

Strata Alert: Disclosure of Draft Building Envelope Reports to Prospective Purchasers

Strata agents will occasionally be at odds with their strata councils over what information needs to be disclosed to prospective purchasers. Some councils, for example, are reluctant to disclose draft building envelope reports or reports that have not yet been circulated to the owners.

The strata corporation's obligation to produce draft building envelope reports is triggered by two sections of the *Strata Property Act*.

Section 59(3) of the Act provides that the Form B information certificate must disclose, among other things, "(e) any amount by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year". If it is possible that the strata corporation may approve a special levy or contingency reserve fund (CRF) transfer for repairs or a second opinion as a result of the report, that fact and the draft report itself should be disclosed to prospective purchasers on the information certificate.

Sections 35(2)(k) and 36 of the Act require the strata corporation to produce, to an owner or person authorized by an owner, two years worth of correspondence sent or received by the strata corporation. A building envelope report or even a draft building envelope report is caught by s. 35(2)(k) of the Act. Most realtors making a request for documents will specifically ask for copies of any building envelope reports received by the strata corporation. This request, coupled with the strata corporation's obligation under ss. 35(2)(k) and 36 of the Act requires the strata corporation to disclose draft reports to the realtor.

Council members may be reluctant to disclose draft reports to prospective purchasers because they are worried about being sued by the vendor/owner. While an owner can always sue the council over any number of grievances, a claim arising from the council's disclosure of a draft building envelope report faces a number of significant obstacles, not the least of which is the strata corporation's statutory duty of disclosure under ss. 59, 35 and 36 of the Act.

The greater risk of non-disclosure is the potential liability to new owners who purchased their strata lots on the strength of what may turn out to be a misleading Form B. Section 59(5) of the Act says that an information certificate is binding on the strata corporation. This section could be relied on by an owner as a defence to a special levy for repairs if the strata corporation fails to disclose a draft report on an information certificate and the purchaser/owner's reliance on the Form B was reasonable. A new owner could also sue the strata corporation for negligent or even fraudulent misrepresentation on the Form B. A fraudulent (i.e. intentional) misrepresentation can significantly increase the strata corporation's risk of liability. Moreover, the strata corporation's errors and omissions insurance may not provide coverage for damages for fraudulent misrepresentation if the claim is successful.

If the council still wishes to withhold a draft report from a prospective purchaser after being advised of these potential risks, a prudent strata manager will confirm their advice to the council on these issues in writing.

What We Do: Lesperance Mendes advises strata agents and licensees on matters of professional liability. If you have a question on matters touching upon your duties as a strata agent, please contact [Paul G. Mendes](#) by phone at 605-685-4894 or by email at pgm@lmlaw.ca. To learn more about our strata property law practice, please visit our website: www.lmlaw.ca or our [condominium law page](#) or our [publications page](#).