers may attend, including meetings dealing with bylaw contravention hearings, rental restriction bylaw exemption hearings and any other matters if the presence of observers would, in the council's opinion, unreasonably interfere with an individual's privacy. Certainly, an audio or visual recording of a meeting dealing with any of these matters brings into question whether or not the meeting will be heard or viewed by non-strata council members at a later date and whether the owner's privacy will be respected.

In my opinion, to promote the free exchange of ideas, strata corporations and strata councils should err on the side of not allowing meetings to be recorded. It is the outcome of any votes at the meetings that have lasting effect on the strata corporation and the owners and the outcome of any votes need to be recorded in the minutes. ▲

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Repairing Common Property



Adrienne Murray

Associate Council, McCormack & Company Law Corporation

Can a Strata Corporation pass a bylaw making an owner responsible for the repair and maintenance of common property? This rather straightforward question is the cause of considerable confusion among a number of Strata Councils and owners.

When the Strata Property Act was originally drafted section 72(2) provided:

(2) The Strata Corporation may, by bylaw, make an owner responsible for the repair and maintenance of

(a) limited common property that the owner as a right to use or,

(b) subject to the regulations, common property other than limited common property

However, at about the time the Act come into force, the section was amended as follows:

The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of

(a) limited common property that the owner has a right to use, or common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.

Section 72(2)(b) was excluded from the sections that came into force on July 1, 2000. Later, in October 2001, when other regulations were drafted, section 72(2)(b) was proclaimed into force.

After the announcement that section 72(2)(b) was in force, some Strata Corporations believed that they could enact bylaws relating to the repair of common property. Others were uncertain about whether the original version or the new version of section 72(2) (b) was proclaimed. The result was considerable confusion among many Strata Corporations.

The version of section 72 that was enacted was the more recent version. That section provides that a Strata Corporation can only enact a bylaw to make an owner responsible for the repair of common property if the common property is identified in a regulation.

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If the strata council is not required to disclose confidential information of owners to other owners, then this gives the owner producing this information some comfort. However, the question of whether or not this information is compellable by another owner still remains unanswered. A specific ruling is required from the Court before one may conclude that confidentiality applies.

The following principles emerged out of J. Burnyeat's review of the case law:

- the fact that the present sale value of a strata lot exceeded the purchase price of the strata lot was "not relevant"
- unsuccessful efforts to sell a strata lot at various prices and the devaluation of the Canadian dollar could not be relied upon to establish hardship
- economic hardship alone is insufficient to establish hardship; however, economic hardship combined with a "leaky condo" is probably "hardship"
- the question of hardship must be decided based upon the facts of each particular case
- loss of rental revenue as a result of a new ban on rentals combined with a decrease in resale value constituted financial hardship
- evidence showing that the strata lot owner may face financial ruin due to debt service constituted hardship
- inability to sell a strata lot alone is not a sufficient ground to find hardship

Other factors to consider may include:

- inability to obtain insurance because a unit is not occupied
- potential prohibitive cost of property management
- substantial decrease in sale value
- the strata lot value making up all or substantially all of an owner's assets
- there must be hardship to the owner
- there must be proof that carrying two properties causes hardship to the owner
- a duplicated expense for a rich owner may not cause hardship; however, a duplicated expense for a poor owner may cause hardship

The Als case suggests that objective documentary evidence to establish financial hardship must be produced by an owner. The owner may not simply allege that a certain fact exists. He or she must prove it with adequate evidence. The statute suggests that the test for hardship may be subjective ie. that particular owner must suffer hardship. However, hard evidence is required to prove that the hardship exists. Strata Council members should not hesitate to demand access to documentary evidence, even if it is otherwise confidential or embarrassing to the owner.

Cora D. Wilson, Lawyer and President of C.D. Wilson & Associates. Ms. Wilson is a condominium lawyer, educator and author. She currently represents numerous strata corporations wherever they are located in British Columbia. She is the author of the Do-it-Yourself Bylaw Package. She is the editor of Strata-sphere Condominium Services Inc. ▲



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“Hardship” — What Does It Really Mean?



Cora D. Wilson
C. D. Wilson & Associates

The question is frequently posed, “When should a strata corporation grant the owner the right to rent a strata lot on grounds of hardship? A battle typically rages between the strata council which desires to exclude rentals and the owner who believes that he or she is suffering in some way and should have the right to rent. The strata council refusing to permit an owner to rent on grounds of hardship may face an application in the Supreme Court for an order granting the exemption in any event.

