

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 200-045

## Headline: **Default in Payment of Strata Fees**

Publication date: Summer 2003

Publication: CHOA Journal

Written by: Stephan Hamilton, Lawyer with Hammerberg, Altman, Beaton & Maglio

Strata Corporations have certain essential duties under the *Strata Property Act* (the “Act”) to maintain and manage the common property, common facilities, and assets of the Strata Corporation. These are fundamental duties, the execution of which is critical to realizing the strata property concept.

The Strata Corporation must raise money to fulfill its duties. This is done by collecting strata fees, and sometimes special levies.

The payment of strata fees by individual owners is the single most crucial contribution to the operation of the Strata Corporation. Without collecting strata fees, the Strata Corporation cannot possibly fulfill its duty to maintain and manage common property and assets. As a result, the Act provides the Strata Corporation with powerful remedies to compel the payment of strata fees and special levies when necessary. The usual procedure is as follows.

Before the Strata Corporation can register a Certificate of Lien for strata fee arrears or commence legal action, it must give an owner at least 2 weeks’ written notice demanding payment of arrears and indicating that a Certificate of Lien may be registered, and legal action commenced, if payment is not made with the 2 week period. Typically, the written demand is prepared by the Strata Agent or Strata Council. If an owner fails to pay outstanding strata fees or special levies following the 2 week demand, the Strata Corporation may then register a Certificate of Lien against the title to an owner’s strata lot to secure the unpaid amounts. The Certificate of Lien becomes a first charge ranking in priority ahead of mortgages and most other encumbrances registered against title.

Once the Strata Corporation has registered a Certificate of Lien against a strata lot, it may apply to the Supreme Court of British Columbia for an Order to sell the strata lot in the event the amount claimed under the Certificate of Lien is not paid. The proceeding is commenced by filing a Petition to the Court.

The Strata Corporation usually retains a lawyer to prepare and file the Petition to the Court. Before commencing a legal proceeding, it is my practice to issue a further 10 day demand to both the delinquent owner and registered mortgagees, in the hope payment will be made without Court intervention, and additional expense.

In most cases, the Court will require a defaulting owner to pay arrears of strata fees and special levies within 30 days, failing which the Strata Corporation will be at liberty to sell the defaulting owner’s strata lot. However, the Court has discretion to order the arrears payable within any time period the Court deems just.

Selling a strata lot under the Strata Corporation’s Court Order is a simple matter. A realtor is hired to list the strata lot for sale, a buyer is found, and the sale is eventually approved by the Court. The sale proceeds are then

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.

disbursed by the Court Order to pay the amounts owing to the Strata Corporation and then to the mortgagees and other charge holders.

It is not unusual for defaulting owners to allege that they have stopped paying strata fees because they are protesting the Strata Corporation's failure to address certain of their complaints, concerns, issues etc. For example, defaulting owners often tell me that they have stopped paying strata fees because their door/patio/strata lot has not been repaired, or that the Strata Corporation has not appropriately dealt with a noisy neighbour. Of the hundreds of collection proceedings I have handled for Strata Corporations in the Supreme Court of British Columbia, I have never had a defaulting owner successfully avoid payment of strata fees or special levies because of unresolved complaints with the Strata Corporation. Without exception, the Court explains to the defaulting owner that strata fees must be paid despite complaints/issues that the owner may have with the Strata Corporation. Owners have the right to deal with complaints in separate proceedings under the Act, however strata fees cannot be withheld or delayed in protest.

In a recent case I argued in the Supreme Court of British Columbia in *Oldaker v. Strata Plan VR1008*, Mr. Oldaker asked the Court to postpone his obligation to pay strata fees because he was unable to rent out his strata lot due to its disrepair. Mr. Oldaker argued that the disrepair of his strata lot was caused by the negligence of the Strata Corporation. The Court concluded that, even assuming negligence of the Strata Corporation, postponing the payment of strata fees was not a remedy contemplated by the Act.

Another argument sometimes raised by delinquent owners, and one also raised by Mr. Oldaker in his hearing before the Court, is whether the Strata Corporation must obtain a  $\frac{3}{4}$  vote of the ownership before commencing an action to recover unpaid strata fees or special levies.

The argument made by Mr. Oldaker, and sometimes made by other owners, relies on s.171 of the Act which states, in part, the following:

- (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:
  - (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
  - (b) the common property or common assets;
  - (c) the use or enjoyment of a strata lot;
  - (d) money owing, including money owing as a fine, under this Act, the regulations, the bylaws or the rules.
- (2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting.
- (3) For the purposes of the  $\frac{3}{4}$  vote referred to in subsection (2), a person being sued is not an eligible voter.

Simply put, the argument for a  $\frac{3}{4}$  vote is that s.171 requires it. However, in my view the Act can be read differently. I view ss. 170-173 of the Act as creating 3 different types of legal proceedings. Section 170 permits the Strata Corporation to sue an owner. Section 171 allows the Strata Corporation to sue as a representative of owners, and s.172 allows the Strata Corporation to sue on behalf of one or more owners.

In my view, ss. 170, 171 and 172 set out different and distinct methods of commencing a legal proceeding under the Act.

**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.

On a plain reading, s.170 does not require the Strata Corporation to obtain a  $\frac{3}{4}$  vote before commencing an action. Nor does s.117 of the Act.

The argument I made to the Court on behalf of the Strata Corporation in the *Oldaker* case was that a proceeding under s.117 of the Act was not a representative proceeding under s.171, nor a proceeding under s.172. It is a proceeding to recover strata fees or special levies owing to the Strata Corporation and, therefore, is authorized under ss.170 and 117 without the need of a  $\frac{3}{4}$  vote. The Court agreed with my interpretation of the Act and dismissed Mr. Oldaker's application.

The reasoning in *Oldaker* is supported by another recent Supreme Court of British Columbia decision in *Strata Plan LMS2643 v. Kwan*.

In the *Kwan* case, a strata lot owner opposed the appointment of an Administrator on the grounds that the Strata Corporation had not obtained a  $\frac{3}{4}$  vote before commencing its legal proceeding. After reviewing ss.171 and 174 (the appointment of Administrator section), the Court concluded that s.171 was a distinct section and only applied if the suit was being brought under that section. The Court concluded that because s.174 did not require a  $\frac{3}{4}$  vote for the commencement of a proceeding to appoint an Administrator, none was required.

Once the Strata Corporation commences a legal proceeding to enforce its Certificate of Lien, it is entitled to recover from the defaulting owner not only the cost to register the Certificate of Lien at the Land Title Office (usually \$300.00 - \$500.00) but also reasonable legal costs (\$1,500.00 - \$5,000.00) associated with the proceedings. I have handled many cases for Strata Corporations where the total legal cost paid by a defaulting owner exceeds the strata fees owing under the Certificate of Lien. Had the owner simply paid his or her fair share of strata fees from the outset, or made reasonable arrangements for payment of the arrears, considerable legal expense would have been avoided.

When an owner fails to pay his or her strata fees, that contribution must be made up by other owners who have already paid their fair share. It is no surprise that the Act provides the Strata Corporation with a swift and powerful remedy to recover strata fees from delinquent owners.

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.