

Strata Property Due Diligence & Strata Depreciation Reports

Presented by: Peter D. Borszcz



The following information is general in nature and cannot be construed as legal advice on for any specific individual or transaction.

Updated March 2014

Outline

- a) Recent Amendments to the Strata Property Act
- b) Legal Requirements for Strata Depreciation Reports
- c) Overview of a Report
- d) New Problems
- e) Liability for Agents
- f) Critical Questions for Home Buyers when reviewing Reports



Executive Summary: the Recent Amendments to the SPA

1. Section 173 - Court Orders for Special Levies
2. Section 98 – Depreciation Reports every 3 years
3. Form B – Addition of Parking Stall and Locker Allocations
4. Form B – More Disclosure Required (Rules, Form J (Rental Disclosure), Budget, Depreciation Report)
5. Rentals restrictions limited by Form J in new Strata Corps
6. Coming Soon: Strata Dispute Resolution



Form B – Disclosure Expanded

1. Strata Fees Payable & Outstanding
2. Owner Agreements
3. Special Levy & Reserve Amounts
4. Bylaw Amendments
5. Court Proceedings
6. Rental Status
7. *Parking Stall Allocation*
8. *Storage Locker Allocation*
9. *Rules*
10. *Budget*
11. *Rental Disclosure Statement (Form J)*
12. *Depreciation Report*



Note: Form B (and attachments) can be obtained by “a purchaser” without owners direct consent

LPM – Additional Strata Due Diligence

1. Form B only has “partial” information (LPM – Strata Sales), Licensees must obtain more.
2. Note: Owner authorization is required for all Strata Records and Information (s.35 SPA), including meeting minutes for last two years.

Key Point for Buyers: When you buy strata you are buying into a community. Buyers should personally read, review and understand the community (and its rules) that they are buying into.



Strata Maintenance and Upkeep Issues

The “*Tragedy of the Commons*”

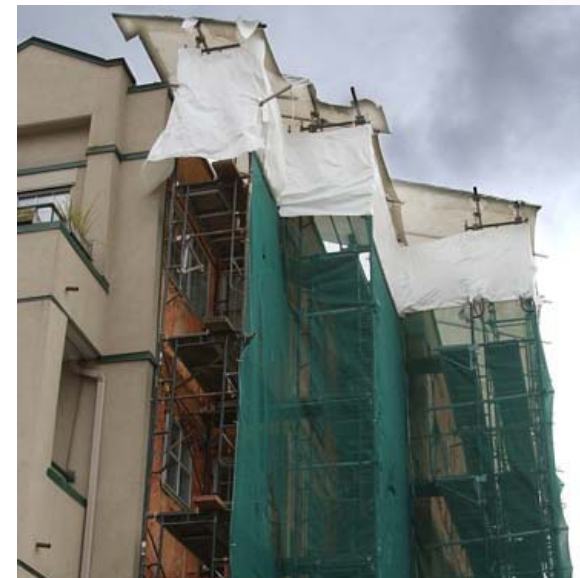
A contingency reserve fund is established to pay for extraordinary expenses, but under the Act, the amount in the CRF was established by a formula (which had NO relationship to the age of the building!)

Furthermore, the amount of contribution to the CRF was CAPPED, unless an $\frac{3}{4}$ vote was obtained to had additional contributions (hard to plan for the future).

2008 - Push for “Legislated Prudence”: long term planning and maintenance will prolong the lifecycle of building systems and reduce premature failure.

Two legislative responses:

- a) Depreciation Reports
- b) Special Levy by Court Order



Disclosure Statement Policy

- Strata Councils required to commission a Strata Depreciation Report (aka Reserve Fund Study (ON/AB))

A report that tells you:

- What you own
 - How much money you have
 - When things need to be replaced
 - What it's going to cost for future replacement
 - What you can do to pay for future replacement
-
- Similar to other Canadian provinces (incl AB and ON)
 - Cookie Jar Savings Analogy



New Legal Requirements

Strata (with 5 or more units) Required to Commission a Strata Depreciation Report

- Existing Strata: by DEC 13, 2013 to:
 - Obtain Report
 - Pass s.94(3) resolution
 - $\frac{3}{4}$ vote
 - Only 18 month exemption
- New Strata: within 18 mo. of 2nd AGM

Does NOT create a separate fund (expenditures still funded by CRF or Special Levy)
- the “cookie jar analogy” does not legally apply

Required to update reports every three years (AB every 5).



