

Memorandum

To Stratawest Management Ltd.

From Veronica Franco

Date May 29, 2013

Re *Limitation Act, S.B.C. 2012, c. 13*
Strata Collections

Limitation Periods

When dealing with most legal issues in strata corporations, the first place to look for guidance is the *Strata Property Act*. However, other legislation can have a significant impact on the business of strata corporations. The *Limitation Act*, R.S.B.C. 1996, c. 266 (the "Current LA") sets out the limitation period, which is the time period that an individual, including a strata corporation, has to file a civil claim. Under the Current LA, different causes of action or types of lawsuits have different limitation periods, which are generally two, six or ten years. The limitation period begins to run on the date on which the person has the right to bring an action. In certain circumstances, the start of the limitation period can be postponed.

In an effort to "standardize" limitation periods across Canada, the Current LA is being replaced with the *Limitation Act, S.B.C. 2012, c. 13* (the "New LA") effective June 1, 2013.

Impact of Limitation Periods on Strata Corporations

Most strata corporations would not have taken much notice of the limitation periods in the Current LA unless faced with a major lawsuit. It will likely come as a surprise to most strata corporations and property managers that there is a time limit for a strata corporation to collect a debt. Under the Current LA, the limitation period to collect a debt is six years. Six years is a long time to allow strata fees to remain unpaid. As a result, for the most part, strata corporations would have initiated collection proceedings long before the limitation period expired.

Section 6 of the New LA sets the basic limitation period for most claims including a claim in debt to two years. Two years is not a long time to allow strata fees to remain unpaid, and it often takes more than two years from the time the owner stops paying strata fees for the strata corporation to make the decision to initiate forced sale proceedings. As a result, strata corporations are going to have to take a different approach to the collection of its debts. So far, I have only mentioned the collection of strata fees, however, under the New LA, the collection of all monies owing to a strata corporation will be subject to a two year limitation period. These debts could include any or all of the following:

- Outstanding strata fees;
- Outstanding special levies;
- Interest;
- Insurance deductibles;
- NSF charges;
- Administration charges;
- Lien filing fees;
- Gas charges;
- Move-in fees;
- Key fob fees;
- Parking fees;
- Chargebacks (i.e. damage caused by the owner; repairs below the insurance deductible, legal fees charged pursuant to a bylaw, the costs of remedying a contravention; and
- Fines.

While the above list is not exhaustive of the types of debts that would be subject to the new two year limitation period, it is important to emphasize that the limitation period is the same for any and all of the above types of debts.

Transition: Which debts are due when?

The New LA comes into force on June 1, 2013. Section 30 provides that all causes of action that accrued on or before May 31, 2013 are subject to the limitation periods in effect under the Current LA. Any cause of action arising on or after June 1, 2013 will be subject to a limitation period of two years. In terms of strata collections, this means a strata corporation has six years to collect all debts that are due and owing on or before May 31, 2013. With respect to any debts that come due and owing on or after June 1, 2013, the strata corporation will only have two years to start its action. While determining the limitation period for strata fees and special levies will likely be easy to do since the due dates for strata fees are usually set out in the bylaws and for special levies it is included in the resolution, not all charges to an owner's account will be that clear. For example, if the bylaws are silent on when payment of a fine is due, when does the limitation period start:

1. The date of the council meeting at which the council makes the decision to levy the fine;
2. The date of the letter notifying the owner of the fine; or
3. The date the fine is levied on the owner's account.

Because of the uncertainty of the due dates of some of the charges on an owner's account, legal advice may be required to determine the limitation period applicable for charges that appear to come due and owing around the date the New LA comes into force, namely June 1, 2013.

Can the Limitation Period be Postponed?

Section 24 of the New LA provides that if a person acknowledges liability before the expiry of the limitation period, the start of the limitation period is reset to the date of that acknowledgement. With respect to debts, such as a special levy, a partial payment would have the effect of resetting the limitation period. For example, if a strata corporation passes a special levy on June 1, 2013 that sets the due date as the payment of the special levy as the date of the passage of the resolution, then the limitation period to collect the special levy is two years from June 1, 2013. If an owner pays part, but not the entire special levy, on February 15, 2015, the start of the limitation period to collect the balance of the special levy owing is reset to February 15, 2015. This means the strata corporation would have until February 14, 2017 to collect the special levy.

Using the Form F to collect arrears

Currently, a favoured practice to collect some types of strata arrears is to withhold providing the Form F: Certificate of Payment when the strata lot is being sold. Near the completion date of a purchase and sale, the owner or the purchaser will request a Form F: Certificate of Payment, which is required by the Land Title Office at the time the transfer of property is registered. Section 115 of the *Strata Property Act* provides that when completing the Form F, the strata corporation can include those amounts which may be included in a Form G: Certificate of Lien, fines, and the costs of remedying a bylaw contravention. As a result, withholding the Form F at the time the strata lot sale is being completed provided to be very effective in collecting small receivables.

Under the New LA, using a Form F will not be effective. The strata corporation will not be entitled to withhold the Form F to collect monies that the strata corporation has no authority at law to collect because the limitation period has expired. Accordingly, unless it is known that the strata lot will be transferred within the two year period following the owners' account going into arrears, the strata corporation is well advised to consider other methods of collecting receivables.

Other Collection Methods

Given the change to a two year limitation period, a strata corporation will have to diarize their outstanding accounts to allow enough time to decide whether legal proceedings will be started and to initiate those legal proceedings before the limitation period is expired. In that regard, I would suggest diarizing the account receivable of an owner 18 months after it goes into arrears. Once the account is 18 months in arrears, the council will need to decide whether to:

1. Initiate court proceedings to collect the receivable;
2. Write off the receivable;
3. Find some other way to engage the owner to make a partial payment to reset the limitation period.

Since different types of receivables may require different kinds of legal action, the strata corporation should consider obtaining legal advice to assist in making the decision. Where the receivable is small, for example, such as a \$200 fine for a bylaw contravention, it may make sense to decide to write it off if the owner does not acknowledge the debt. On the other hand, if the receivable is \$1,000 in strata fees, the strata corporation may want to proceed with legal action to prevent other owners from defaulting on their pay strata fees on the basis that it is likely that the strata corporation will "write it off".

Under the Current LA, I would normally recommend that a strata corporation wait until the strata fee arrears reach about \$5,000 before initiating legal proceedings. However, with the level of strata fees in some strata corporations, it may take longer than two years of not paying strata fees to reach that threshold. Because of this, the limitation period for any arrears older than two years would expire and the arrears of strata fees might never reach the threshold. In such circumstances it might make sense to start forced sale proceedings. The strata corporation could proceed to start forced sale proceedings, but not serve the initiating documents, Petition and Affidavit, on the owner and other respondents immediately. Under the Supreme Court *Civil Rules*, the strata corporation would have 12 months to serve the Petition. This gives the strata corporation a further 12 months to accumulate arrears to a threshold amount that makes the court proceedings cost effective. In addition, the strata corporation could serve the proceedings and allow time to pass before setting a court date to obtain the Order for sale of the strata lot. Again, this buys the strata corporation some more time to make the forced sale proceedings more cost effective.