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RESEARCH REPORT

RE-SALE OF LEAKY CONDOS:
DID THE BUYER KNOW?

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RE-SALE OF LEAKY CONDOS: DID THE BUYER KNOW?

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RE-SALE OF LEAKY CONDOS: DID THE BUYER KNOW?

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EXECUTIVE SUMMARY

BC's Homeowner Protection Office believes that the number of leaky condos to be discovered and repaired is in the range of 65,000 of which 50,000 are currently known. These condos will be resold a number of times throughout their economic lifespan, and the buyer will likely rely on a real estate agent to assist them in the transaction. The agent incorporates standard clauses recommended by the Real Estate Council of BC into the Contract of Purchase and Sale. These clauses mandate the use of investigative tools and declarations to bring maximum transparency to the transaction. The investigative tools are a Property Disclosure Statement from the seller, a professional property inspection and a request for documentation from the strata corporation including bylaws, financial statements, minutes of strata meetings for a specified time period and any engineering reports that have been done. Since July 2000 when the new Strata Property Act came into effect, a Form B Information Certificate is also used.

Despite these procedures, the leaky home crisis has been exacerbated by the sale of problem homes without full disclosure to subsequent buyers. There are numerous cases where the buyer was not aware of material facts prior to the purchase.

The object of this study was to understand how it happens that homebuyers purchasing a re-sale condo are not aware of the condition of the building. The possibilities that were examined were that

1. the Contract of Purchase and Sale did not mandate the use of investigative tools for the purchaser to discover the true condition of the building
2. the tools that are currently being used are ineffective
3. the buyer did not understand the implications of the information that was received.

The methodology employed was to examine transactions where the buyer discovered within one year of purchase that there was a material problem that was not known at the time of purchase. Forty cases from the Greater Vancouver area, the Fraser Valley and Vancouver Island were reviewed.

Over the time period spanned by the cases in this study (1996-2002), there is a noticeable change in the drafting of the Contracts of Purchase and Sale. Since 1999, Contracts more consistently used the investigative tools to assist the purchaser in bringing transparency to the transaction than those drafted in 1996 to 1998. Out of 14 cases in 1999 - 2002:

- The Property Disclosure Statement was requested 14 out of 14 times
- At least 12 months of minutes of the Strata Corporation were requested 13 out of 14 times
- A professional Property Inspection was requested 7 out of 14 times

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Though the use of the investigative tools appears high since 1999, (save for Property Inspections) the buyers still discovered a serious problem within 1 year of purchase. This lack of transparency leads to the next question: are the investigative tools effective?

Between 1999 – 2002, 13 cases had used the newer form of the Property Disclosure Statement. This form - designed solely for strata properties - elicited a number of positive responses regarding special assessments that had been proposed but answered 'no' to subsequent questions about '*damage due to wind, fire or water*' and awareness of '*any leakage or unrepaired damage.*' This contradiction in responses cannot be explained (interviewing the sellers was not part of this study) but this inconsistency would be confusing to buyers.

The Property Disclosure Statement cannot be relied upon – on its own – as a tool to reveal the physical condition of the property. A recent court decision in BC has stated that it is not reasonable for a buyer to rely on the Property Disclosure Statement alone if the minutes of the Strata Corporation reveal problems.

Additionally, when a material change in what is known about the property occurs between the date of the Contract of Purchase and Sale and the closing date, the seller's declarations in the Property Disclosure should be amended and drawn to the attention of the buyer. However, in 4 cases in this study, though new information emerged during this time period, it was not made known to the buyer.

For these reasons, the Property Disclosure Statement is limited as an aid to the buyer.

The minutes of the Strata Corporation and Strata Council are considered an essential tool for the buyer to gain insight to the knowledge and operations of the Strata Corporation. In the recent period 1999 – 2002; though the minutes were requested 13 out of 14 times, there were challenges for the buyer to benefit from this information: :

- Since 2000, the norm is to request 12-24 months of minutes which gives the prospective buyer an onerous amount of material that requires careful reading in a limited time period. The minutes are often drafted in a manner that does not reveal the true condition of the building.
- Persons knowledgeable with the phenomenon of building envelope failure may be able to discern certain 'red flags' in the minutes but the typical homebuyer has little chance of interpreting these signs.

Understanding condominium terms (e.g. limited common property, phased strata, unit entitlement) is another barrier to many buyers. Though this study did not have cases of 'English as second language buyers' it is clear that they would have a tremendously difficult time interpreting the meaning of the Property Disclosure Statement and strata minutes.

The least used investigative tool is the professional Property Inspection. It was only used in 50% of the cases in the 1999 – 2000 time period, and even less prior to that. The Property Inspection suffered as an investigative tool due to:

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- The extent to which the exterior of the building was inspected varied greatly.
- The 'checklist' format of report sometimes had significant information buried in the pre-printed part of the form.
- Written comments by the inspector appeared benign in some cases but closer inspection by a person knowledgeable with building envelope failure would recognize ominous warnings couched in soft language.

Only one inspection report gave warnings in plain, simple language that ensured the buyer understood that there was risk attached to the purchase decision.

The reasons given for not having a property inspection include the perception that they are ineffective. Another important reason for not having an inspection that was cited in a number of purchases made prior to 1999 was the existence of a warranty. The collapse of the New Home Warranty in 1999 temporarily removed the comfort of warranty. However, a number of units are now available on the market that fall under the jurisdiction of the Homeowner Protection Act and the dual umbrella of builder licensing and a required warranty. The existence of a warranty may once again become a prominent reason for buyers not obtaining a property inspection. Additionally, the cost of property inspections has increased.

The Form B Information Certificate which has only been in use since July 2000 should have been acquired for the buyer in 5 cases. It was requested in 4 cases, and only delivered to the buyer in 3 cases. The reliability of the information should be high even though it is limited.

Engineering reports, if they exist, are critically important for the buyer to review in their entirety. None of the Contracts of Purchase and Sale contained a request for an engineering report. However, in 4 cases, the buyer did receive information from an engineering study.

- In one case, it appears the scope of the engineering study was limited and the work that was recommended was a temporary measure. However, this was not explicitly stated.
- In one case, the buyer received information extracted from an engineering report but did not receive the entire report which recommended a repair that cost 400% of what the extract suggested.

There were some transactions that occurred in special circumstances. The buyers in these cases needed more information about these special circumstances than was provided.

- The sale of a unit in a building that had been rented for more than 6 years by the developer. Units were sold under an updated Developers Disclosure Statement.
- The sale a unit that was in a building on federal Crown land in a Reserve. The property was described to the buyer as a 'condo on Indian Land' and that it was substantially the same as any other condominium unit. However, a variety of legal structures that protect strata homebuyers in BC (e.g. the Strata Property Act, the Land Title Act, Part 2 of the Real Estate Act) do not have jurisdiction on Reserve Land.
- The sale of a unit in a phased strata.

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The investigative tools have shortcomings and even where a buyer employed every tool available, a clear understanding of the risk was not apparent. Participants explained why, in a number of cases, they arrived at a purchase decision:

- Some clues were believed to be normal maintenance items that would be resolved.
- In some cases, they were told it had problems but it had been fixed. Most homebuyers are not aware of the high rate of failure of ‘fixes.’
- Some believed leaky condo syndrome does not affect concrete buildings or townhouses.
- Some believed they had an accurate estimate of the cost of the repair at the time of purchase and they negotiated a price to reflect that cost.
- Some believed the investigative tools would give them clear answers, not just hints. They interpreted couched language to mean there was not a serious problem.

Previous home owning experience is not necessarily an asset in understanding leaky condo syndrome. Twenty-nine out of 40 participants in this study had previously owned a detached home, a condo or lived in a co-operative. Many had ‘hands-on’ experience in maintenance and home repairs. This experience predisposed many of them to consider evidence of leaks to be a manageable repair rather than a life changing event. Catastrophic building envelope failure – and the resultant impact on their finances and their strata community was not in their experience.

Even if the use of investigative tools is more frequent, or if the leaky condo crisis has peaked, it is clear that there will be many more condo buyers who discover, after the fact, that *‘what they got is not what they thought they bought.’* The tools themselves are flawed, the Contract of Purchase and Sale may still fail to request all the documentation and there is little assistance for the buyer in understanding and analyzing the information they receive.

RÉSUMÉ

Le Homeowner Protection Office de la C.-B. estime que les copropriétés endommagées par l'humidité qui ont été réparées atteignent les 65 000, dont 50 000 sont connues à l'heure actuelle. Ces copropriétés seront revendues à quelques reprises au cours de leur durée utile, de sorte que l'acheteur s'en remettra probablement à un agent immobilier pour l'aider à conclure la transaction. L'agent fait intégrer les clauses standards recommandées par le Real Estate Council de la C.-B. dans le contrat d'achat et de vente. Ces clauses requièrent le recours à des instruments d'investigation et des déclarations visant à rendre la transaction la plus transparente possible. Les instruments d'investigation s'entendent de la déclaration relative à l'état de la propriété obtenue du vendeur, du rapport d'un inspecteur en bâtiment et d'une demande de documents de la société des copropriétaires, y compris des règlements administratifs, des états financiers, des procès-verbaux des réunions du conseil des copropriétaires pendant une période spécifiée et de tout rapport d'ingénieur. Depuis l'entrée en vigueur de la nouvelle loi intitulée Strata Property Act en juillet 2002, le certificat d'information (formule B) s'emploie également.

Malgré ces formalités, la crise des copropriétés endommagées par l'humidité a été amplifiée par la vente de maisons problèmes dont l'état n'a pas été divulgué aux acheteurs subséquents. Bien des fois, l'acheteur n'était pas au courant de la situation avant d'acquérir la copropriété.

L'objet de la présente étude consiste à savoir comment il se fait que les acheteurs se portant acquéreurs d'une copropriété sur le marché de la revente ne sont pas au courant de l'état du bâtiment. Voici les possibilités qui ont été étudiées :

1. le contrat d'achat et de vente ne requerrait pas le recours à des instruments d'investigation de façon à permettre à l'acheteur de découvrir le véritable état du bâtiment.
2. les instruments qui s'emploient actuellement se révèlent inefficaces.
3. l'acheteur ne saisissait pas les conséquences des renseignements reçus.

La méthode employée consistait à examiner les transactions où l'acheteur a découvert dans un délai de un an suivant l'achat que le logement recelait un problème dont il n'était pas au courant au moment de s'en porter acquéreur. Quarante cas de la grande région de Vancouver, de la vallée du Fraser et de l'île de Vancouver ont été vérifiés.

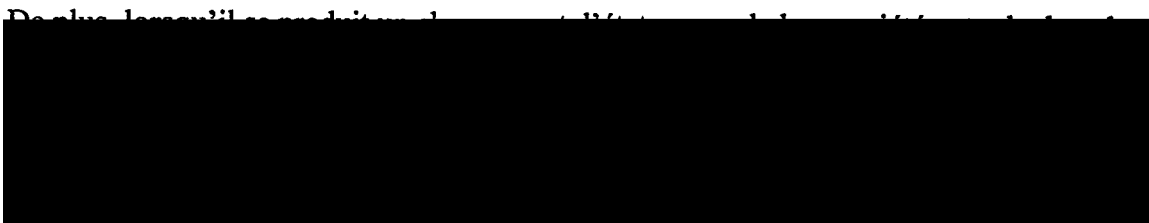
Au cours de la période couverte par les cas étudiés ici (1996-2000), on constate un changement remarquable dans la rédaction des contrats d'achat et de vente. En effet, depuis 1999, les contrats font plus systématiquement état du recours à des instruments d'investigation pour rendre la transaction transparente et ainsi aider l'acheteur que dans ceux qui ont été passés de 1996 à 1998. Parmi les 14 cas étudiés de 1999 à 2002,

- la déclaration portant sur l'état de la propriété a été demandée 14 fois sur 14.
- les procès-verbaux des réunions que la société des copropriétaires a tenues pendant une période minimale de 12 mois ont été demandés 13 fois sur 14.
- une inspection immobilière par un spécialiste a été demandée 7 fois sur 14.