By way of background, an owner may apply to the strata corporation for an exemption from a rental bylaw on the grounds of hardship pursuant to Section 144 of the Strata Property Act (“SPA”). The owner must apply, in writing, and state the reason why he or she thinks the exemption should be granted and whether or not the owner requires a hearing. This provision appears to require a subjective test of hardship (ie. What does the owner think?) as opposed to an objective test (ie. What would a third party reasonable person think?). Clear cut direction on what documents a strata council may require to support the application is glaringly absent.

Section 144(6) of SPA provides that the strata corporation must not unreasonably refuse to grant the hardship exemption. So what does this mean?

Strata Council’s frequently ask the question, “Can we ask an owner to provide us with evidence of financial hardship ie. financial statements and other documents to support the allegations. Many believe that an owner’s financial documents are personal and extremely sensitive. A recent case appears to point towards a solution.

In *Als v. Strata Corp.* NW1067 [2002] B.C.J. No. 145, 2002 BCSC 134, Vancouver Registry No. L013649 (B.C.S.C.), J. Burnyeat addressed the issue of hardship. The owner argued that the grounds to establish hardship were as follows:

- the assessed value of the strata lot was lower than the amount of the mortgage by approximately 33%
- the owner’s employer transferred him to another city so accommodation costs were duplicated
- the owner would suffer a substantial loss if he sold at this time
- the insurance of the strata lot may be at risk due to prolonged vacancy

The strata council refused the request on grounds that there was insufficient evidence to establish that the inability to rent the strata lot was a financial hardship. The court agreed.

There was no mention of financial loss or figures given to suggest or prove hardship would be suffered as a result of the move. The strata lot owner refused to provide a financial statement on grounds that it was “very intrusive”. The financial information provided indicated that the strata lot owner received an incentive ie. his base rent was paid by the employer.

It is worthy of note that legal counsel requested evidence of other hardship applications from the strata council. The strata council refused this request on grounds of confidentiality. This is a common occurrence. The Court did not disagree.

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How to Save Energy

in a multi-residential building and improve your bottom line

Energy costs are a significant part of the operating costs in a strata property. Your building consumes energy for indoor and outdoor lighting, ventilation, exhaust fans, elevators, heating and more. Paying attention to how your building uses energy can result in big cost savings.

Being Power Smart results in more efficient, comfortable and marketable buildings, as well as lower operating costs. And the savings go straight to your bottom line. You can decrease your electricity bills by taking simple Power Smart steps as part of your routine building maintenance program:

Lighting

- Install energy-efficient lighting such as compact fluorescents and LED exit lamps in common areas. Compared with regular incandescent bulbs, these lights turn more energy into light, and less into heat (which is not only a waste, but puts more demand on your cooling system). They last so much longer that they can save significantly on labour for replacing bulbs.
- Use lighting controls such as automatic switches, photo cells and timers to limit lighting to the times when it is needed. Remember that fire regulations require lighting in areas such as hallways and stairwells at all times.

Ventilation

- Adjust the ventilation air heating temperature where it enters common spaces to 21°C from November to March, and to 18°C the rest of the year.
- Keep all components (such as filters, heating and cooling coils) clean and well maintained to reduce the load on motors.

Parking exhaust

- Use a carbon monoxide (CO) sensor to activate fans when the CO level in enclosed parking areas approaches the level set by the building code in your area.
 - Use a timer to shut off ventilation fans when there is little or no activity in the parking area, for example from midnight to 5 am.
- Note: a timer is not required if CO sensors are used.

Water heating

- Make sure that all tanks and hot water lines are properly insulated.
- Set the hot water temperature to the lowest level necessary for your building. (In most buildings, 60°C meets the needs). A setting of 55°C may be used for gas water heaters.
- Use an aquastat to control circulating pumps and reduce pumping costs as well as piping heat loss.

