



Providing Access to Strata Documents

It has come to the Council's attention that some trading services licensees and some strata management brokerages are posting copies of strata records, such as minutes of meetings, Form B Information Certificates, budgets etc., on the internet without ensuring that the requirements of the *Strata Property Act* are followed.

The *Strata Property Act* allows strata lot owners and others authorized by owners to obtain copies of strata corporation records. While the posting of records may seem an effective and timely way for them to be available to interested buyers and others, these records are not public and licensees must not provide these documents, or access to them, to people who have not been authorized, in accordance with the *Strata Property Act*, to receive them.

In the case of trading service licensees, these records may be related to a strata lot that the licensee is offering for sale, where they are posted on any combination of that licensee's website, their related brokerage's website, real estate marketing websites, and MLS® websites.

In the case of strata management licensees, this includes posting their clients' records on their brokerage's website without the requirement for a secure logging on procedure, where it can first be verified that the person logging on to obtain or review the documentation is authorized, in accordance with the *Strata Property Act*, to obtain access.

Licensees who make strata records avail-

able to unauthorized people may be found to be in contravention of the Council Rules and subject to disciplinary procedures.

For further information with respect to obtaining strata records, please refer to sections 36 and 115 of the *Strata Property Act*, as well as the Professional Standards Manual at www.recbc.ca/licensee/PSM/PSM2-5.htm?zoom_highlight=obtainin+g+strata+documents#jump28. ■

Strata Property Act Instruction Guides Updated

In 2000, to assist strata owners, residents and developers, the Superintendent of Real Estate prepared 28 guides to provide basic information about certain parts of the *Strata Property Act* ("SPA") and its Regulations. In the spring of 2010, all the guides were reviewed and updated as appropriate by the Ministry of Housing and Social Development.

A copy of the 28 updated guides is available on the Superintendent's website at:

www.fic.gov.bc.ca/responsibilities/strataowners/instruction_guides.htm.

A copy of SPA and the Regulations is available on the Superintendent's website at:

www.fic.gov.bc.ca/responsibilities/strataowners/act_regulations_forms_standardbylaws.htm.

It should be noted that the updated guides do not provide a legal interpretation of provisions of SPA or the Regulations. Licensees should seek professional advice from a lawyer if they need to determine specific legal rights and duties which may apply in their particular situations. ■

Further Information about Providing Access to Strata Documents



The August 2010 *Report from Council* newsletter contained an article entitled ‘Providing Access to Strata Documents’ which discussed the posting of strata corporation documents by licensees on their websites. Licensees providing trading services have raised a number of questions and concerns about this article which advised that strata corporation documents are not public documents and that licensees must not provide these documents to people who have not been authorized by the *Strata Property Act* to receive them.

Section 36 of the *Strata Property Act* obligates a strata corporation to provide documents to an owner, a tenant who has been assigned a landlord’s right to inspect and obtain copies of documents, or a person authorized in writing by an owner or a tenant previously authorized. It is rare that a tenant will authorize the release of documents. This article will only refer to the owner in respect of the person authorizing the release of the documents.

The *Strata Property Act* does not restrict who may receive documents. Rather, it requires a strata corporation to provide documents in certain circumstances. A strata corporation is not obligated to provide a prospective buyer with strata corporation documents, other than a Form B and a Form F, unless the owner has authorized the buyer, in writing, to obtain the documents. This happens infrequently. It is usually the case that the owner authorizes the listing licensee to obtain the required documents from the strata corporation.

The Council has provided licensees with an authorization form to be signed by an owner that a licensee may present to the strata corporation as evidence of their authorization to obtain the strata corporation’s documents. The form can be found within the ‘Strata Sales’ section of the Professional Standards Manual (the “PSM”) on the Council’s website (www.recbc.ca/licensee/PSM/PSM2-5.htm) or commencing on page 141 of the hardcopy version of the manual. Additionally, clause 1(B)(i) of the Multiple Listing Contract also contains authority for the listing licensee to obtain information about the listed property from other sources, including a strata corporation.

Once the licensee has obtained the documents from the strata corporation, how a licensee uses or distributes the documents is determined by the instructions provided to the licensee by the owner of the strata lot.

The Council has also provided licensees with a form entitled “Authorization to Agent to Deliver Strata Documents” which can also be found in the ‘Strata Sales’ section of the PSM noted above. The form sets out the owner’s instructions to the licensee regarding the use and distribution of the documents obtained from a strata corporation. The authorization provides the licensee with the permission to deliver the strata documents and records to “a prospective buyer or buyer’s agent”.

The Council has interpreted the phrase “a prospective buyer or buyer’s agent” to mean purchasers or their agents who are specifically interested in purchasing the seller’s strata lot. The phrase cannot be interpreted to mean the “world at large” or, put another way, anyone who is surfing the internet and clicks on the licensee’s website.

The Multiple Listing Contract contains an authorization in clause 9(A) in which the seller agrees that the documents obtained by the listing licensee can be disclosed to, among others, persons interested in the property, including prospective buyers and their agents. **The authorization contained in the Multiple Listing Contract is significantly broader than the authorization contained in the Council’s authorization form.**

The authorization being relied on will determine how the licensee may distribute the strata corporation documents.

If a licensee wishes to post the documents on a website in order to make the documents available to any person who may wish to view them, the licensee should ensure that they have the appropriate authorization, such as that contained in clause 9(A) of the Multiple Listing Contract, from the owner. A licensee who makes strata corporation minutes and documents available on a website based only on the authorization form available from

the Council could be found to have failed to follow their client’s instructions if their client complains to the Council about too broad a circulation of the documents.

The further question that arises is whether an owner is entitled to authorize a licensee to make strata documents available to the public at large. Some licensees have argued that the *Strata Property Act* does not contain any restrictions on the use of the documents once they have been provided by the strata corporation. This view is correct. The *Strata Property Act* does not contain restrictions on how the documents can be used. However, the strata corporation may choose to impose such restrictions.

Licensees have also suggested that the documents obtained from the strata corporation belong to the owner and the owner is entitled to authorize their release. In fact, the documents, such as minutes, budgets, financial statements, engineering reports and legal opinions, belong to the strata corporation, not an owner. The strata corporation may wish to restrict how its documents could be used and disseminated.

For this reason, a licensee who wishes to rely on the authorization to distribute documents as set out in the Multiple Listing Contract should point out clause 9(A) to the owner and advise how the licensee intends to distribute the information. Before agreeing to such distribution, the owner or, if directed to do so by the owner, the licensee should confirm that the strata corporation has not imposed any restrictions on the manner in which strata documents can be distributed.

Licensees should recognize that simply being provided with strata corporation documents does not entitle the licensee to distribute the documents in a manner other than as directed by their client. ■