Même si l'emploi d'instruments d'investigation semble élevé depuis 1999, (sauf pour les inspections immobilières), les acheteurs ont tout de même découvert un problème sérieux dans l'année qui a suivi leur achat. Un tel manque de transparence nous amène à poser la question suivante : les instruments d'investigation sont-ils efficaces?

Entre 1999 et 2002, 13 transactions ont été assorties de la récente déclaration portant sur l'état de la propriété. La formule, réservée exclusivement aux copropriétés, a permis d'obtenir des réactions favorables quant aux cotisations spéciales proposées aux copropriétaires qui ont cependant répondu « non » aux questions suivantes portant sur les *dommages attribuables au vent, au feu ou à l'eau* et leur connaissance de *toute infiltration ou dommage non réparé*. Cette contradiction dans les réponses ne s'explique pas (interviewer les vendeurs ne faisait pas partie de la présente étude), mais cette anomalie risque de semer de la confusion chez les acheteurs.

On ne peut se fier à proprement parler à la déclaration portant sur l'état de la propriété, pour connaître l'état des lieux. Le jugement rendu par un tribunal de la C.-B. statuait qu'un acheteur ne pouvait pas logiquement s'en remettre uniquement à la déclaration portant sur l'état de la propriété si les procès-verbaux des réunions de la société de copropriété révélaient l'existence de problèmes.



C'est pourquoi la déclaration portant sur l'état de la propriété a une portée limitée pour l'acheteur.

Les procès-verbaux des réunions de la société de copropriété et du conseil des copropriétaires sont considérés comme un outil essentiel pour que l'acheteur puisse mieux connaître le mode de fonctionnement de la société. De 1999 à 2002 inclusivement, les procès-verbaux ont fait l'objet d'une demande 13 fois sur 14, mais un défi attendait les acheteurs voulant tirer parti de ces renseignements :

- Depuis l'an 2000, la norme consiste à demander les procès-verbaux des réunions tenues sur une période de 12 à 24 mois, ce qui, dans certains cas, représente une quantité considérable de documents qui exigent une lecture attentive en peu de temps. Bien souvent, les procès-verbaux sont rédigés de manière à ne pas révéler le véritable état du bâtiment.
- Les personnes connaissant bien les aspects de la défaillance de l'enveloppe d'un bâtiment peuvent être en mesure de discerner des « signaux d'alarme » dans les procès-verbaux, mais il est peu probable que l'acheteur type réussisse à les interpréter.

Comprendre la terminologie des copropriétés (parties communes à usage exclusif, ensemble de copropriété aménagé par phase, part du logement) est un autre obstacle qui se dresse devant de nombreux acheteurs. La présente étude ne fait pas état de cas « d'acheteurs pour lesquels l'anglais est la deuxième langue », mais il est clair qu'ils éprouveraient énormément de difficulté à interpréter la déclaration portant sur l'état de la propriété et les procès-verbaux de la société de copropriété.

La vérification des lieux par un inspecteur en bâtiment a été l'outil d'investigation le moins utilisé. En effet, il n'a servi que dans 50 % des cas s'échelonnant sur la période de 1999 – 2000 et même moins auparavant. À titre d'outil d'investigation, l'inspection de la propriété en a souffert pour les motifs suivants :

- l'étendue de l'inspection portant sur l'extérieur du bâtiment variait grandement;
- le mode de présentation du rapport, sous forme de liste de vérification, enfouissait parfois des renseignements d'importance dans la partie pré-imprimée de la formule.
- les observations écrites de l'inspecteur pouvaient paraître anodines dans certains cas, mais une étude plus poussée de la part d'un spécialiste de la défaillance de l'enveloppe des bâtiments aurait donné lieu à de sinistres avertissements exprimés en termes modérés.

Un seul rapport d'inspection livrait des avertissements en termes simples qui faisaient en sorte que l'acheteur connaissait en tout état de cause les risques rattachés à sa décision d'acheter la propriété.

Pour motiver leur décision de ne pas faire vérifier l'état des lieux par un inspecteur, certains ont invoqué comme raison la perception qu'une telle démarche était dénuée d'efficacité, d'autres l'existence d'une garantie dans quelques transactions conclues avant 1999. L'effondrement du Programme de garantie des maisons neuves de la C.-B. a temporairement anéanti la sécurité qu'offrait une garantie. Pourtant, certains logements maintenant en vente sur le marché tombent sous le coup de la Homeowner Protection Act et sous l'égide de l'accréditation du constructeur et de la garantie requise. L'existence d'une garantie peut encore une fois être la principale raison qui incite les acheteurs à ne pas faire inspecter la propriété. De plus, les frais d'une inspection immobilière ont accusé une augmentation.

Le certificat d'information (formule B), en usage uniquement depuis juillet 2000, aurait dû être obtenu pour l'acheteur dans 5 transactions. Il a été demandé dans 4 cas et délivré uniquement à l'acheteur dans 3 cas. Par contre, dans les 4 cas, les renseignements, quoique limités, devraient être d'une grande fiabilité.

Quant au rapport technique, s'il existe, il est d'une importance primordiale que l'acheteur en étudie la teneur intégrale. Aucun des contrats d'achat et de vente ne renfermait une clause demandant un rapport technique. Par contre, dans 4 cas, l'acheteur a reçu des renseignements provenant d'une étude technique.

- Dans un cas, la portée semblait limitée et les réparations recommandées étaient une mesure temporaire, quoique non formulée en termes explicites.

- Dans un autre, l'acheteur avait reçu des renseignements provenant d'un rapport technique, mais pas le rapport intégral qui recommandait des réparations dont le coût était 400 % plus élevé que ce qu'indiquait l'extrait.

Des transactions se sont déroulées dans des circonstances particulières. Les acheteurs avaient alors besoin de recevoir davantage d'information au sujet de ces circonstances particulières que ce qu'ils avaient reçu.

- La vente de logements dans un bâtiment que le promoteur louait depuis plus de 6 ans. Les transactions de vente des logements ont fait l'objet d'une déclaration actualisée sur l'état des lieux.
- La vente d'un logement dans un bâtiment situé sur des terres publiques dans une réserve. La propriété avait été décrite à l'acheteur comme étant une « copropriété aménagée sur une terre indienne » et qu'elle ressemblait essentiellement à toute autre copropriété. Par contre, une série de structures juridiques qui protègent les acheteurs de copropriétés en C.-B. (Strata Property Act, Land Title Act, Part 2 de la Real Estate Act) ne s'appliquent pas aux terres indiennes.
- La vente d'un logement dans un ensemble en copropriété aménagé par phase.

Les outils d'investigation comportent des lacunes et même si l'acheteur avait employé tous les outils à sa disposition, une compréhension claire du risque n'était pas manifeste. Les participants ont expliqué, dans certains cas, les raisons motivant l'achat :

- Certains indices n'étaient, croyaient-ils, que des aspects qu'un entretien normal parviendrait à régler.
- On avait indiqué à certains acheteurs qu'il y avait effectivement des problèmes, mais qu'ils avaient été corrigés. La majorité des acheteurs de maisons ne savent pas que les « correctifs » comportent un risque élevé de défaillance.
- D'autres étaient d'avis que les maisons en bande ou les bâtiments en béton étaient à l'abri du syndrome des copropriétés endommagées par l'eau.
- Certains estimaient avoir une idée juste des coûts de réparation au moment de l'achat et avaient donc négocié le prix en conséquence.
- D'autres croyaient que les outils d'investigation leur permettraient d'obtenir des réponses claires, non seulement des indices. Ils ont interprété les termes employés comme signifiant qu'il n'y avait pas de problème sérieux.

Le fait d'avoir déjà été propriétaire d'une maison n'est pas nécessairement un atout pour comprendre le syndrome des copropriétés endommagées par l'eau. Ainsi, 29 des 40 personnes ayant participé à la présente étude avaient déjà été propriétaires d'une maison en bande, d'une copropriété ou habité dans une coopérative d'habitation. Bon nombre d'entre elles possédaient une expérience pratique des travaux d'entretien et de réparation d'une maison. Cette expérience avait prédisposé bon nombre d'entre elles à considérer les preuves d'infiltration d'eau comme des réparations réalisables plutôt qu'un tournant dans leur vie. La défaillance catastrophique de l'enveloppe du bâtiment et l'incidence consécutive sur leurs finances et la collectivité des copropriétaires ne faisaient pas partie de leur vécu.

Même si le recours aux outils d'investigation est plus répandu, ou que la crise des copropriétés endommagées par l'eau a atteint un sommet, il est clair qu'il y aura toujours plus d'acheteurs qui découvriront après coup « qu'ils n'ont pas obtenu exactement ce qu'ils croyaient avoir acheté ». Les outils proprement dits ne sont pas parfaits, le contrat d'achat et de vente peut ne pas requérir tous les documents nécessaires et les acheteurs disposent de peu d'aide pour comprendre et analyser les renseignements qu'ils obtiennent.



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TERMINOLOGY

BARRETT COMMISSION	A commission appointed by the BC government with a mandate to inquire in the quality of condominium construction in BC. Part 1 was completed in 1998; Part 2 was completed in 2000. www.hpo.bc.ca/Overview/Barrett1/contents.htm
BUILDING ENVELOPE FAILURE	The building envelope includes all the components that separate the inside of the building from the outside. When it allows the outside elements in – it has ‘failed.’
BUYER AGENT	The real estate agent representing the buyer.
CONTRACT OF PURCHASE AND SALE	A standard form of Contract used in residential real estate transactions in British Columbia; copyright by the B.C. Real Estate Association.
CONDOMINIUM	A strata title unit. May be apartment style or townhouse style.
FORM B INFORMATION CERTIFICATE	A form issued by the Strata Corporation that discloses certain information about the Strata Corporation and the particular strata lot in question. This form originated with the Strata Property Act in 2000. http://www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm#part4%20-%20division%206
HOMEOWNER PROTECTION ACT	A bill passed in BC in 1998 intended to: (a) strengthen consumer protection for buyers of new homes, (b) improve the quality of residential construction, and (c) support research and education respecting residential construction in British Columbia. A further purpose of this Act is to establish a Reconstruction Program to provide financial assistance to eligible homeowners for home reconstruction. www.qp.gov.bc.ca/statreg/stat/H/98031_01.htm
HOMEOWNER PROTECTION OFFICE	A provincial Crown corporation formed as a response to many of the recommendations from the Barrett Commission. The HPO is responsible for: <ul style="list-style-type: none">• Residential builder licensing and establishing the framework for and monitoring the provision of mandatory third-party home warranty insurance• administering a no interest repair loan program and PST grant relief for owners of leaky homes, and• a research and education function designed to benefit the residential construction industry and consumers• www.hpo.bc.ca
LEAKY CONDO SYNDROME	Catastrophic failure of the building envelope allowing water to enter the envelope leading to rotting, rusting, decay and mold. Has affected condominiums, detached homes, schools and hospitals.

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LIMITED DUAL AGENT	A real estate agent acting for the seller and the buyer in the same transaction with an agreement that certain agency obligations will be limited.
LISTING AGENT	The real estate agent acting for the seller.
PHASED STRATA	A strata development that is built in stages; and each stage is registered at the Land Title Office separately as a 'phase.'
PROPERTY DISCLOSURE STATEMENT	A standard form used in real estate transactions in BC whereby the seller makes certain declarations of known information that would be considered hidden defects; copyright by the BC Real Estate Association.
REAL ESTATE COUNCIL OF BC	A body that regulates licensing, education and discipline for the real estate brokerage industry in BC; created by the Real Estate Act of BC www.recbc.ca
SPECIAL ASSESSMENT	An amount of money over and above monthly maintenance fees that an owner of a strata unit may be required to pay. Special assessments are often used to fund major repairs. Since the enactment of the Strata Property Act in 2000, known as a "special levy."
SPECIAL LEVY	Formerly referred to as a 'special assessment'. The Strata Property Act of BC which became effective July 2000 changed the terminology.
STRATA PROPERTY ACT OF BC	The legislation that governs the operations of strata title properties in BC; came into effect July, 2000 replacing the Condominium Act. http://www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm
STRATA TITLE	A type of property ownership consisting of an individual ownership in one unit plus an undivided shared interest of the common property.
TOWNHOUSE	A style of dwelling where each unit goes from ground to roof and shares common walls with the next unit. Also known as 'row housing.'

