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Collections

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Webinar Sponsor



Education Pilot Project

- The fall webinar series is a pilot project to develop an 8 part education series for new strata council members and owners. Your feedback is welcome throughout the sessions are at the end of the 8 as we continue to develop the on line programs and support materials.
- The information presented and discussed in the webinar is not intended as legal advice or an opinion on the merits or questions raised by a participant. It is only intended for educational purposes.
- Participants are advised to seek legal counsel independently regarding the specific nature of a bylaw, bylaw enforcement, interpretation of legislation, or matters relating to contractual relationships.

Collecting Money

This session provides an overview of the following:

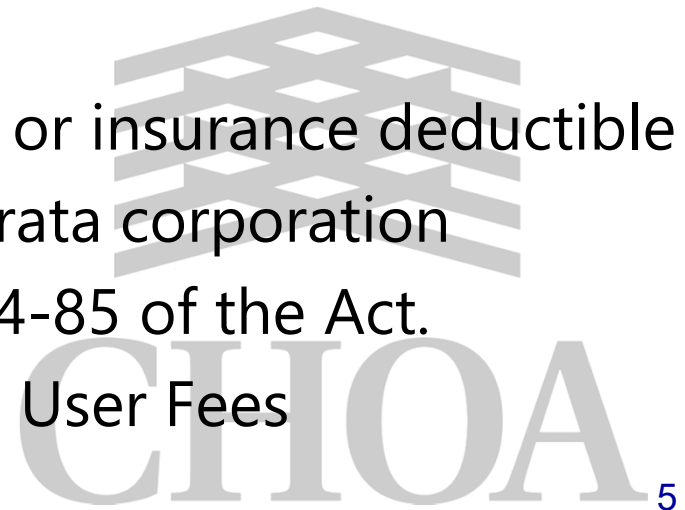
- The 2 different fees and costs we collect
- The types of fees and how they are created
- The tools we use to collect fees
- The procedures on collections



Strata Corporation Duties

The objective: Collect money owing to the strata that has been authorized or created by budgets, special levies, bylaws, lawsuits, insurance claims or orders, such as:

- Strata fees, special levies and interest
- Insurance deductibles levied on the owners by unit entitlement
- Owner debt for damages or insurance deductible
- Judgments against the strata corporation
- An order under section 84-85 of the Act.
- Bylaw and Rule Fines and User Fees



Types of Fees & Costs

- Two different fees and costs we collect and recover
 - **Secured debts** – those fees that may be included on a lien
 - **Unsecured debts** – those fees that may not be included on a lien and that frequently relate to alleged bylaw violations or damages.

Secured Debts

- Secured debts fall into the category that requires the strata to collect the fee and where the fee or debt owed may be included on a lien against a strata lot.
- Sections 112-118 set out the conditions for the collection of secured debts, including the procedures for an application to court for an order for sale of a strata lot

Secured Debts

Secured debts include

- Strata fees & Special Levies
- Interest permitted
- Administrative costs
- Special levies generated by an insurance deductible claim against the strata corporation
- Judgments against the strata corporation
- Orders under section 84-85

Unsecured Debts

Unsecured debts – fees that may not be included on a lien:

- Fines for bylaw and/or rule violations
- User fees
- Insurance deductibles & damages
- Costs associated with alteration agreements
- Judgments for the above which may be registered against a title but do not take priority



The types of fees we collect and how the fee is established

- Strata fees
- Special levies
- Interest
- Fines and penalties for bylaw and rule violations
- Insurance Deductibles & Damages
- User fees
- Cost of registering a lien
- Judgments against the strata corporation
- Costs owing for work orders
- Costs owing from alteration agreements



The types of fees we collect

Strata fees

- Calculated after the annual budget and the annual contribution to the contingency reserve fund are approved.
- Based on unit entitlement or any other amendment filed in the Land Title Registry amending unit entitlement by unanimous resolution
- Operating budget strata fees and contingency contributions must be calculated separately
- Due and payable in accordance with the bylaws of the strata corporation

