

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 200-006

Headline: **When Tragedy Strikes in a Strata and a Death Occurs**

Publication date: Spring 2002

Publication: CHOA Journal

Written by: Cora Wilson, Lawyer with C.D. Wilson Law Corporation

There are a number of challenges which a strata corporation faces when there is death in the complex. The following answers some of the more common questions:

## What can/must the strata corporation do if someone is discovered deceased in their unit?

Although this is not a legal question, it is suggested that if a person is found deceased within their unit, "911" should be contacted immediately. If there is a suspicion of wrongful death, make sure that nothing is touched in the unit pending completion of a police investigation. Do not disturb the potential crime scene. Make the telephone call for help from another location.

## Who should the strata corporation call?

If forceful entry is discovered and wrongdoing is suspected, then the police should be called. Otherwise, call an ambulance and the fire department. These numbers are readily available in your phone book. "911" applies as an emergency number in most areas.

## How does the strata corporation find out if there is any family or executors?

The strata council may not know the answer to this question unless it elects to keep a telephone registry of next-of-kin for all occupants, together with telephone numbers and addresses. Although this is not a statutory requirement, it is a good idea especially for senior complexes. Also, it takes very little administrative time. If there is a surviving spouse in the unit, the demise of a loved one will likely not affect the strata corporation operations significantly. However, the need to know the contact names and details of the next-of-kin or executors becomes highlighted if the deceased is the sole surviving occupant of a unit. A seniors-oriented strata corporation should seriously consider keeping such a registry.

It may be more difficult to find out who the executors are, than it is to determine next-of-kin. After a will is executed, a wills notice should be filed with a Division of Vital Statistics. The notice sets out the location of the will. It does not set out the name of the executor, but it provides the trail to find out this additional information. This filing is not mandatory, so a search may come up empty.

## What if someone shows up representing themselves as the executor, but has no proof of status?

The strata council should always be on guard when someone makes such a representation. It should not provide information or grant access to a strata lot unless proof of status is first reviewed. Satisfactory proof would be a certified copy of a will appointing the person as executor or, if there is not will, a copy of a Court Order naming the person as the Administrator of the Estate.

For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto:office@choa.bc.ca).

page 1

**No part of this publication may be reproduced without the prior written permission of CHOA**

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

If there is not person willing and competent to administer the estate, the Official Administrator is obligated to act. Currently, the Public Trustee is the sole Official Administrator in B.C. Again confirmation of status should be requested and reviewed.

In the absence of appropriate authority, it may be inappropriate for the strata council to give certain information (see sections 31, 36 and 59 of the Strata Property Act (“SPA”) dealing with access to records and other information).

#### Who will pay the strata fees?

“Owner” is defined in SPA as “A person in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person’s own right or in a representative capacity... .” In order to qualify as an “owner”, registration of certain documentation must first take place at the Land Title Office naming the “personal representative of a deceased owner”. This process may take time. The representative of the estate of the deceased is either the executor, the administrator or the Public Trustee and that person will be responsible to pay the strata fees.

If the strata fee payments are in arrears and the strata council is aware that the registered owner is deceased, then it is suggested that aggressive collection procedures only be taken if it is clear that funds will not be forthcoming from the estate in a reasonable and timely fashion. Legal advice should be sought on this issue.

#### What role does the executor/public trustee play?

The personal representative of an estate is impressed with a fiduciary obligation to account not only to beneficiaries of the estate, but also to creditors (ie. The strata corporation for the strata fees, etc.). The personal representative has the following responsibilities (the list is not exhaustive):

- Disposition of remains;
- Care & management of the assets of the estate;
- Deal with liabilities (mortgage, leases, strata fees, taxes, etc.);
- Pay & settle all debts and claims; and;
- Distribute the estate to beneficiaries

#### Who is entitled to vote for the unit?

A person who is legally authorized to represent the deceased has the right to vote for the deceased. This person could be the trustee of the estate, the executor, the administrator of the public trustee. He or she enjoys the same right to vote and the same limitations as the deceased. The strata corporation should ensure that appropriate legal authority to vote is vested in the personal representative by way of review of the appropriate documents.

#### Where do we send notice for general meetings?

Section 45(1) of SPA provides that notice of a general meeting must be provided to every “owner”. If the personal representative or trustee of a will is vested with legal authority to step into the shoes of the deceased, then that person as the right to vote as the “owner”. However, if that person does not reside at the address for the notice, he or she may not receive notice of the meeting.

For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto:office@choa.bc.ca).

page 2

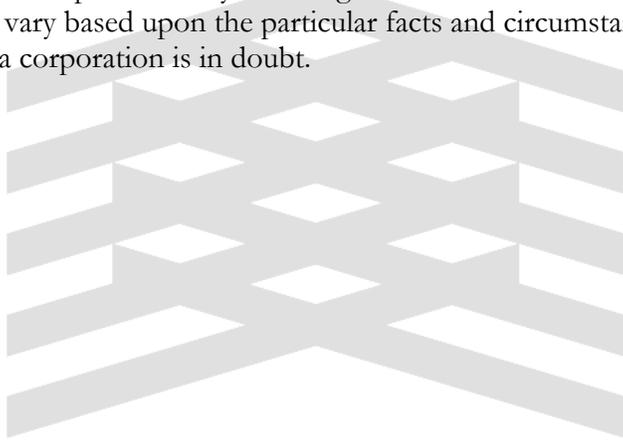
**No part of this publication may be reproduced without the prior written permission of CHOA**

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

The strata corporation is under a legal obligation to provide notices pursuant to section 61 of SPA. This section envisions providing notices to the address provided to the strata corporation or if no such notice is provided, then providing the notice by the means provided for in that section at the strata lot. The strata corporation is under no legal obligation to search out the personal representative. However, in exceptional circumstances, such as a “leaky condo” case, if the strata corporation knows of a passing, it may have a moral obligation to make reasonable attempts to notify to personal representative.

If the strata has an age restriction bylaw of 55 and over and the owner dies and the heir is 39, can that heir be a resident in the strata if they choose without violating the bylaws?

The heir may have a legal right to own the strata lot; however, he or she may not be permitted to occupy the strata lot without being in direct contravention of the bylaw. One should query whether the heir has a right to occupy the strata lot if his or her spouse is 55 years of age or older. This is a complex area of the law. The answer to this question may vary based upon the particular facts and circumstances of each case. Legal advice should be sought if the strata corporation is in doubt.



CHOA

For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto:office@choa.bc.ca).

page 3

**No part of this publication may be reproduced without the prior written permission of CHOA**

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.