1. INTRODUCTION

1.1 BACKGROUND

The BC Homeowner Protection Office believes that the number of leaky condos to be discovered and repaired is in the range of 65,000 of which 50,000 are currently known. Most are located in the coastal climate area of BC. These condos will be resold a number of times throughout their economic lifespan, and the buyer will likely rely on a real estate agent to assist them in the transaction. The agent incorporates clauses into the Contract of Purchase and Sale that mandate the use of investigative tools and declarations to bring maximum transparency to the transaction. The investigative tools include a seller's Property Disclosure Statement (PDS), a property inspection by a professional home inspector and a request for documentation from the strata corporation including bylaws, financial statements, minutes of meetings for a specified time period and any engineering reports that may have been done. Since July 2000, another document known as a Form B Information Certificate is also used.

Despite these procedures, the leaky home crisis has been exacerbated by the sale of problem homes without full disclosure to subsequent buyers. There are numerous cases where the buyer was not aware of material facts prior to the purchase. This situation is attested to by complaints to the real estate regulatory body the Real Estate Council of BC, claims settled by the real estate Errors and Omissions Corporation and litigation.

In BC the resale condo presents a unique challenge for the discovery of material facts. While the purchaser of a new condominium relies on warranty protection to a large extent, there is very little residual warranty protection left in BC for re-sale condos since the collapse of the major warranty provider. The re-sale buyer relies on seller's disclosures and their own investigations to make an informed buying decision. It is not known if current investigative tools are adequate to discover problems that may exist in the re-sale condo, or if real estate agents are consistently employing recommended clauses in the Contract that would require the investigations to be undertaken.

In BC, standard clauses are not pre-printed in the Contract. The agent must use his/her discretion dictated by the circumstances of the transaction in deciding which clauses are appropriate. The clauses that provide for the investigative tools are recommended but not mandatory. There may be circumstances where the use of a particular clause does not meet the needs of the parties or the situation. For example, a buyer may forgo a professional property inspection if a recent engineering report is available.

Though evidence of the leaky condo syndrome was available by the mid-nineties, the real estate brokerage industry in BC was relatively uninformed of the magnitude or the specifics of the disaster. Until the collapse of the New Home Warranty Program in 1998, many believed that most building envelope failures would be repaired by the warranty company and the problem would be resolved in time. Testimony at the Barrett Commission revealed that only a small percentage of the problems were resolved by the

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warranty provider, but this was not common knowledge in the brokerage industry.

1.2 OBJECTIVES

The objective of this study is understanding how it happens that buyers of re-sale condominiums are not aware of the condition of the building at the time that they purchase. Is it a failure of the real estate agent to include clauses that implement investigative tools and declarations intended to reveal the true state of the building; is it the failure of the tools themselves, or is it the buyer's understanding of the meaning of the information?

The purpose of the research is to provide data to individuals and organizations that are stakeholders in the real estate purchase process so that improvements may be made to increase transparency in the transaction and assist future buyers in obtaining an accurate picture of the physical condition of the property they propose to purchase.

Transparency in the transaction has the effect of eliminating many costs and losses after the fact. These include:

- Protecting and preserving the buyer's investment.
- Eliminating costs of misrepresentation (innocent or deliberate) including legal costs for buyer, seller and real estate agents.
- Elimination of unexpected financial demands on the buyer, which may include cost of borrowing, bankruptcy and foreclosure.

1.3 PROJECT INVESTIGATOR AND AUTHOR

The sole investigator and author is Nancy Bain, M.B.A. Ms. Bain works as an educator, author, and researcher in the real estate industry. In addition, she is licensed as a real estate agent under the Real Estate Act of BC.

2. METHODOLOGY

The premise of this research is that by studying cases where the transfer of information failed to give the buyer a true picture of the property that was being purchased, it may be possible to understand how it happens.

2.1 CRITERIA FOR STUDY CANDIDATES

Candidates were sought that had the following criteria

- They had purchased a condominium in the coastal climate area of BC (Greater Vancouver, the Fraser Valley or Vancouver Island).
- The purchase occurred since 1996.
- The unit was not new at the time of purchase.
- Within one year of purchase, the buyer discovered a serious problem that was not known at the time of purchase.
- Candidates had their documents of purchase and were willing to allow the researcher to copy the documents.

The type of 'serious problem' that the buyer encountered was not pre-defined. There are many different problems that may arise after the purchase, for example, discovery of restrictive by-laws that the buyer was not aware of at the time of purchase. In every instance in this study, persons who fit the other criteria, had purchased a unit where the problem was building envelope failure a.k.a leaky condo syndrome. In some cases it was accompanied by other problems.

The purpose of requiring that the serious problem be discovered within one year of purchase was to be virtually certain that the problem existed at the time of purchase.

2.2 DATA COLLECTION PROTOCOL

Maximum sampling variation was sought by seeking candidates through a variety of organizations and geographical areas. Organizations and individuals that were approached included:

- Seniors organizations
- Leaky condo groups (CONDUIT – A Vancouver Island group; COLCO – Coalition of Leaky Condo Owners, and CASH – Compensation and Accountability to Soaked Homeowners)
- Appraisers and property managers
- Individual real estate agents and real estate organizations

Other sources of candidates included word of mouth (most people in greater Vancouver and Victoria know at least one person affected by leaky condo syndrome); and a general appeal through community newspapers.

The criteria for candidates were posted on a web page, and a unique email address (Researcher @telus.net) was created specifically for correspondence concerned with this project.

Candidates were pre-qualified by telephone or by email to ensure they met the criteria for the study. Interviews were done in their homes in most cases. Several were done by telephone with documents being forwarded by mail.

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All interviews were conducted by Nancy Bain.

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The interview protocol was:

First, each participant was provided with a form letter which identified the purpose of the project and assured them of total confidentiality of their personal information. This assurance was critical as many leaky condo victims are reluctant to divulge details about the problems of their strata complex.

In addition, participants were advised that the sole purpose of the research was to assist future homebuyers from suffering a similar fate. The research would not seek to identify or attach blame to any of the participants in the transaction, or any professionals associated with the transaction.

Second, participants were asked a series of questions set out in an interview guide (Appendix 1.) The length of time required varied from 30 minutes to an hour. The interviews were at times stressful - as would be expected considering the questions concerned a painful experience. One candidate commented "You're the first person that has ever listened to us."

Third, documentation of the sale was collected, copied and the originals returned to the owners.

The number of interviews was intended to be 50. Finding affected buildings was not difficult – conversely – finding individuals willing to share the details of their story was not easy. These homeowners live in an environment rampant with accusation, litigation, and horrific financial stress. Some participants related how even friends and family treated them as if they were not particularly astute home buyers. One participant who was frequently asked "How did this happen to you?" responded "How does a 747 fall out of the sky?"

Additionally, the requirement that their documents of the sale process be examined was often a barrier. Some were unable to retrieve their documents; some had handed it over to lawyers, some were just unwilling to share this highly personal business with a stranger for the purpose of research. In all, 40 candidates were interviewed, 20 from Vancouver Island and 20 from Greater Vancouver and the Fraser Valley.

For the purposes of this study (i.e. understanding and description) the smaller than anticipated number of participants does not denigrate the results. It is an 'information rich' sample that has provided valuable insight to the questions posed by this research. However, this group does not represent the population of all failed transactions in this time period. There are two types of participants that are not represented: buyers for whom English is not their first language and investors.

Observations that are drawn from this study may not be representative of the entire population of transactions in this time period where the buyer was not aware of the true state of the property that was purchased. No attempt should be made to extrapolate or generalize.

3. SUMMARY AND ANALYSIS OF DATA

3.1 CHARACTERIZATION OF PARTICIPANTS

Information was collected from participants regarding household size, age and gender of owners, and their previous residence in terms of tenure (owner or renter) and type (detached home or strata title).

Participants' ages were tabulated by the age of the oldest owner where there was more than one owner, and by decade (30's, 40's etc.) at the time of the interview. All purchases had occurred within 6 years of the interview date in 2002.

Age and Household Size							
# in Household	20	30	40	50	60	over 70	Total
1 p HH	1	1	5	4	2	4	17
2 p HH		2	2	3	7	2	16
3 p HH		3	1	2			6
5 p HH			1				1
Total	1	6	9	9	9	6	40

Household by Gender and Children*							
	F	M	MF	F + Child	F + Other	MF + Child	Total
1 in HH	16	1					17
2 in HH			14	2			16
3 in HH						6	6
5 in HH					1		1
Total	16	1	14	2	1	6	40

*children or grandchildren

The interview included other questions designed to provide general information about motivation for their purchase, how they have been affected by getting caught up in this dilemma, what they knew about leaky condos prior to the purchase.

Question: *What was your previous residence?*

- 19 participants previously owned a detached house
- 8 previously owned a condo
- 2 lived in a co-operative building
- 11 were renting a condo, house or apartment

Question: *Why did you buy a re-sale condominium?*

Participants were assisted by two prompts from the interviewer: 'Why not a house' or 'Why not a new condominium?'

- 20 identified affordability as the main reason
- 5 said lifestyle. Examples given were relief from yard and house maintenance, and security.

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- 5 said location. Specifically, proximity to public transportation, freeways, or closeness to a relative.
- 4 said to avoid a leaky condominium. Some were looking for a building with a warranty; others said they thought an older building was less likely to have problems that had not yet been detected and repaired.
- 6 had other reasons

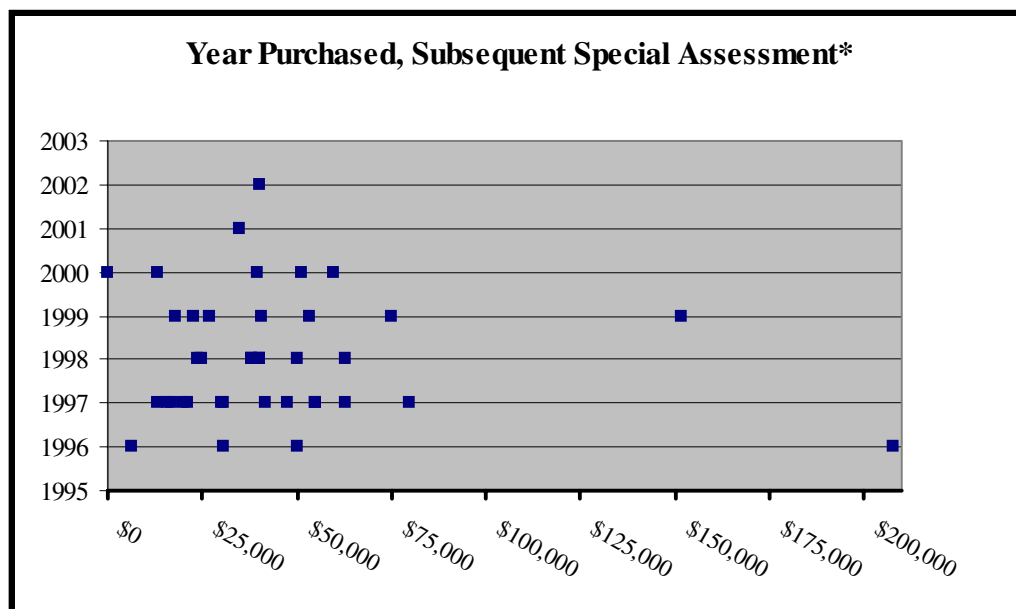
Question: “*Had you heard of the leaky condo phenomenon at the time you purchased?*”

- 7 said ‘No.’ Most of these participants were from Alberta.
- 33 said ‘Yes’ although many of these were qualified –
 - 8 said “Vaguely” “Generally”
 - 4 thought it was a ‘Vancouver’ problem not affecting their area.
 - 2 thought it did not affect townhouses (at the time they purchased)
 - 3 thought concrete buildings were safe (at the time they purchased)
 - 2 thought a professional property inspection would identify a ‘leaky condo’
 - 1 had previously owned a building that had a small but successful repair and believed this building would be the same.

