

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Headline: **Privacy Legislation - It's Time To Tell All**

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In May 2003, we told you about proposed, new privacy legislation for British Columbia. The *Personal Information Protection Act* came into force on January 1 of this year. This legislation requires all businesses and organizations in B.C. to develop and implement a system for the collection, use, disclosure and protection of personal information. The legislation applies to all strata corporations.

Strata corporations possess all sorts of personal information about those living in the strata lots such as names of owners, names of tenants and occupants, addresses of owners outside the strata plan, personal banking information, including the bank's name, the branch and the owner's account number and emergency contact information for owners, such as phone numbers of friends and family.

An organization collecting personal information must protect it. The first step -- appoint a privacy officer. A privacy officer, among other things: (1) ensures that privacy policies and procedures are being followed; (2) responds to requests by individuals for access to their personal information; (3) handles complaints; and (4) periodically reviews internal information protection procedures.

The next step -- establish policies and procedures to meet its obligations under the *Personal Information Protection Act*. Personal information includes any information about an identifiable individual, except business contact information. Personal information is fact or opinion about owners, tenants and occupants.

The personal information that strata corporations collect, use and disclose may be classified into three broad categories:

1. information required under the *Strata Property Act*;
2. information that a strata corporation asks for to better manage itself; and
3. information volunteered to the strata corporation.

Sections 35 and 36 of the *Strata Property Act* require a strata corporation to collect, use and disclose the following:

1. a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements;
2. names of tenants; and
3. each council member's telephone number or some other method by which the council member may be contacted at short notice, as long as that method is not prohibited by the bylaws.

This information, although personal information, must be provided to: (1) an owner; (2) a tenant who has been assigned a landlord's right to inspect and obtain copies of documents; and (3) a person authorized in writing by an owner or a tenant (with a right to inspect).

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Section 59 of *Strata Property Act* governs Information Certificates (Form B's). Some of the information required in the Form B is personal information. For example:

1. the monthly strata fees payable by an owner;
2. any amounts a strata lot owner owes to the strata corporation;
3. any agreement under which the owner takes responsibility for expenses relating to alterations; and
4. any amount an owner is obligated to pay in future for a special levy.

Sections 115 and 116 of the *Strata Property Act* deal with personal information. These sections require the strata corporation to disclose whether an owner owes money or the strata lot is subject to a strata corporation lien. Section 146 of the *Strata Property Act* requires the strata corporation to collect personal information about a tenant.

Many strata corporations, pursuant to their bylaws, require owners to provide personal information to a strata corporation beyond the requirements under the *Strata Property Act*.

Personal information provided pursuant to bylaws may include:

- a. the names of all persons living in the suite;
- b. banking or credit card information allowing for a pre-authorized debit to pay strata fees;
- c. emergency contact information;
- d. information regarding pets in the suite;
- e. vehicle description and license numbers;
- f. owner's insurance particulars; and
- g. personal information provided by use of surveillance equipment.

Individuals may volunteer personal information. A strata corporation cannot prevent an individual from setting out personal information in correspondence sent to the strata corporation. The personal information could be about the person who wrote the letter or it could be about another person.

In accordance with sections 35 and 36 of the *Strata Property Act*, a strata corporation must make correspondence available to: (1) an owner; (2) a tenant, who has been assigned a landlord's right to inspect and obtain copies of documents; and (3) a person authorized in writing by an owner or a tenant (with a right to inspect). However, access to correspondence does not mean disclosing the personal information set out in the correspondence, without consent to disclose, either express or implied. If there is no such consent to disclose this personal information, the strata corporation must edit the personal information out of the correspondence.

Before collecting, using or disclosing personal information, a strata corporation must ensure that it has valid consent. Express consent is preferred, but it may also be implied. Consent may, in certain situations, be withdrawn. There are also circumstances where consent is not required.

If personal information is retained, then it is subject to the *Personal Information Protection Act*. This means that any personal information volunteered by an owner and kept on file by a strata corporation is subject to the security requirements in the *Personal Information Protection Act* and subject to an access request. For instance, a strata lot owner may give medical information to a strata corporation to allow the strata corporation to respond in an emergency. This information must be safeguarded along with all other personal information collected and may only be used for the purpose for which it was provided (i.e. responding to an emergency).

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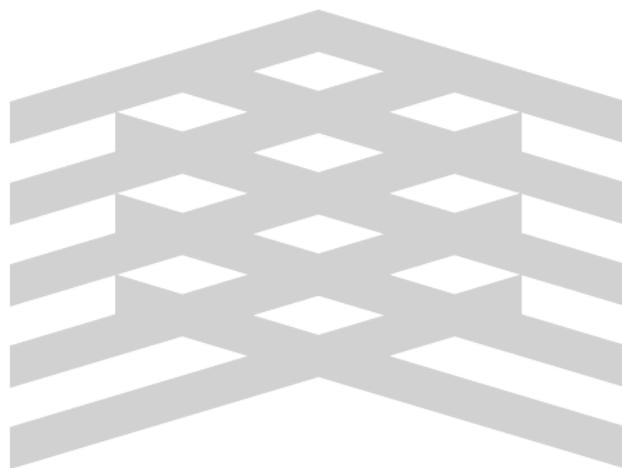
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Implied consent is of particular importance in correspondence received by a strata corporation. It may be reasonable to imply the writer's consent to the collection and use of personal information contained in correspondence. However, it is not reasonable to imply consent to disclose the personal information contained in the correspondence to others. Thus, where a request is made for records under section 36 of the *Strata Property Act* and that request includes correspondence, the personal information in the correspondence should not be released unless an express consent is obtained from the person who originally provided the correspondence.

Individuals may withdraw consent to the collection, use and disclosure of their personal information, except for personal information required to be collected, used and disclosed pursuant to the *Strata Property Act*, in that case consent may not be withdrawn.



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