Heating

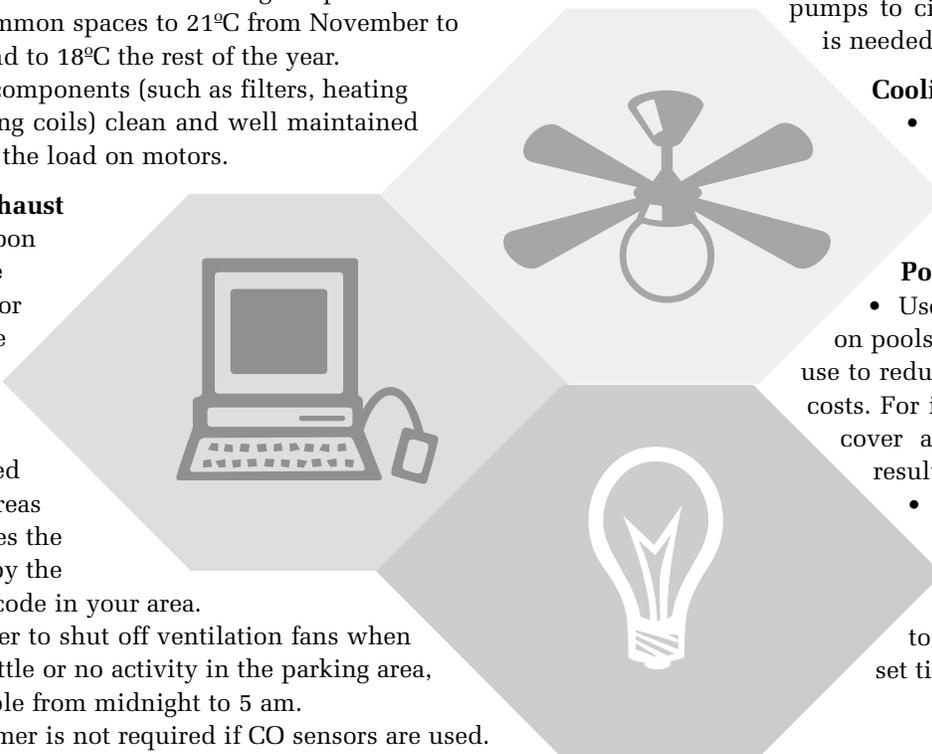
- Set the room temperature in common areas to 20°C–21°C.
- Use a setback thermostat to reduce temperatures to 15°C–18°C during unoccupied hours.
- Set thermostat temperatures to 5°C–10°C in sprinkler rooms (which is within code requirements and high enough to prevent freezing) and 30°C in electrical switch rooms and elevator machine rooms to activate cooling fans.
- Install a controller on radiant loop circulation heating pumps to circulate water only when heat is needed.

Cooling

- Set the air conditioning temperature to 24°C–26°C, with a setback to 30°C if possible during unoccupied periods.

Pools and spas

- Use a polyethylene or foam cover on pools and spas when they are not in use to reduce heat loss and lower heating costs. For indoor pools and spas, using a cover also reduces ventilation costs resulting from evaporation.
- Set pool water temperature to 24°C–28°C and spa water temperature 36°C–40°C.
- Install push button timers to operate sauna heaters for pre-set time period.



Maintenance Schedule for Your Building

	As Required	Monthly	Per Season	Mid Season	Semi-Annually	Annually
Lighting						
Clean lenses and reflectors	•					
Check photocells		•				
Adjust timer clocks for daylight savings					•	
Ventilation Unit						
Check filters for cleanliness		•				
Check belt condition and tightness					•	
Lubricate fan and motor bearings					•	
Check and clean fan blades						•
Clean heat exchange elements						•
Water heating						
Check safety equipment					•	
Drain, clean and refill tanks						•
Boiler						
Check safety and operating controls		•	•			
Check burner and combustion equipment			•			
Inspect fireside of boiler, firebrick and pressure vessel			•			
Perform combustion check and adjust burner				•		
Test water treatment						•
Pumps						
Inspect leaks from mechanical seals and packing	•					
Lubricate pump and motor bearings		•	•			
Visually check pump alignment and coupling		•	•			
Packaged and split heat pumps						
Inspect filters, replace or wash if dirty		•				
Inspect for refrigerant leaks			•			
Lubricate evaporator, condenser fan and motor bearings			•		•	
Check belts and sheaves					•	
Check and clean drain and drain pans under cooling coil					•	

Ongoing maintenance

To keep energy costs down, make sure all your energy-using equipment is well maintained. Dirty or out-of-balance equipment wastes energy. Use the above check list as part of your ongoing maintenance to maximize the savings on your energy bills.

More information

For more information on how to conserve energy and improve your bottom line contact your BC Hydro representative, visit www.bchydro.com/business, or call 604 453-6400 in the Lower Mainland, 1 866 453-6400 elsewhere.

Article provided courtesy of BC Hydro Power Smart ▲