Question: “*How has this affected you?*” Two types of information were sought here:

- the amount of special assessments and
- other ways that the participants were affected by this experience

The graph below identifies the amount of special assessment that followed the purchase. Each block represents one purchase. Where there are a number of blocks lumped together, it is because there were a number of special assessments for similar amounts in that time period.



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*Where the special assessment has not yet been levied, an estimate has been made based on an engineering report or other best information available.

When asked “*What other ways have you been affected?*” responses included:

- “*Stress. Very very stressful. Massive stress. Enormous stress. People are at each others throats.*”
- “*Lost my life savings.*” “*Can’t afford holidays.*” “*Now we have negative equity in our home.*” “*Never go to concerts, rarely go to the theatre.*” “*Heating bill was double during the repair.*” “*May have to give up unit – can’t handle it financially.*” “*Payments are crippling us.*”
- “*Trying to run a home based business during the repair – noisy, dirty, and dusty. A saw came through the wall right by my shoulder.*” “*Come home from work and there are pieces of drywall in the bed.*” “*No privacy, dusty and dirty.*” “*Under tarps for 6 months – like living in a tomb.*” “*My pets were traumatized by noise and strangers coming into my place to do repairs.*”
- “*Life is on hold. Marriage and family delayed.*” “*Place is like a ghost town – people are moving out due to bankruptcies and mold problems.*”
- “*Coughing, sinusitis, pharyngitis.*” “*A lot of bronchitis.*” “*Doctor prescribed an inhaler. Symptoms disappeared once repair was done.*”
- “*We both work – and then we worked on the strata council an additional 30 hours a week during the repair process.*” “*After working all day I put in 8-16 hours week on the Strata Council.*”
- “*I have a friend who works at the bank who said the bankruptcy guidelines are changing almost weekly because there are so many people affected by the leaky condo crisis.*”
- “*During my time on the Strata Council I’ve seen people cry in front of the whole Council with desperate heartbreaking stories. And you see your neighbours with all their stuff on the sidewalk because the bank is taking their place.*”

Question “*In hindsight, can you see there were clues that there was a problem at the time you purchased?*”

- 24 said No. Some elaborated.
 - “*It looked A-1. There were no signs of problems.*”
 - “*I was assured it was all fixed.*”
- 4 said there were signs in the minutes but they did not have the minutes at the time of purchase. –
 - They only had last 2 years of minutes – clues were farther back.
 - “*I realize now that the absence of minutes was a subterfuge.*”
- 3 said they believe – after the fact -that certain design elements gave clues
 - No overhangs
 - Numerous skylights
 - Numerous angles in roof
- 3 said there were physical clues but
 - They were told the odour they detected was because the previous owner had a dog. In fact it was mold.
 - A large water stain on the wall adjacent to the balcony was hidden by furniture at the time they viewed the property and had it inspected.
 - The professional property inspector did not find any visual clues, but the carpet cleaner pointed out a line around the top edge of the bedroom carpeting. Water was leaking into the bedroom from the exterior and being wicked across the room by the carpet.

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Question: *“Who did you rely on to guide you through the transaction?”*

- **Real estate agent:** More than 50% of the participants named their real estate agent as their source of guidance. Despite the catastrophic event that unfolded after purchase, approximately 30% of this group still feels positive towards their real estate agent. The remainder felt the agent was not much help; gave them bad information or think the agent should have known from previous dealings in the building that there was a problem.
- **Legal Adviser:** There were 2 cases where participants felt enthusiastic about assistance received from their legal adviser. In 1 other case, the conveyance was done by the seller’s lawyer.
- **Friends:** 4 participants either received assistance from friends in some way, or had friends living in the building where they purchased.
- **Property Manager:** 6 of the participants contacted the Property Manager prior to the purchase and were lead to believe there were no problems.
- **Strata Council:** 6 of the participants contacted a member of the Strata Council prior to the purchase and were assured there were ‘no problems,’ ‘the repairs are done’ or ‘we will ensure that problem is taken care of.’ Another 4 participants purchased from a member of the strata council and considered the seller’s declarations to be from the strata council.
- **Buyers Guides:** 2 participants had obtained information from a buyer’s guide, but they did not recall the source of the guide.

3.2 CHARACTERIZATION OF BUILDINGS

Out of 40 interviews, only 37 different buildings were involved because 3 buildings had 2 participants in the same buildings. Buildings are profiled by age, type of construction, number of units, age of building at the time of purchase and location.

Year Built	Wood	Concrete	Total
1986	2		2
1988	1	3	4
1990	5	1	6
1991	4	2	6
1992	3		3
1993	3		3
1994	6		6
1995	4		4
1996	2		2
1997	1		1
Total	31	6	37

The age of the building at the time of purchase – note this totals 40 because it pertains to the purchase.

Building Age at Purchase Date	Wood	Concrete	Total
1 year old	1		1
2 years old	2		2
3 years old	8		8
4 years old	2		2

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5 years old	5		5
6 years old	4	3	7
7 years old	2		2
8 years old	4	1	5
9 years old	2	1	3
12 years old	3	2	5
Total	33	7	40

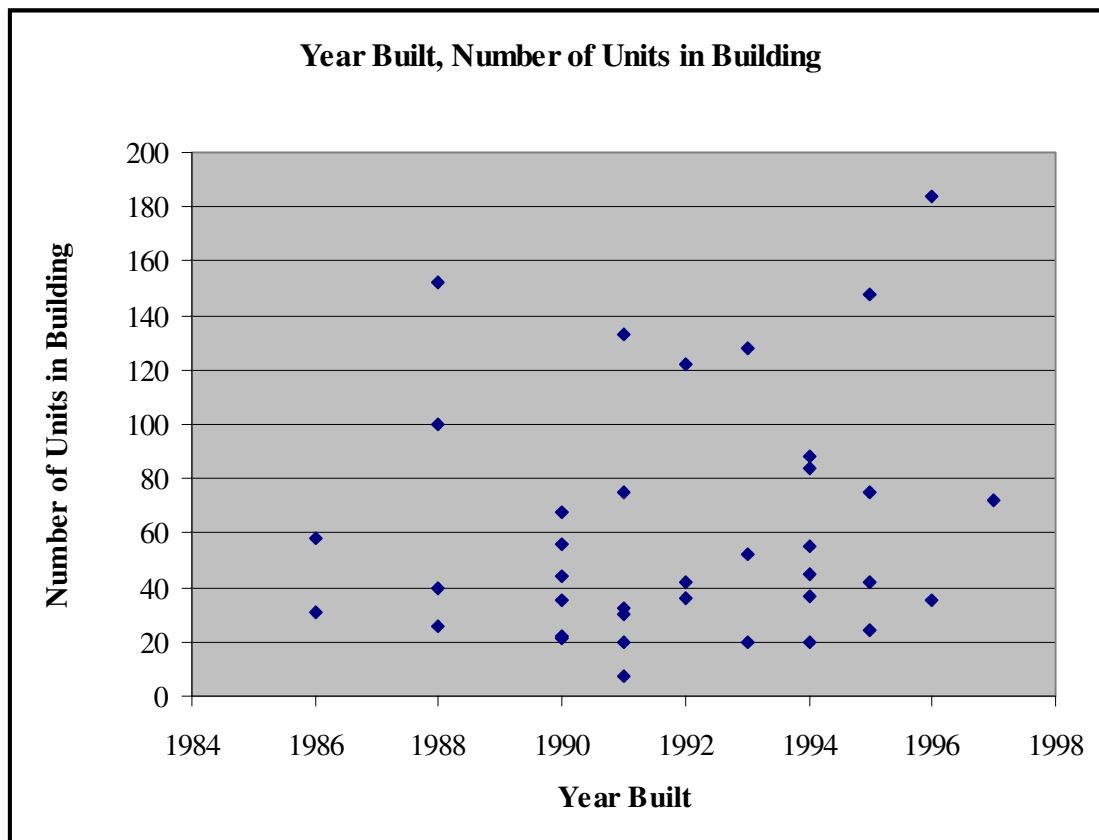
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The location of the 37 buildings includes 19 on Vancouver Island and 18 in Greater Vancouver and the Fraser Valley.

Vancouver Island:	# of Buildings
Nanaimo:	1
Sydney:	1
Victoria:	17
Total:	19

Greater Vancouver and Fraser Valley	
Abbotsford:	1
Burnaby:	2
Coquitlam:	2
Maple Ridge:	1
New Westminster:	2
Surrey:	1
Vancouver:	9
Total:	18

Number of Units: The year built and number of units in each building is graphed below. There are 37 buildings but in 1990, the graph markers are overlapping for 2 buildings that had 20 and 21 units.



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3.3 THE CONTRACT OF PURCHASE AND SALE.

In BC, the clauses required to explain the nature of the transaction are not pre-printed on the Contract of Purchase and Sale. The real estate agent working with the buyer must use his/her skills to correctly ascertain the appropriate clauses that should be included in the Contract.

The investigative tools used in a condominium purchase to bring transparency to the transaction include:

- The Seller's Property Disclosure Statement
- An inspection by a professional property inspector
- Obtaining and reviewing documents of the strata corporation. Most significant for discovering the need for major repairs are the minutes of meetings and any reports that have been ordered by the strata corporation. In most cases, the reports are those prepared by engineers or other building consultants who have been asked to investigate certain aspects of the physical condition of the building(s) of the strata corporation.
- Since July 2000, a Form B Information Certificate

There is a specific clause to invoke the use of each of these investigative tools. See Appendix 2: Clauses.

The clauses most commonly used are recommended by the regulatory body, the Real Estate Council of BC. They are published in the 'Licensee Practice Manual' the practice standards handbook for professional agents. The Council provides a copy to every licensed real estate agent in the province, and it is available on-line.

These clauses are updated from time to time to reflect current best practices. They evolve from various sources:

- Existing clauses that have been tried and tested in the field.
- Revisions to existing clauses or creation of new clauses that are deemed necessary due to a legal ruling, a change in the law, or evidence that the clause is faulty in some way. This evidence may come from complaints filed with Council of harm that occurred to a buyer or seller due to the actions of a licensed agent, data from the Real Estate Errors and Omissions Insurance Corporation indicating a problem that could be remedied by changes to clauses and practitioner input of problems arising in the course of transactions.

There is often a substantial time lag for these feedback mechanisms to report back. If they result from a legal action, the problem is likely at least two years old – often more. The result is that today's solutions address yesterday's problems. If the problems are static, this works but if the nature of the problems changes over time, there is a critical lag.

The first question of the research problem is to ascertain if the real estate agent incorporated the recommended clauses requiring the use of these investigative tools. This was determined by reviewing the Contract of Purchase and Sale and tabulating the

Re-sale of Leaky Condos: Did the Buyer Know?

clauses that were used. Thirty-eight of the 40 buyers interviewed were able to retrieve the Contract of Purchase and Sale that was drafted at the time of their purchase. However, 2 of these 38 were not considered in answering this question because:

- One sale occurred in a building where all units had been rented for a number of years and units were sold under a Developer's Disclosure Statement. The investigative tools for this sale are somewhat different and it is discussed under "Special Cases."
- One sale was direct from seller to buyer without the assistance of a real estate agent. The object of the first question is to determine "If the real estate agent included the investigative tools in the Contract of Purchase and Sale." Therefore, this Contract was not included in this particular aspect of the analysis.