Exemptions and Waivers

Two Exemptions

1. Strata corporations with fewer than 5 strata lots are not required to obtain the report nor hold a $\frac{3}{4}$ vote to exempt themselves;
2. Strata corporations with more than 4 strata lots can release themselves from the obligation to obtain a report for 18 months by obtaining a $\frac{3}{4}$ vote at an AGM or SGM.



Overview of a Report

- a) Physical Inventory of Assets
- b) Evaluation based on on-site Inspection
- c) Repair, Renewal and Maintenance Costs for a 30 year plan
- d) Assumptions
- e) Three Year Cash Flow Models
- f) “Rolling” minimum 30 year time horizon



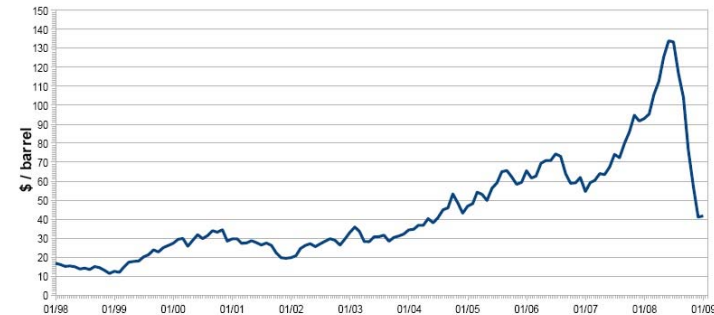
Reports can vary

- a) Component Cost changes (ie; price of oil/ metals)
- b) Construction Cost Index v. CPI (do not trend together)
- c) Study does not carry out destructive testing (things can be mixed)
- d) Varied of backgrounds in qualified persons

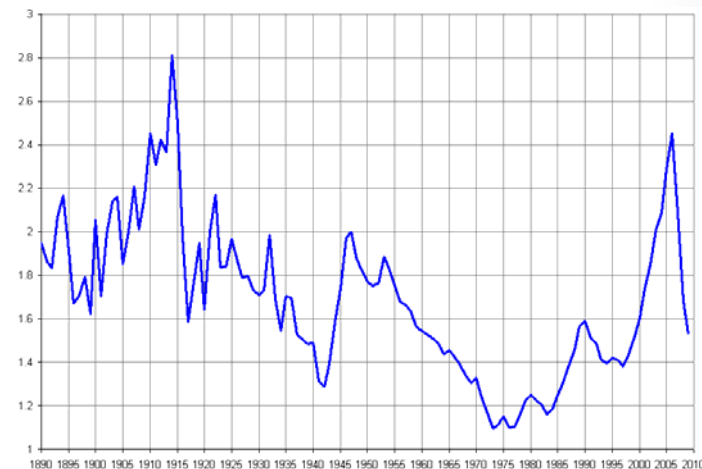
Reports are a “PLAN” – they are not fixed in stone...

Crude Oil Prices 1998 – 2009

(West Texas Intermediate – monthly averages)



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Kent Macpherson

30 Year Cash Flow Projection (Years 1-15)

		Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year
		2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
	Reserve Estimate	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
OPENING BALANCE		293,000	340,817	400,055	437,057	501,931	540,447	545,849	567,560	562,750	537,685	513,779	601,541	690,970	779,998	872,818
Reserve Fund Contributions		50,250	52,763	55,401	58,171	61,079	64,133	67,340	70,707	74,242	78,000	78,000	78,000	78,000	78,000	78,000
Reserve Fund Interest Income		1.90%	5,567	6,476	7,601	8,304	9,537	10,268	10,371	10,784	10,692	10,216	9,762	11,429	13,128	14,820
Total Cash Resources		348,817	400,055	463,057	503,531	572,547	614,849	623,560	649,050	647,685	625,901	601,541	690,970	782,098	872,818	967,402
RESERVE FUND EXPENDITURES																
1	Foundations and Parking Garage	12,290									9,022					
2	Superstructure & Building Envelope - Walls	65,372									56,100					
3	Windows and Doors	30,171				15,700					17,600					19,700
4	Roof Cover - Torch-on	19,048														
5	Roof Cover - Asphalt Shingle	68,476	8,000					54,200	55,100							
6	Flooring	36,000								110,000						
7	Interior Finish	29,500					69,000									
8	Furnishing and Decorating	3,333							6,000							
9	Elevators	86,063														
10	Plumbing	43,995				16,400					18,300					20,500
11	Electrical	24,928									5,500					12,300
12	HVAC	41,040														
13	Life Safety & Access Systems	51,000		26,000												34,900
14	Water and Sewer Supply System	11,900														10,000
15	Landscaping, Irrigation and Fencing	15,664							19,300							
16	Roadways, Surface Parking and Sidewalks	16,750														
17	Professional Fees	0			1,600			1,800	5,900		5,600			2,100		
Total Expenditures		8,000	0	26,000	1,600	32,100	69,000	56,000	86,300	110,000	112,122	0	0	2,100	0	97,400
Closing Balance		340,817	400,055	437,057	501,931	540,447	545,849	567,560	562,750	537,685	513,779	601,541	690,970	779,998	872,818	870,002
DEFICIENCY ANALYSIS																
Reserve Requirements		555,530	547,530	620,890	669,645	743,725	788,714	797,657	819,770	812,003	780,388	746,051	823,183	901,781	979,772	1,047,068
Reserve Fund Surplus		-206,713	-220,835	-232,588	-241,794	-248,266	-251,808	-252,210	-249,252	-242,703	-232,272	-221,643	-210,811	-199,774	-188,527	-177,067