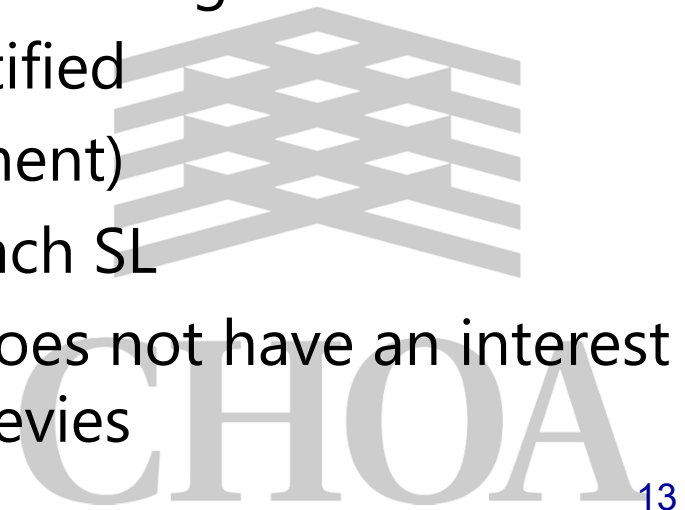
The types of fees we collect

Special levies

- Except for an insurance deductible paid by the strata corporation, special levies must be approved by a $\frac{3}{4}$ vote resolution approved at an annual or special general meeting, or unanimous waiver of notice.

Special Levies – SPA sec. 108

- Funds levied & accounted separately from annual budget
 - expense or insurance deductible
- Special levy requirements: Section 108
 - ✓ $\frac{3}{4}$ vote approval at a general meeting
 - ✓ purpose of levy must be identified
 - ✓ Method sharing (Unit Entitlement)
 - ✓ Amount & date payable by each SL
 - ✓ Interest penalty if the strata does not have an interest bylaw that applies to special levies



Special Levies – Example

- Example: Special levy for \$100,000 roof replacement
 - Purpose of the levy – Roofing replacement
 - Amount - \$100,000 by special levy
 - Method – unit entitlement (attached schedule showing each strata lots share of the levy)
 - Date of payment(s) – actual date(s) this may be a payment schedule
 - Interest (either via bylaws or as part of resolution)
 - authorization for the use of contingency reserve funds to pay for owner arrears

The types of fees we collect

Interest

- Generated by the creation of a bylaw or included in a $\frac{3}{4}$ resolution of a special levy
- May apply to either strata fees or special levies.
- The limit permitted is 10% annually
- The interest may only be compounded annually
- The interest may only be calculated monthly

The types of fees we collect

Fines and penalties for bylaws and rules

- Section 135...before a fine or penalty is imposed you must give proper notice and an opportunity for the person to respond or request a hearing
- Step 1 You must give notice of the complaint
- Step 2 Owner/tenant must be given opportunity to respond in writing or request a hearing before a penalty is imposed



The types of fees we collect

Fines and penalties for bylaws and rules

- The frequency and rate of fines is set out in the Standard Bylaws(SB) of the Act, but may be increased through bylaw amendments
- SB \$50 Maximum Permitted \$200
- Short Term Accommodation Violations \$1,000/day
- SB – Rules \$10 Maximum Permitted \$50

The types of fees we collect

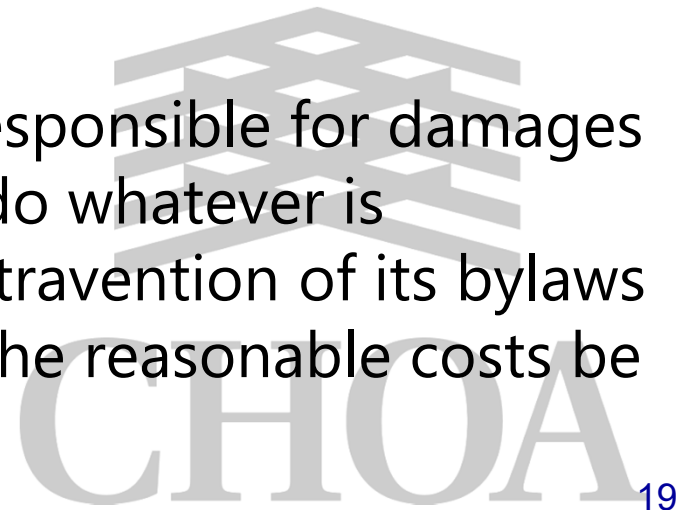
Fines and penalties for bylaws and rules

- The frequency is once every 7 days for repeat contraventions: *the bylaw prohibits pets and an owner is contravening the bylaw with 5 parrots, or*
- Each time there is a separate event : *an owner has loud parties every Sunday and Wednesday*
- *Practice tip: make sure the strata has documentation of notices of bylaw complaints and decisions of council to enforce bylaws*