All of the Contracts examined in this study were drafted by different real estate agents. The Contracts contained other clauses such as those necessary for the buyer to arrange financing. The only clauses reviewed for this purpose of this study are the clauses relating to the use of the investigative tools.

Below is a tabular summary of investigative tools included in the Contract of Purchase and Sale in 36 transactions, arranged by year of purchase:

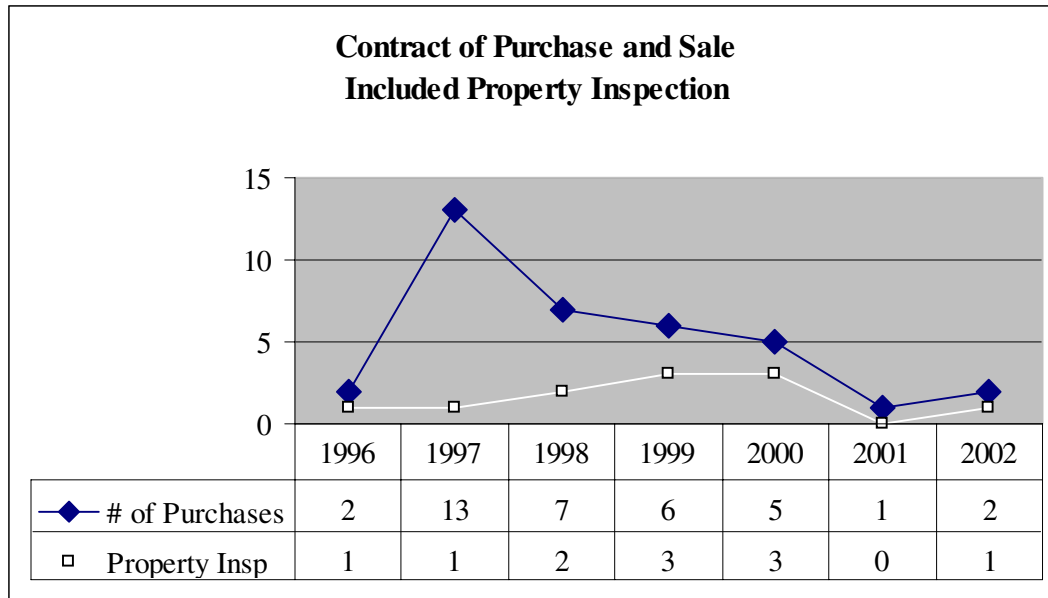
Year	# of Purchases	Property Disclosure Statement	Property Inspection	Minutes	Form B
1996	2	2	1	1	N/A
1997	13	12	1	2	N/A
1998	7	6	2	5	N/A
1999	6	6	3	5	N/A
2000	5	5	3	5	2*
2001	1	1	0	0	0
2002	2	2	1	2	2
Total	36	34	11	20	4

*Use of the Form B commenced July 1, 2000. Only 2 sales in 2000 qualified.

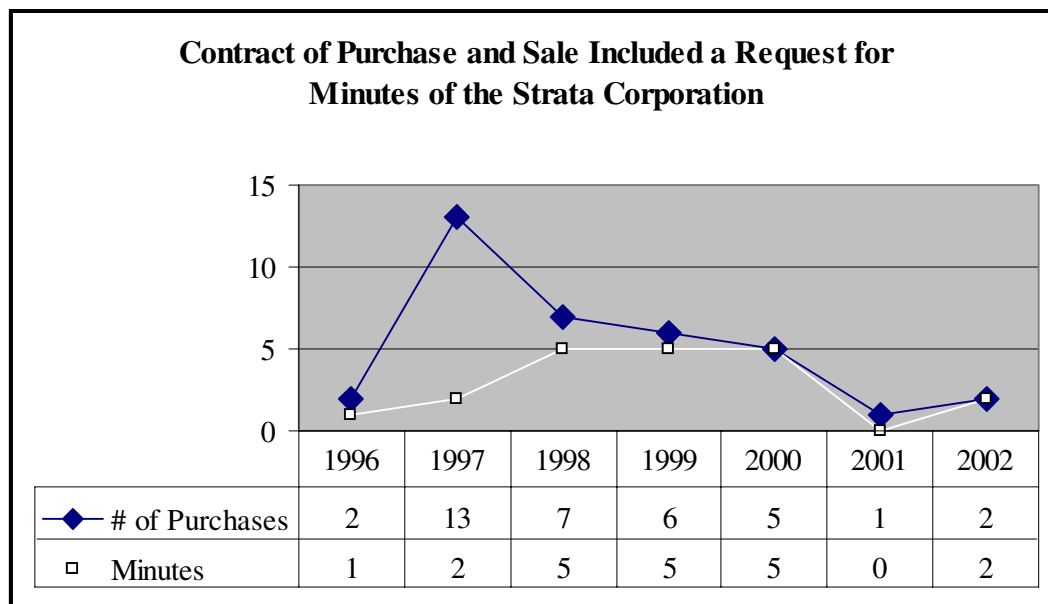
3.3.1. The Property Disclosure Statement: Of all the investigative tools, the Property Disclosure Statement has been used most consistently over the time period of this study. Out of 36 transactions, there are only 2 where the Property Disclosure Statement was not requested in the Contract of Purchase and Sale.

3.3.2. Professional Property Inspections: Out of 36 transactions, a Property Inspection was only requested in 11 of the transactions. Over the time period of this study, the frequency of use of this tool has improved but the best it ever got to was 60% in 1999.

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3.3.3 Minutes of Strata Meetings: The Contract of Purchase and Sale had a clause requesting minutes in 20 of the 36 transactions. It should be noted that in the period 1996 -1998, minutes may have been obtained even though it was not requested in the Contract of Purchase and Sale. This was a time when real estate practice was changing. Though the standard clause did not include a request for minutes until 1999, prior to that date, many agents added this request to their Contract.



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3.3.4. Form B Information Certificate: The certificate was borne with the new Strata Property Act that came into effect in July, 2000. There are only 5 cases in this study where a request for the Form B should have been included. In 4 of the 5 cases, it was requested.

3.3.5 Engineering reports. None of the Contracts of Purchase and Sale requested engineering reports. However, in 4 cases, the buyer received an engineering report or pages that they believed were from an engineering report.

Each of these forms of documentation is discussed in the following sections to ascertain the effectiveness in use.

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3.4 THE PROPERTY DISCLOSURE STATEMENT

The purpose of the Property Disclosure Statement (PDS) is to disclose hidden defects (latent defects) which the seller knows about. The role of the listing salesperson is set out by the Real Estate Council with respect to latent defects:

Listing salespersons should explain the concept of "latent defects" to sellers at the time a listing is taken. A latent defect is one that is not visible upon ordinary inspection, but which materially affects a strata lot's use or value. If owners know about a latent defect, they must fully inform potential buyers about it.

*In strata developments, a latent defect can occur inside or outside an owner's strata lot. **Significant building deficiencies anywhere in the strata corporation's property can materially affect the value of each strata lot because of the potential for special levies. If owners know about significant building deficiencies, whether confirmed or under investigation, they must disclose the problem to buyers.** If owners know that other strata lots in other parts of the strata development have been subjected to water leakage through the building envelope and that the strata council has asked an engineering firm to investigate and report on the matter, the owners must disclose the problem to buyers or risk a lawsuit. This is a latent defect. The presence of problems serious enough to warrant professional investigation elsewhere in the development is not something that buyers would necessarily discover upon ordinary inquiry and these problems can certainly affect the value of a strata lot.*

Source: Real Estate Council Licensee Practice Manual 2000

During the time period encompassed by this research (1996-2002) real estate boards in the coastal climate area required that the seller complete a Property Disclosure Statement for all properties marketed through the Multiple Listing System except new construction. This was a voluntary requirement by real estate boards - it was not required by the Real Estate Act. In cases where the seller had no knowledge of the property (e.g. executor of an estate) or the seller declined to complete the form for some other reason, a line would be drawn through the body of the form and the seller would sign at the bottom. This served to notify the buyer the seller was not making any declarations about the property.

Initially, one Property Disclosure form was used for all residential properties. It had only 3 questions specifically relating to a strata property. In 1997, a new form was developed solely for strata properties, and that form has experienced a number of minor modifications since then. At least 3 different versions of the Property Disclosure Statement were encountered in this study.

Of the 40 cases reviewed for this study, 6 participants were unable to locate their PDS though they did believe that one had been received. Of the remaining 34 cases:

- 4 did not receive a PDS
- 30 did receive a PDS

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3.4.1 The Buyer Did Not Receive a PDS

4 participants did not receive a PDS for the following reasons:

- 2 units had never been occupied, even though the purchase was from the 2nd owner. One unit was 3 years old and the other 6 years old at the time of purchase. The purchaser was told the PDS was not provided because the seller had never lived in the unit.
- 1 unit was a 'For Sale By Owner' and the seller did not provide a Property Disclosure Statement
- 1 unit was sold under an updated Developer's Disclosure Statement. The entire building had been rented for a length of time prior to the sale of units to individual buyers.

3.4.2 Buyers who did Receive a PDS

30 of the participants did receive a PDS and were able to retrieve it. This group has been split into 2 to reflect substantially different versions of the PDS :

1. "Old PDS": The original version of the PDS which was used for all residential properties and had only 3 questions pertaining to Strata Units
2. "New PDS": Newer versions of the PDS that were designed specifically for Strata Title Properties came into use after 1997 and contained questions specifically relating to special assessments.

3.4.2.1 Buyers who Received the Old PDS

Contracts of Purchase and Sale that had this older version of the PDS attached were dated from 1996 to 1999. The strata specific form was available by 1998 but the old forms continued to be used until stock ran out.

16 participants received the old version of the PDS. One PDS had a line drawn through it with a note that '*vendor has no knowledge of condition – property sold as is where is.*' This was a CMHC foreclosure sale.

Responses are summarized for the remaining 15 participants.

This PDS was divided into 3 sections: General, Structural and Strata Unit. It was not clear if a strata owner should assume some of the questions in General and Structural applied to their own unit or the entire strata complex.

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The questions having the most relevance to this study were answered in 15 cases as indicated:

STRUCTURAL:	YES	NO	DO NOT KNOW	DOES NOT APPLY
Are you aware of any damage due to wind, fire, water?	2	12	1	
Are you aware of any roof leakage or unrepaired damage?		14	1	
STRATA UNIT: *(only 14 responses)				
Are you aware of any special assessments voted on or proposed?	2	12		

*One PDS had been altered so that the entire STRATA UNIT section was deleted. It was not readily apparent by looking at the form that it had been altered.

Notes about these responses:

- The seller that responded ‘Do Not Know’ to 2 questions was not occupying the unit –it was rented. On possession date, the buyer discovered serious water stains on one wall. Correspondence from the previous tenant and the rental manager indicated this problem had been reported to the strata council but it is not known if the rental manager also notified the seller.
- There were 2 cases where the response was ‘yes’ to “Are you aware of any damage due to wind, fire, water?”
 - One instance was for water damage on the patio. The seller paid a small special assessment at the time of sale for the work that had not yet started.
 - The other case had comments added at the bottom of the PDS stating that repairs had been completed. At the AGM after the purchase, it was revealed that work was in progress but more work was required and funds were not available to do work.

Other than these exceptions, the PDS’ did not reveal any concerns. There is evidence that the PDS should have identified problems in a number of cases: –

- Case in 1997. One day after the buyer’s offer was accepted; the strata corporation instigated a study of leaky balconies. The only minutes the buyer received were from the previous AGM which made no mention of leaky balcony problems.
- Case in 1997. One week after possession date, the buyer discovered the first time it rained; water liberally flowed in through the windows. The previous owner lived in the suite and would have been aware of this. It was not revealed on the PDS. The buyer did not receive any minutes at the time of purchase – being told they were not available.
- Case in 1997. The seller was on the strata council and fully aware that a building envelope investigation had been done just prior to the sale. Nothing was disclosed on the PDS. No minutes were acquired for the buyer to review prior to the sale.
- Case in 1997. A buyer who received no minutes prior to purchase discovered (after the fact) that there had been ongoing discussions of water ingress, inadequate

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flashings and significant repairs required in minutes prior to the purchase date. In addition, there was no disclosure on the PDS of these issues.

