

Considerations Regarding Emergency Expenditures

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As a Council member, most decisions are made at Council Meetings and most expenditures are made out of monies that have been earmarked for that purpose either in the budget or by special levy. However, sometimes decisions need to be made on an emergency basis. This article discusses a process for making those decisions. I will use the example of a fictional Strata Corporation (“Trembling Tower”) whose electronic security system has stopped working, so that the front door to the apartment tower is unlocked. Trembling Tower has not registered any bylaws, so they are governed by the Schedule of Standard Bylaws contained in the *Strata Property Act*. Trembling Tower is purely fictional and any resemblance that John Right, the fearless protagonist, bears to any person is merely coincidence.

John Right, the President of the Strata Corporation, came home from work at 4:00 p.m. one Thursday so that he could make a nice dinner and watch his favourite television shows. When he walked through the front door of the tower he realized that there was a problem. The door was unlocked. As a result, anyone who tried the front door could gain access to the lobby, the main floor and the parking area.

He immediately called the strata manager and advised her of the problem, and the strata manager immediately called the company servicing the electronic security system. A representative of the service company came out to Trembling Tower within an hour and gave John Right the bad news a short time later. He recommended that the security system be replaced at a cost of approximately \$12,000.00. The other alternative was to repair the present system at a cost of approximately \$1,000.00. He explained that he needed two days to fix the present system, as he would need to wait for parts, but could install the new system in about a day.

After the service man left, John considered section 14 of the Strata Corporation’s bylaws, which provide as follows:

Calling council meetings

14 (1) Any council member may call a council meeting by giving the other council members at least one week's notice of the meeting, specifying the reason for calling the meeting.

(2) The notice does not have to be in writing.

(3) A council meeting may be held on less than one week's notice if

(a) all council members consent in advance of the meeting, or

(b) the meeting is required to deal with an emergency situation, and all council members either

(i) consent in advance of the meeting, or

(ii) are unavailable to provide consent after reasonable attempts to contact them.

(4) The council must inform owners about a council meeting as soon as feasible after the meeting has been called.

As a result, John took steps to organize a Council meeting for that evening. He could only get a hold of four out of the seven Council members, even though he telephoned all of them at work, at home and emailed them. The four members that he did get in touch with agreed to attend a meeting at his place at 6:00 p.m.

At the Council meeting the members discussed what to do about the security issue. They considered section 98 of the *Strata Property Act*, which provides as follows:

Unapproved expenditures

98 (1) If a proposed expenditure has not been put forward for approval in the budget or at an annual or special general meeting, the strata corporation may only make the expenditure in accordance with this section.

(2) Subject to subsection (3), the expenditure may be made out of the operating fund if the expenditure, together with all other unapproved expenditures, whether of the same type or not, that were made under this subsection in the same fiscal year, is

(a) less than the amount set out in the bylaws, or

(b) if the bylaws are silent as to the amount, less than \$2 000 or 5% of the total contribution to the operating fund for the current year, whichever is less.

(3) The expenditure may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise.

(4) A bylaw setting out an amount for the purposes of subsection (2) (a) may set out further conditions for, or limitations on, any expenditures under that provision.

(5) Any expenditure under subsection (3) must not exceed the minimum amount needed to ensure safety or prevent significant loss or damage.

(6) The strata corporation must inform owners as soon as feasible about any expenditure made under subsection (3).

One Council member, Sam, brought up the fact that Council could spend up to \$2,000.00 in unapproved expenditures. John explained that the \$2,000.00 limit was for all unapproved expenditures in a fiscal year and reminded the Council that they had spent \$2,000.00 over and above the budgeted amount for hydro.

John asked the Council members if they considered the situation with the front door to constitute an emergency and everyone agreed it was because of the security concern it created.

The Council members considered whether they should replace the system or fix the old one. Sam spoke in favour of paying for the new system out of the contingency reserve fund and having it approved

retroactively by the owners. After all, the building had major security concerns. In the last month, three vehicles in the underground parking had been broken into. She advised the rest of the Council that it would make more economic sense to replace the present security system with the new one and then explain the \$12,000.00 expense to the owners at the next annual general meeting. Otherwise, the Strata Corporation would need to spend \$1,000.00 or more to repair a system that needs to be replaced. Also, the front door could remain unlocked for days while the security system was being repaired.

John considered the wording of section 98 and explained his interpretation of the section to the other Council members. Pursuant to subsection (5), they should only be expending the minimum amount necessary to ensure safety or prevent significant loss or damage. He was concerned that replacing the system was not within their powers, but he was also concerned that repairing the system would mean that the front door would remain unlocked longer than necessary.

Then he came up with an idea. The Strata Corporation could retain a security guard to man the front door. The security guard would ask all of the individuals entering to show him their pass card or confirm through the intercom system that they were invited guests. After considering the matter further, all Strata Council members voted to proceed with repairing the system and hiring a security guard.

The next consideration was how to advise the residents about what was taking place. The Council members felt an obligation to advise the residents of the problem, and how it was being addressed, but didn't want to advertise that they were having a problem to the general public. Instead of placing notices in the elevators, the strata manager was instructed to place minutes of the council meeting under the doors as well as mailing them to non-resident owners. This would be done by the next morning. The Council meeting ended and John was back watching television by 9:00 p.m. The security guard came that evening and they had continuous on site security until the system was repaired two days later.

The entire Council met two weeks later to discuss the proposed budget for the coming year. While they were preparing the budget, the Council considered section 105 of the *Strata Property Act*, which provides as follows:

Budget surpluses and deficits

105 (1) Subject to section 14, contributions to the operating fund which are not required to meet operating expenses accruing during the fiscal year to which the budget relates must be dealt with in one or more of the following ways, unless the strata corporation determines otherwise by a resolution passed by a 3/4 vote at an annual or special general meeting:

- (a) transferred into the contingency reserve fund;
- (b) carried forward as part of the operating fund, as a surplus;
- (c) used to reduce the total contribution to the next fiscal year's operating fund.

(2) If operating expenses exceed the total contribution to the operating fund, the deficit must be eliminated during the next fiscal year.

As a result, they knew that any operating fund deficit that the Strata Corporation had incurred that year had to be eliminated in the next fiscal year. The Strata Corporation's expenditure of \$2,000.00 above the budgeted amount on hydro had created a deficit in the operating fund which had to be eliminated in the next fiscal year. The Council had spent \$1,500.00 on a security guard and \$1,000.00 on repairs to the security system from the contingency reserve fund. The Council chose to include an extra \$2,500.00

payment to the contingency reserve fund to pay back the unbudgeted amounts expended to deal with the emergency.

This is merely one illustration of how a Strata Council can properly handle an emergency expenditure under the *Strata Property Act*. If your Strata Corporation is faced with an emergency and you don't know how to respond as a Council member, you should consider seeking legal advice.

First published: CHOA Journal – March 2007
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