The types of fees we collect

Insurance Deductibles & Damages

- Section 158 of the Act permits the strata corporation to commence an action against an owner if the owner was responsible for an insurance deductible
- Section 133 If an owner is responsible for damages the strata corporation may do whatever is reasonable to remedy a contravention of its bylaws and rules, and may require the reasonable costs be paid by the owner



The types of fees we collect

User fees

- A strata corporation is permitted to impose user fees for the use and enjoyment of common property or common facilities
- User fees must be reasonable and the fee must be set out in the rule or bylaw. Regulation 6.9
- If a user fee is adopted as part of a rule, it does not come into effect until the rule setting out the fee has been ratified at a general meeting by the owners. SPA 125 (6)

The types of fees we collect

Cost of registering a lien

- SPA 118
- The cost of registering and removing a lien against a strata lot may be added to a certificate of lien
- Reasonable legal costs, land title and court registry fees, reasonable disbursements



The types of fees we collect

Judgments against the strata corporation

- If there is a decision awarding damages against the strata corporation, the amount must be paid by the strata corporation
- Depending on the circumstances
 - From the contingency reserve fund or
 - Special Levy of those identified parties

The types of fees we collect

Orders against the strata corporation

- Section 84 – 85
- If an authority orders a strata lot owner or the strata corporation to perform work on a strata lot
- If the owner fails to comply with an order, the strata corporation after reasonable notice in writing at least one week before the work is done, may perform the work, except in the case of an emergency where the strata may be required to proceed without notice.

The types of fees we collect

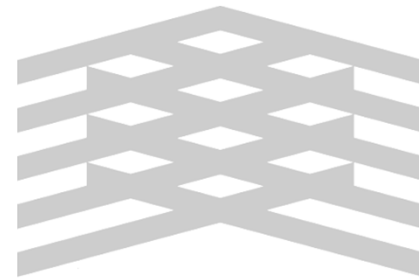
Alteration agreements

- Subject to any agreements for alterations to the common or limited common property, the strata corporation may still be responsible for the continual maintenance and repair of the alteration; however they may have contracted with the owner, that the owner will be responsible for any costs associated with the alteration.



Collection tools – Bylaws

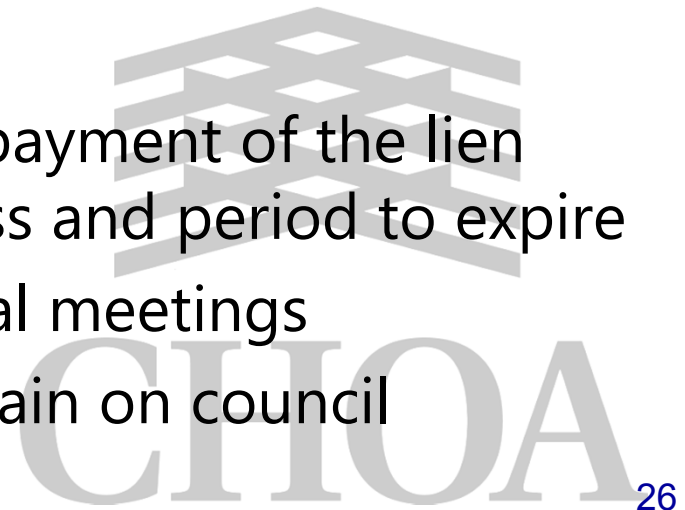
- The following are examples that when applied correctly will help a strata to collect fees without court action:
 - Bylaws
 - Resolutions
 - Liens
 - Real estate forms (F)
 - Voting and eligibility for council,
 - Higher penalties
- Provide the strata with enforcement tools to collect fees.



Collection tools

Ineligibility for voting or council

- Requires a bylaw : “ if the strata corporation is entitled to file a lien against a strata lot, the owner may not:
 - The demand notice for the payment of the lien amount enforcement process and period to expire
 - eligible to vote at general meetings
 - election to council / remain on council



Collection tools – Bylaws

- Voting eligibility & Council eligibility
 - Being ineligible to vote is a significant incentive for owners to pay fees.