- Case in 1996. A buyer who received no minutes prior to purchase became a member of the strata council afterwards. While reviewing old minutes, the buyer discovered that the building had serious problems starting in its first year and continuing to the date of purchase. The PDS did not reveal any problems.

The time period in which this older version of the PDS was used coincided with a time when it was not standard practice in a real estate transaction to obtain any more than a few months' minutes, or just the last AGM. Thus if the PDS was not revealing, there was often not a second chance to discover through the minutes.

3.4.2.2. Buyers who Received the Property Disclosure Statement for Strata Properties

Fourteen contracts dated 1999 – 2002 had the strata specific version of the PDS which was available by 1998.

In one case, the PDS had a line drawn through it with the notation: "*Not completed due to pending litigation and Engineers Report.*" Of the 13 remaining cases, the following questions were answered as indicated below.

GENERAL:	YES	NO	DO NOT KNOW	DOES NOT APPLY
Are you aware of any special assessments voted on or proposed? For how much? (Note: 1 did not answer this question)	5	6	1	
Have you paid any special assessments in the past 5 years? For how much? (*This questions was added near the end of 1999 – only 5 cases used this form of the PDS)	4	1		
STRUCTURAL (Respecting the unit and common property including limited common property)	YES	NO	DO NOT KNOW	DOES NOT APPLY
Are you aware of any damage due to wind, fire, water? (Note: 1 crossed out this section entirely)	1	11		
Are you aware of any roof leakage or unrepaired damage? (Note: 1 crossed out this section entirely)	1	11		

Though the section titled 'Structural' includes a note saying it includes common property, it is unclear whether a seller of a unit where there are multiple buildings would assume these questions would apply to all the buildings or just the building that the seller resides in.

In some cases, there appears to be a discrepancy in the information disclosed by sellers. In 3 cases, the sellers revealed there was a special assessment, but in response to the

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questions that followed regarding knowledge of damage due to wind, fire, water or roof leakage they answered 'no.' The specifics of these 4 cases is:

- 1999 Case. The seller (a member of the Strata Council) agreed to pay the special assessment for a pending assessment but answered 'no' to the two questions regarding knowledge of damage due to wind, fire, water or roof leakage.
- 2000 Case: The seller answered 'yes' to proposed special assessment but 'no' to the two questions regarding knowledge of damage due to wind, fire, water or roof leakage
- 2000 Case: The seller disclosed repairs in progress (though not complete) but answered no to the two questions regarding knowledge of damage due to wind, fire, water or roof leakage

In addition, other cases revealed anomalies in their responses:

- 2001 Case: The Contract of Purchase and Sale contained a holdback for roof repairs but the seller answered 'no' to all 4 questions (i.e regarding special assessments and damage). :
- 1999 Purchase. The seller answered 'no' to all questions but minutes of meetings showed leaks and discussed legal action.
- 2000 Purchase. The Seller (a member of the Strata Council) did not answer the question about proposed assessments. Minutes were only available to the buyer to read on the seller's premises leaving a limited time for the buyer to study the information. The building had ongoing problems for years with leakage and had applied elastomeric paint and repaired the roof. Within a year of purchase, an engineering firm was engaged and major problems were discovered.

In summary, the PDS for Strata Titled properties was generally in use by 1999 – 2000 and it revealed much more information than the generic predecessor. Information that had historically been problematic such as parking stall arrangements and restrictive by-laws were identified in the new PDS. However, by the mid-nineties, the pressing issue in the coastal climate area was leaky condo syndrome. In this study, the responses to questions about special assessments were more revealing on this strata specific form than the previous generic form. By the time strata specific form was in general use, (1999-2000) there were other factors that contributed to the propensity to reveal 'hidden defects':

- The Barrett Commissions raised general awareness of the nature of the leaky condo phenomenon.
- The standards for drafting contracts of strata properties had changed and it became routine to include a request for at least 12 months of minutes.
- The implementation of the Strata Property Act in July 2000 assisted in making documentation more readily available to buyers. The Form B Information Certificate provides information directly from the strata corporation (via the strata council or management company) about special assessments.

Though the PDS is consistently used in the transfer of information between sellers and buyers in transactions brokered by a real estate agent, it cannot and should not be relied on – by itself - for a number of reasons:

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- One reason is the outcome of a legal case in BC in 2000 concerning a situation where the minutes revealed water ingress problems but the sellers had answered ‘no’ to questions on the Property Disclosure Statement about roof leakage and unrepaired damages, structural problems and damage due to wind, fire or water. The judge decided that since the minutes revealed water ingress problems, the buyer failed to act in a reasonable manner by relying only upon the PDS, and denied her claim for damages. (BC Supreme Court: *Sask V Brooke*, Reasons for Judgement).
- Another reason is that where new information about the physical condition of the property emerges prior to completion, it is rare to hear of a seller amending the Property Disclosure Statement. – despite the small print at the bottom of the statement:

The sellers state that the above information is true, based on the sellers' current actual knowledge as of the above date. Any important changes to this information made known to the sellers will be disclosed by sellers to buyers prior to closing.

In this study, there were at least 4 cases where material information was revealed between the date of the offer and completion, but was not made known to the buyer prior to closing

- The seller and/or buyer may not understand the meaning of some of the questions as evidenced by the contradictions discovered in some of these cases. For example – is building envelope failure ‘structural’ damage? The definition of ‘structural damage’ by warranty companies does not include all aspects of envelope failure.

The coastal climate area of BC has a diverse population mix and many of the persons relying on the Property Disclosure Statement are not familiar with the ‘language of condominiums.’ This may be because English is not their first language and/or they may not be familiar with the terms associated with strata title properties.

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3.5 PROFESSIONAL PROPERTY INSPECTION

The use of professional property inspectors by home buyers in BC has increased dramatically since 1995. Prior to that time, in most residential sales, both the listing and selling salespersons acted as agents of the seller. It was a system that was difficult to understand, particularly by the courts. In 1995, the system of agency representation changed so that the salesperson working with the buyer was an agent for the buyer in most cases. The introduction of buyer agency brought a new awareness to real estate agents of their obligation to the buyer, and there was an immediate trend for the buyer agent to recommend that the buyer engage a professional property inspector.

The Real Estate Council of BC issued two advisories in 2000 to real estate agents regarding the desirability of recommending that all buyers engage a professional property inspector. In a bulletin that was issued after the introduction of the Strata Property Act (July, 2000), the following specific recommendations in the sale of a strata unit were made:

*Licensees should always advise buyers to make their purchase "subject to" a property inspection. **If buyers decline to have an inspection, licensees should have them sign a statement that they have been advised by the licensee to have an inspection and they are declining the licensee's advice***

*Some property inspections are restricted to the strata lot; others will include a limited investigation of the common property. **Licensees should advise buyers to clarify with the inspector what services will be provided.** An inspection that includes the common property is preferable, although more expensive than one that only includes the particular strata lot. Buyers may wish to confer with their property inspector about matters arising from the buyers' review of the documentation they have received or from the inspection itself.*

Real Estate Council of BC, Strata Property Guidelines, 2000

There is an added transaction cost for the buyer to engage a property inspector – in this study, the cost range was \$175 - \$300. Out of 40 cases in this study, 29 did not have a property inspection.

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3.5.1 Buyers who did not engage a professional property inspector. Their reasons:

# of Buyers	Reason for not having a property inspection.
8	No reason given
9	Discouraged by real estate agent for some reason e.g.– <ul style="list-style-type: none">• “We are trying to make this purchase affordable for you”• “It’s never been lived in. You don’t need one.”• “No point. They only look at your suite – not the rest of building”• “It’s all been repaired.”• “You have the CMHC full package deal and they will appraise the building.”
2	Self inspected – the buyer had construction experience.
4	There was a warranty and it was believed it would cover any problems.
3*	There was an existing engineering report that was relied on.
3	Buyer believed it was not necessary as the property inspection would only report on the unit they were purchasing which they believed did not have any problems.
Total: 29	
* In 1 case there was a warranty and an engineering report. It was counted as a ‘warranty’ reason	

None of the participants cited the cost of the inspection as the reason for not having one. However, the cost of a property inspection are increasing, currently in the range of \$300-\$500 for an inspection of the unit alone, and considerably more if the entire building is to be inspected.

3.5.2 Buyers Who Did Have a Professional Property Inspection. Eleven of the participants did have a professional property inspection, though in one case, it was a ‘used’ report purchased from another buyer who had recently purchased a unit in the same building. This was done on the advice of the real estate agent who believed the main part of the report was on the condition of the exterior of the building (i.e. the common property) which would not have changed significantly in a few months. A copy of the report was obtained for a nominal fee which was substantially less than ordering a new property inspection.

Of the remaining 10 buyers, 9 of the 10 chose a property inspector based on information given to them by the real estate agent, sometimes a list of names, sometimes just one.

In BC, there is no licensing system or educational requirements for property inspectors. There are several associations for property inspectors - each with their own educational and experiential requirements. The requirement to carry Errors and Omissions Insurance is not consistent. In the late 90’s, a number of property inspectors announced that their insurance coverage did not include ‘leaky condo’s.’ One property inspection report included in this study had a handwritten notation “Insurance does not cover water

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Penetration (e.g. leaky condo syndrome.) “ Though enquiry has been made, the current status of insurance coverage could not be established except that it is not uniform.

3.5.3 Property Inspector’s Credentials. Buyers in this study did not know the property inspector’s designations, though in 3 cases they did have some general knowledge of the inspector’s experience.

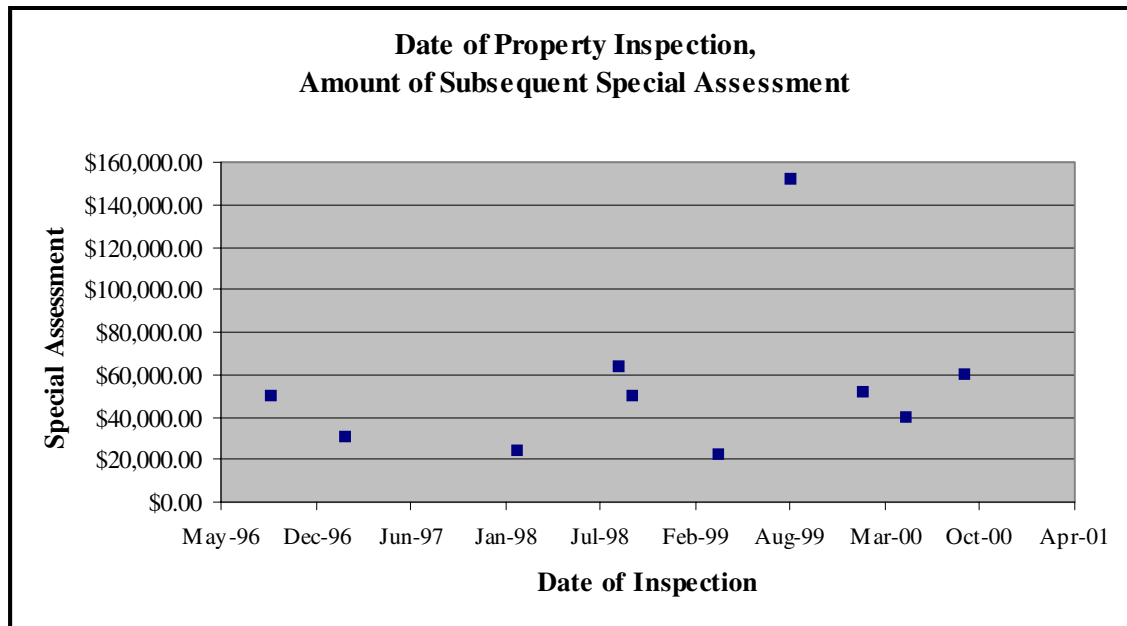
# of Reports	Inspectors Designation
6	RHI (Registered Home Inspector ¹)
2	CPI (Certified Property Inspector ²)
1	Not able to discover qualification or designation for inspector
1	Numbered company; no name, address or telephone number
Total 10	

¹ Registered Home Inspector: *Registered Members have demonstrated their proficiency by performing no fewer than 250 fee-paid inspections in accordance with the CAHPI Standards of Practices; they have also passed a series of written examinations testing their knowledge of residential construction, inspection techniques, report writing, and the Standards of Practice and Code of Ethics. Registered Members carry mandatory Errors & Omissions Insurance. Retaining membership requires each Member to earn 40 continuing education credits every two years. Registered Members of CAHPI(BC) are registered under the Society Act with the Occupational Title designation "Registered Home Inspector" and the initials RHI. (Source: www.cahpi.bc.ca)*

² Certified Property Inspector: *Inspectors who use the letters ‘CPI’ after their name, on their business cards and stationary, and on your house inspection report Certified Property Inspectors meet the Property Inspection Certification Board requirements for training and experience in condominiums, single family residences and entire buildings. What’s more, inspectors with the CPI designation are also certified by the Applied Science Technologists and Technicians of BC association as meeting national standards for a Certified Technician (CTech) or Applied Science Technologist (AScT). (Source: <http://bcipi.asttbc.org/buy.html>)*

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The general expectation of buyers was that a professional Property Inspection would protect them from being saddled with a leaky condo. The graph below depicts the date of the inspection, and the amount of the special assessment that came to pass.