Red Flags

- Special levy (or levies) – especially in short term
- Low cash balances (less than 25%)
- Major assets not on the list
- Low closing balance
- Unrealistic “factors”

Home Buyers and Depreciation Reports

- Reports Are a **MANDATORY attachment to the Form B**
- Reports Are a BUDGETING tool, so it is important to look for agreement between the report and the strata actions.
- Interpreting this Technical Document
 - <http://kent-macpherson.com/services/depreciation-report/3271/>
 - <http://www.housing.gov.bc.ca/pub/stratapdf/Guide12.pdf>



New Problems

Many legislative oversights:

- Funding a report not a requirement (may require SL with $\frac{3}{4}$ vote)!
- Following and implementing the report is not a requirement!
 - But... now the Act allows additional CRF contributions with a simple majority vote (to allow a Report to be followed).

Administrative Issues:

- Not enough “qualified persons” to do all the required reports
- Reports may be costly
- Lenders may require Reports in BC as pre-condition to funding.



What if the Study is Wrong?

Deference by the Court to the “forward looking” nature of the report:

- **Scotwick Realty Services Inc. v. The Owners: Condominium Plan No. 7510479 (June 11, 2003)**
- "Preparing a reserve fund plan that projects many years into the future is always going to be a bit of a guessing game. The exact timing of the expenditure and the exact quantum of the expenditure will always be an estimate only.";
- "The only conclusion that I can reach is that a board confronted with an unexpected expenditure then has a duty to revisit the reserve fund plan and make any necessary adjustments"



Liability for Agents

Pass on the Correct Information

Re Buchanan - Realtor misread Form B and drafted an “amendment” adjusting the Purchase Price by \$5000 for a special levy (which was not passed).

Re Cha – Realtor allowed Buyer to remove subject condition even though Buyers had not received Form B and strata docs.

Ensure Report is Complete

Meslin v. Lee – Seller, acting together with the Seller’s Agent, innocently misrepresented to the Buyer that there was no “engineer’s report” – Buyer entitled to rescind contract and return deposit.

Ensure there is no Misrepresentations

Hilman v. McKenzie – Realtor selling own property in Ft. McMurray to her client. Judge found that “once was a “Realtor” she was always a “Realtor” and must conduct herself in accordance with RECA rules and code. Seller (Realtor) knew that there were problems with the roof and fraudulently covered them up; b) provided an incomplete document package and c) represented that despite a note “deficiency” in the Contingency Fund, that the funds were sufficient. Court found that the Realtor was “reckless” (and careless). Damages and costs awarded to the Buyer.

Critical Questions for Home Buyers (and their Realtors)

1. Is the Form B complete? (containing current Rules, Budget, Rental Disclosure, and Depreciation Report)
2. Do the Buyer understand the Report?
3. Has the strata deferred its Report obligations under s.94(3)?
4. Does the financial forecast in the Report and the strata budget align?
5. Should anything in the Report be reflected in the Purchase Price when analyzing comparators?



Discussion Problem

You (the agent) give your Buyer the complete Form B package 24 hours prior to subject removal.... The next day the Buyer says “Lets get this deal going, where do I sign?”

You sign up the deal and then as you are about to leave to deliver the deal, the Buyer asks “BTW - Does this apartment allow pets?”



Discussion Problem

While showing strata property, your client remarks to you that “I really think a condo is a good idea for me, I am now on a fixed retirement income and I cannot afford any surprise expenses. I like the fact that all I have to pay is my monthly fee”

How should you respond.



Thank you for listening...



- Questions are always welcome...
- 250-762-5434 (ext. 209)
- Peter.Borszcz@pihl.ca



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