" an owner is not entitled to vote at an annual or special general meeting, except for unanimous votes, or be elected to council or continue to stand on council, if the strata corporation is entitled to file a lien against the strata lot"

This is a bylaw amendments permitted by the Act

Procedure to enforce voting eligibility or council eligibility

An owner has not paid their Mar 1, strata fees

- March 2nd the strata corporation sends a demand notice of the fee advising if the fee is not paid within 20 days the strata may be entitled to file a lien on the strata lot
- 14 days plus deemed notice 4 days + plus 2 days (at least) = 20 days notice
- The strata is entitled to file a lien

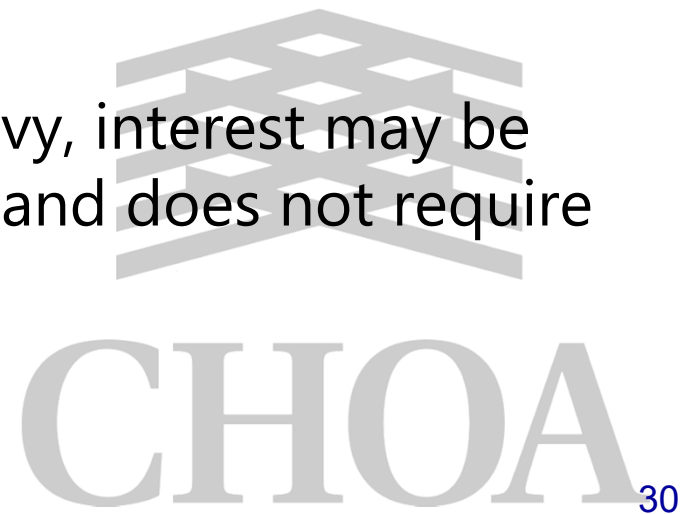
Procedure to enforce voting eligibility or council eligibility

- Practice tip:
 - " when you send the notice package for the annual or a special general meeting, send the demand notice at the same time. By the time the notice period comes due at the meeting, the strata is *entitled to file a lien* if the amounts have not been paid.

Collection tools

Bylaws

- Rate of Interest for fees and levies
 - “ a rate of interest of 10% annually may be charged for the late payment of strata fees and special levies. The interest is calculated monthly and compounded annually”
- Like a strata fee or special levy, interest may be included in the lien amount and does not require notice and/or hearing.



Collection tools

Do we need an insurance bylaw to be able to collect a deductible?

- Section 158 provides the authority to proceed with the collection; however, case law and some insurance policies may require a bylaw to cover deductible amounts or costs.
- If not paid, the strata may need a $\frac{3}{4}$ vote resolution to proceed with a court action, and depending on the value may either be small claims or Supreme Court.

Collection tools

- Do we need an insurance bylaw to be able to collect a deductible?
- The bylaw is essential provided the wording is not contrary to the Act or imposes a higher standard. It:
 - Provides owners with constant notice of their liability, and protects liabilities where a bylaw is required.
 - It ensures council acts the same for all owners
 - It simplifies the claims process for owners whose insurance providers set a bylaw as a condition.

Collection tools

- Bylaws
 - Amendment to rule and bylaw fine rates
 - The maximum fine for a rule is \$50
 - The maximum fine for a bylaw is \$200
 - The maximum fine for AirBnB etc. is \$1,000
 - Also contemplate frequency. Is it:
 - Per month/per week/per event?

Collection tools

The Civil Resolution Tribunal may be used for the collection of fines and penalties:

- An action to collect funds under the CRT is permitted by a majority vote decision of the strata council. The corporation must give 2 weeks written notice of the amount owing if they intend on filing a CRT complaint.
- A CRT action cannot be used for an Order for Sale proceeding for unpaid strata fees or special levies.

Methods of Collection

The Form F Payment Certificate

- The Form F payment certificate is a valuable tool to collect outstanding fees, user fees, fines, penalties, and judgments against the strata lot that have not been satisfied within 2 years
- **The Form F is not permitted to be used for the collection of damages or insurance deductibles, unless a judgement has been obtained**
- Detail expenses claimed on a Form F

Methods of Collection

The Form F Payment Certificate

- Strata Fees
- Special Levies
- Interests
- Fines
- User Fees
- Costs of registering the lien
- Judgments against the strata lot



Form F

- Provide Form within one week stating:
 - No money owing; or,
 - Money owing & paid into court or to SC, in trust; or,
 - Arrangements made satisfactory to strata
- Current for 60 days
- Fee - \$15.00
- Collection Tool with limitations
- Rush fees? The strata corporation must provide the form within 7 days, if the forms are requested on 24 hrs notice, the strata is still only required to provide the form in 7 days. If a rush fee is agreed by the parties the amount must be approved by council

Statements

A financial statement generated specifically for a strata lot is essential to be able to establish:

- Different types of costs owing
- When they were applied
- Interest generated
- Fees overdue
- Special levies overdue
- The secure debts and unsecure debts



Statements

A monthly arrears summary is vital for the strata council to enable them to make decisions on collections giving the manager/treasurer authority to proceed with directions.