The limitations of the property inspection reports varied. All the reports stated that they were visual inspections only. Some detailed that they did not include mechanical systems, compliance with building codes etc.

# of Reports	Limitation of inspection
5	Some language to describe limited inspection e.g. ‘partial inspection’ ‘spot check only of common property’ ‘Strata unit to CAHI standards”
1	“Whole House to CAHI standards” but a note in report stated ‘roof not inspected at request of purchaser’.
4	Reports appear to cover exterior walls, the roof and grounds as well as the unit being purchased.
Total 10	

3.5.4 Format of Reports:

There were two distinct formats of the inspection reports:

1. 3 reports were in a narrative format where everything that was written was specific to that inspection.
2. 7 reports were a series of checklists, with blank areas for written comments, and often a substantial amount of generic information in the ‘boilerplate’³ of the document.

³ The preprinted part of a standard form is referred to as ‘boilerplate.’

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The information about the specific inspection was handwritten, usually in blue ink which contrasted with the 'boilerplate'. When reading this format, the tendency is to focus on the handwritten portion.

Some of the 'checklist' formats had highly significant information in the boilerplate, for instance:

- One buyer was unable to accompany the property inspector due to an injury and relied on the real estate agent to recommend an inspector. The buyer stated beforehand: *"I am concerned about two things: leaks and insects."* The inspection report did not reveal any concerns, but later when the buyer was reading the boilerplate of the report, it was discovered that water penetration *'was not within the scope of this inspection'* nor was *'the nature or status of any insect infestation, treatment or hidden damage.'*
- An inspection report summarized a property as *'typical'* with only minor repairs required. Within the body of the report the boilerplate stated *"Buildings with little or no roof overhang are susceptible to water penetration and rot damage....EXPECT MAJOR PROBLEMS."* There was an "X" beside this paragraph indicating it applied to this building. This was not identified in the Summary of the Report as an area of concern.
- On possession date, buyers discovered a large water stain on a wall adjacent to a balcony. It was caused by water leaking into the wall from the balcony. The buyers were puzzled why it had not been detected by the inspector and they were aware that leaky balconies are often a sign of serious problems. Apparently there had been a bed against this wall, and the boilerplate of the inspection stated *"Furniture, appliances, stored items etc. will not be moved for the inspection."*

In 8 out of 10 cases, the buyer did not take alarm from the contents of the report.

- The language of some reports was ambiguous and it appeared that the inspector was trying to give warning in couched language.. One report stated *"...buildings of this design style ...displayed a greater tendency to have water ingress issues....Review strata minutes."* *"..the building does have some inherent design weaknesses but there was no evidence at interior that significant moisture entry is occurring.."* *"Exterior wall surface has on elastomeric paint ."*

The minutes of the strata corporation revealed no problems, but there were. A person experienced in leaky condo issues would have intuited that this building was in trouble by understanding the implications of the inspector's written comments. However, it was not apparent to this buyer (nor would it be to most homebuyers).

- A building was identified as *"above average"* and comments contained in the property inspection report stated that *"no signs of major structural or mechanical problems were noted."* *"Consult with the strata council regarding any history of leak*

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problems in the building...” The minutes did not reveal the ongoing problems and band-aid fixes appeared to be regular maintenance.

The previous two cases illustrate how the property inspection report combined with non-revealing minutes can fail to bring transparency to the transaction. These two inspection reports were done on the same building by two different inspectors 4 years apart. The building had been experiencing problems prior to the first inspection, and it deteriorated with the passage of time and the lack of remedial action.

In 2 cases, the property inspection report identified serious concerns. Both reports were the narrative type:

- A report cited numerous problems with the common property and appeared to be thorough and informative. The inspector gave a verbal estimate of the cost to repair and described the estimate as being “*worse case scenario*.” Based on that estimate, the buyers negotiated a price reduction. The cost of the repairs was 700% of the estimate provided by the property inspector.
- Another report that identified many problems advised the buyer to seek further expertise from a Building Envelope Specialist regarding exterior siding and stucco, a qualified roofing consultant regarding the roof, an engineer qualified to evaluate cracks in the parkade; and a qualified professional to ensure the integrity of the fire separation. The detailing of the specific problems in this report was in plain, simple language. This report was unique in that it did not rely on references back to the minutes – it encouraged the buyer to seek further independent opinion.

The buyer negotiated a price reduction with the seller, and upon completion, made the strata council aware of the report. This buyer qualified for this study due to the fact the eventual restoration was far greater in scope and expense than anticipated. However, the buyer agrees that the property inspection report was extremely valuable as it provided notice of risk.

A scenario that complicates the ability of the property inspection report to assist the buyer is in the case of a phased strata (different buildings built at different dates but all part of one strata corporation), or a strata that just has more than one building. The issue of whether the inspection will include the exterior of the building is now multiplied and the cost of inspecting common property of all the other buildings would be extremely high.

- In one case, the building inspection report stated “*Basically a good property.*” However, it was a phased strata and the adjacent building had serious problems. The buyer admits at the time of purchase, the concept of a phased strata was not understood and the real estate agent did not flag this as an important issue.

In summary, buyers typically have little time to review an inspection report. The ‘checklist’ format of report is usually delivered to the buyer immediately and the ‘subject to inspection’ clause removed within a day. If the buyer had time to read the fine print of the report and/or had assistance from persons who understood the language of leaky

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condos, they would have recognized that in some of these cases, the report carried subtle foreshadowing.

While the inspectors may be delivering a service that meets the stated limitations of the report, the expectation of the buyers was simple: they wanted to be sure they were not buying into a building requiring major repairs. To that end, there was not a meeting of the minds in most of these cases.

The object of this exercise is to ascertain if the tools intended to reveal the true condition of the property failed in some aspect. Though 9 out of 10 of these reports were not viewed as helpful by the buyers, it is not to suggest that a professional property inspection may not be helpful in many cases. One instance where the property inspection would likely be of great assistance, depending on the abilities of the inspector, is where there is mold within the unit. Also, a property inspection that includes the exterior of the entire building (including the roof) has a greater likelihood of providing useful data for the purchaser. However, the cost of this type of report currently ranges from approximately \$500 - \$800. For many buyers, this would decimate their down payment.

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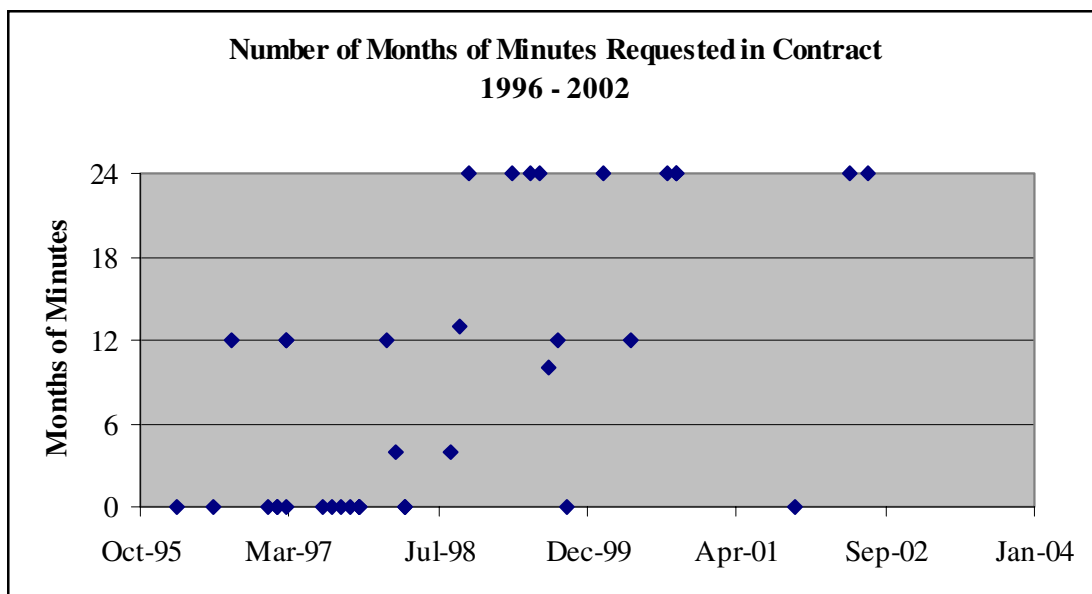
3.6 MINUTES OF MEETINGS OF THE STRATA CORPORATION AND COUNCIL.

The minutes of the strata corporation are the record of the business of the strata corporation and should provide insight to the physical condition of the buildings by noting reports of problems as well as maintenance and repairs that have been performed. Additionally, the minutes should reveal the decision making abilities of the strata council and strata corporation.

Until the emergence of the leaky condo phenomenon, the importance of the minutes mainly related to forthcoming changes in by-laws that would restrict pets, rentals or certain age groups. It was common practice for the realtor working with the buyer to obtain the minutes of the last Annual General Meeting and intervening strata council minutes and quickly peruse them for contemplated by-law revisions. As awareness of the leaky condo phenomenon emerged, the minutes were also viewed for hints of leaks.

In 1997-98 many agents began adding a clause to the Contract requesting minutes which were then passed on to the buyer to review. In 1999, the standard clauses used by real estate agents were revised and the request for at least 12 months of minutes became standard in the Contract of Purchase and Sale. In 2000, this was extended to 12 – 24 months of minutes.

3.6.1 The number of months of minutes requested in the Contract of Purchase and Sale for 38 of the 40 transaction in this study are graphed. In two cases, participants were not able to retrieve their Contract of Purchase and Sale. Note: that there are not 38 points on the graph as transactions that occurred in the same year and month and had the same number of minutes only appear as one point.



In the cases where no minutes were requested in the Contract of Purchase and Sale, there may have been some minutes delivered even though it was not detailed in the Contract.

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In one case where 2 years of minutes was requested in the Contract of Purchase and Sale, the buyer actually received 4 years of minutes. It is sometimes suggested that ‘more minutes’ will assist the buyer in formulating an accurate picture of the building. However, in this case, there were about 300 pages of minutes. The buyer was overwhelmed with the task of reviewing this mammoth binder of information and instead relied on a recent engineering report.