Monthly detailed reports make it easy to track debts and decisions.

The following sample shows which Strata lot owes funds, the type of debt, when the event occurred, when the council made a collection decision and status of the claim

When owners don't pay

Collection – Strata Fees

- Strata fees must be paid
- The Strata Council :
 - Has an obligation to act in the best interest of the strata corporation and protect the debt and collection
- Step 1 Demand notice & Complaint Notice
- Step 2 Filing of Lien – Imposition of fines
- Step 3 Action for recovery of the debt-
 - Notice to the mortgage provider of the non payment of strata fees who may pay the debt
 - *Court application for sale of a strata lot when the amount is necessary for the strata to take the action.*⁴¹

When Owners Don't Pay!

- Understanding the sequence and procedure of the actions is important for the council
 - Due date is defined in a special levy (December 1, 23)
 - If the amount of the levy is substantial and any arrears may prevent the corporation from paying their debts, immediate action may be required
 - December 2nd the strata issues a demand notice to every strata lot in arrears providing them with 14 days notice requiring them to pay or the strata will be entitled to file a lien
 - December 25th council meeting 3 units are still in arrears and council instruct the manager to charge the rate of interest on late payments, and the lawyer to have liens filed for the amount and commence a collection process, including notice to a mortgage provider for the amount and an application for order for sale if necessary within 30 days.

Demand Letter Errors: The Consequences

- What if the demand or lien includes non lienable items?
 - Legal costs may be recoverable
 - Court may find Lien invalid/dismiss application
- Demand notice should include the strata fees, special levies, costs of filing permitted, and interest set in bylaws.
 - The lien may only include those fees and costs prescribed
 - Fines, penalties, damages and insurance deductibles are claims that may be disputed at a later date and collected through a Form F or court action

Types of fees and collections

How do limitation periods affect the collection of fees ?

- The *Limitation Act* compels parties to act upon debts rather than letting them age and anticipating they may be collected later
- The Limitation period is 2 years
- The Limitation period is especially important for damages, insurance deductibles, fines and penalties, where a Court action may be the only option for collection

What if an owner disputes an amount that is claimed?

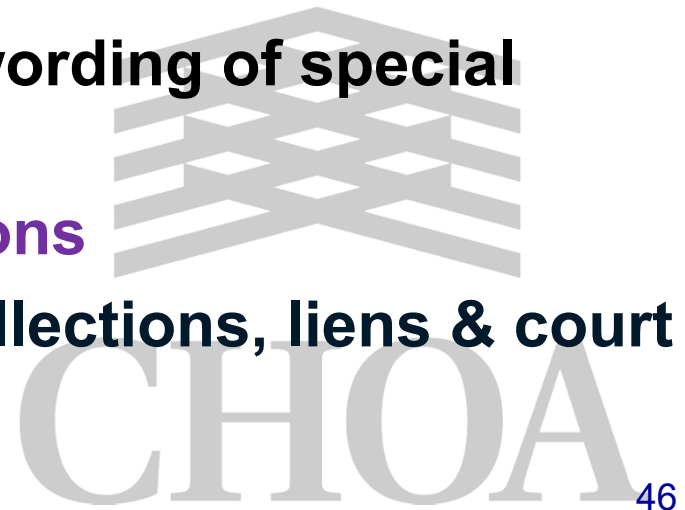
Section 114

If there is a dispute over whether money is owed, an owner may make an application to the courts to dispute the amount, or if time is a factor, may commence a Supreme Court Action, Arbitration or claim with the Civil Resolution Tribunal and pay the amount into trust to the court or the strata corporation. **The strata corporation must hold the funds separate in trust until the dispute is resolved.**

If the dispute is resolved the strata corporation must pay the amounts ordered by the courts or arbitrator.

Best Practices

- ✓ Record keeping showing all debts separately owing for each strata lot
- ✓ **Written communication to owners of all debts**
- ✓ Full (20day) notice period for demands
- ✓ **Minutes showing the decisions of council**
- ✓ Minutes showing the exact wording of special levies
- ✓ **Bylaws that support collections**
- ✓ Legal services to support collections, liens & court ordered sales of strata lots



Feedback? info@choa.bc.ca



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