In most cases, it is not possible to conclude with certainty what information the buyer received and relied upon prior to the purchase because –

- Since the transaction, some of the minutes delivered to buyers have been lost.
- Since the transaction, some buyers obtained the minutes that were missing from those given to them at the time of purchase, and intermingled them.
- In some cases, the minutes do not begin with a motion to approve minutes of the previous meeting. Thus it is not possible to identify the date of the previous meeting, and determine if the entire set of minutes was provided.
- None of the transactions had a cover sheet that listed the documents that were delivered. Although The Real Estate Council has, since 2000, developed forms to catalogue documentation delivered to the buyer, no “cataloguing forms” were found.

Since it was recommended (in 2000) that 12-24 months of minutes be obtained, the documentation of the sale of a strata unit has become an onerous bundle of paper. It is not uncommon that buyers were provided in excess of 100 pages of various kinds of documentation for their perusal in a limited time period.

The advice to real estate agents from the Real Estate Council regarding the minutes that are obtained for buyers is:

In providing this information to buyers, licensees should stress the importance of buyers reading the documents carefully, looking for any evidence of major repairs, continuing unresolved maintenance issues, use restrictions, or other concerns. Licensees should be aware that this process does not relieve them of the responsibility to use reasonable care and skill in the performance of their duties. Where there are matters beyond a licensee’s scope of knowledge, buyers should be referred to an appropriate expert.

Licensee Practice Manual, 2000. published by the Real Estate Council of BC

In many cases, buyers concur they were instructed to ‘*read these minutes carefully*’ but received little guidance (usually none) on the key issues they should look for. It is rare that the minutes contain a succinct description of repairs required with an accurate estimate of cost. This type of information normally comes in an engineering report. Prior to the realization that the building has serious problems, repair and maintenance items may look routine and appear to be resolved. Often the strata council has no idea of the extent of the problem. Thus it is often difficult for the buyer to ascertain the state of the building from the minutes.

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- One of the participants in the study who had recently moved to the Vancouver area from the UK said *“We knew nothing about strata living or why it was important to read the minutes. There was a pile of paper on the dining room table and we were urged to read it carefully but we could not take it with us. We thought it was good that the roof had just been replaced.”* Within the year, an engineering report was ordered and building envelope failure was diagnosed.
- A buyer who had moved to the coast from Ontario was aware of the leaky condo phenomenon and had a relative assist with reviewing the minutes. They noted a 3rd coat of plastic-type paint had just been applied and it had a 10 year warranty. For most home buyers, this appears to be a sign of good maintenance. (Those experienced with the leaky condos would infer the building had been leaking for some time.) Since purchasing in this building, there has been a series of special assessments for various repairs culminating in an assessment for an engineering study that confirmed building envelope failure.
- A buyer received an armload of minutes from a strata council that met every week. While there were detailed discussions about the events in and around the building, maintenance issues were referred to the property manager and little information was contained in the minutes. Between purchase date and completion, a meeting was called and the strata council revealed a litany of serious maintenance issues culminating in a building envelope investigation. This information was not revealed to the buyer prior to completion of the sale.

Clues of impending problems are often guised in terms that may not be recognized by most people as ‘red flags’ indicating serious problems – for example:

- Maintenance initiatives described as ‘proactive’ or ‘aggressive’ or ‘targeted’
- Maintenance items described as “General maintenance” with no explanation of the nature of the problem, the extent or the cost to remedy.
- Roof problems that appear to be a ‘leak that will be fixed.’
- Mold, musty odours or bad smells
- Problems with windows/skylights/solariums
- Crane plumbing fixtures, Wolverine pipe
- Applications of ‘leak proofing or plastic type paint’
- Problems with caulking or sealants
- Problems with balconies
- Existence of engineers reports, particularly ones rejected by the strata council.
- The absence of maintenance issues in the minutes; tabling of matters for the future
- Ongoing correspondence with warranty providers or developers over repairs that do not appear to be resolved
- Special resolutions seeking financing for repairs or building envelope investigations, including ones that have been defeated
- Missing minutes of meetings, missing pages from minutes
- Minutes that do not detail maintenance problems in terms of costs and size of problem.

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- Minutes revealing conflict among members of the strata corporation and an inability to take decisive action when problems emerge.
- Water coming into underground parkade.
- Recurring reports about the same maintenance item (particularly leaks)

Some of the participants have said they did see maintenance items in the minutes, but at the time they believed:

- Problems were covered by a warranty; in one case, by two warranties.
- That the problems were localized or minor issues, not major repairs.
- That action had been taken and successfully resolved the problem
- That the estimate for repairs was a good approximation for negotiating a price adjustment or a holdback with the seller.
- That concrete buildings do not suffer building envelope failure.
- That leaky condo syndrome does not affect townhouses.
- That the required repairs were paid for and there was not any likelihood of significant future assessments.
- Assurances from the strata council/property manager/real estate agent that there were no problems or that repair issues would be taken care of or that it was already fixed.

Many of the participants in this study stated they had some knowledge of the leaky condo crisis at the time of purchase. The term 'leaky condo' shaped their understanding of the phenomenon in a number of ways e.g. that it affected apartment style units – not townhouses; that it was a finite number of leaks that could be repaired.

This impression of a leaky condo is common. When leaky condos are discussed on radio programs, it is almost certain that someone will call in and say “I bought a house and the roof leaked. I fixed it and paid for the repair myself – why should the government help out these leaky condo people?”



What is not understood is that building envelope failure is more akin to having a 'Swiss cheese' exterior, where water entry is through numerous and often undetectable entry points such as –

- Areas where the stucco is much thinner than required by the building code.
- Any joint where a horizontal surface meets a vertical surface.
- Windows that fail, roofs that leak, balcony membranes that are compromised.

Even with sophisticated technology and expert eyes, building envelope investigations often fail to identify all the damage before the actual reconstruction takes place. For most people, until they have lived through a major repair project, they do not truly understand the leaky condo phenomenon

The data that they may gather through reading the minutes does not reshape their thinking of what is happening. Even when maintenance items are discussed, it is often believed that there are a few problems and they will be resolved.

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<p>'Leaky condo' conjures an image of a wood frame building and apartment style units with a finite number of leaks that can be located and repaired.</p>	<p>Leaky condo phenomenon is more closely akin to a Swiss cheese building exterior with numerous leaks and resultant damage that is often difficult to completely identify prior to a major repair.</p>

Finally, there was an unexpected discovery of a surprising practice that affected 3 of the participants in this study. Two of these cases occurred in 2000, one in 2002

The buyer was able to read the minutes that were requested in the Contract of Purchase and Sale - but they were not allowed to keep them. In 2 cases, after reviewing the minutes, they were asked to return them. In the other case, the minutes were left on the table in the unit for the buyer to read at the time they viewed the unit.

This practice is troublesome because if the buyer discovers - after completing the transaction - that there is a problem not disclosed prior to the purchase, and they do not have the set of minutes they relied on to make their purchase decision, their ability to seek redress from the seller is compromised. Part of the effectiveness of an investigative tool is that it leaves the buyer with concrete evidence of the information they relied on at the time they made the purchase decision.

3.7 FORM B INFORMATION CERTIFICATE

The Form B Information Certificate was borne with the new Strata Property Act on July 1, 2000. Its purpose is to disclose certain information about the Strata Corporation and the particular unit that is being purchased. The standard clauses used in real estate contracts, since July 2000, contain a request for a Form B.

The Form B Information Certificate normally comes from the strata management company, except in the case of self-managed stratas where it would be filled in by a member of the strata council. One of the main benefits of the Form B to a buyer is that the information disclosed in the Form B is binding on the strata corporation in its dealings with a person who relied on the certificate. Though the information contained in the certificate is limited, its reliability should be good. This is very important. A number of persons interviewed in this study that purchased before July 2000 related how they had contacted members of the strata council and/or the property managers prior to the purchase to obtain information about the property. In many cases, the information they received was not reliable. However, as the communication was verbal, they had no way of verifying that they had been misled.

The types of information contained in the Form B that are most useful in avoiding major repair situations are:

- *any amount that the owner is obligated to pay in the future for a special levy that has already been approved and the date by which the payment is to be made;*
- *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;*
- *the amount in the contingency reserve fund minus any expenditures which have already been approved but not yet taken from the fund;*
- *any notice that has been given for a resolution that has not been voted on, if the resolution requires a $\frac{3}{4}$ vote or unanimous vote or deals with an amendment to the bylaws;*
- *any court proceeding or arbitration in which the strata corporation is a party and any judgments or orders against the strata corporation;*

The limitation of the Form B is that if the Strata Corporation has not taken any action to discover a serious repair problem, or to deal with known major problems, the Form B will not be revealing. Also, there is a \$35 fee for obtaining this certificate and that charge appears to be a factor in some cases.

In this study, 5 sales qualified to receive a Form B, 2 sales do not have Form B's because:

- In one case, the Form B was not requested in the Contract of Purchase and Sale.
- In one case, the Form B was requested but not delivered to the buyer.

Of the remaining 3 cases, the Form B Information certificate did not alert the buyer because the need for major repairs had not yet been detected. Thus there were neither

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special levies approved nor any or notices of resolutions relating to the physical condition of the property.

An interesting phenomenon was observed on one Form B that was completed by the property manager. Where the form has provided for 'yes' and 'no' answers, in this case, it has been revised to allow for a variety of answers that include caveats and limitations on the information. As the forms required by the Strata Property Act are available in electronic format, it is a simple task to make revisions -though not legally proper. This detracts from the main benefit of the form which is the reliability of the information.

Strata Property Act
FORM B
INFORMATION CERTIFICATE
(Section 59)

The Owners, Strata Plan [REDACTED] certify that the information contained in this certificate with respect to Strata Lot [REDACTED] is correct as of the date of this certificate.

(a) Monthly strata fees payable by the owner of the strata lot described above is:
\$ [REDACTED]

(b) Any amount owing to the strata corporation by the owner of the strata lot described above (other than an amount paid into court, or to the strata corporation in trust under section 114 of the *Strata Property Act*):
\$ [REDACTED]

(c) Are there any agreements under which the owner of the strata lot described above takes responsibility for expenses relating to alterations to the strata lot, the common property or the common assets?

☒ **Not to the Best of our Knowledge** ☐ **See Attached**
(Since records may be unavailable or incomplete, purchaser should check Bylaws & Rules and documents that are registered at Land Title Office and request the seller to disclose any applicable agreements.)

(d) Any amount that the owner of the strata lot described above is obligated to pay in the future for a special levy that has already been approved:

Any special levy that has been approved are due and payable now by the current owner.

(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:

FINAL EXPENSES ARE UNDETERMINED

While the Form B provides for 'Yes' and 'No' responses, this one has been modified. Note that identification of the strata corporation and unit and dollar values have been removed to preserve confidentiality.

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3.8 ENGINEERING REPORTS

The term ‘engineering report’ when associated with condominiums in the coastal climate area, is assumed to be an investigation of the building envelope. The credibility attached to this source of information is very high.

The advice from the Real Estate Council to real estate salespersons regarding engineer’s reports is:

If there are any expert reports regarding the building (e.g. building envelope, engineer’s, etc.), licensees should make buyers aware of the existence of such reports and where they may be examined. Licensees should stress to buyers the importance of reading them. Again, buyers may wish to confer with their property inspector or lawyer regarding these reports. If a report cannot be obtained, buyers should be advised to obtain legal advice before being bound to a contract of purchase and sale.

Real Estate Council of BC, Licensee Practice Manual, Strata Property Guidelines, 2000

The standard clause that is used in real estate contracts for requesting documentation does not include ‘engineers reports.’ Since 2000, the clause has been open ended with instruction to the real estate agent that is drafting the Contract to “include any other information, document, record or report the buyer needs before being committed to buy.”

In the Contracts of Purchase and Sale reviewed in this study, none of them requested an engineering study.

3.8.1 Buyers Who Received an Engineering Report. Despite the fact the Contract did not request the engineering report, there were 4 buyers who did receive an engineering report, or information they believed to be an extract from an engineering report prior to purchase. Based on this information, various strategies were employed by the buyer.

Information Received	Strategy employed by buyer
1. Building envelope investigation by an engineering firm experienced in remediation work.	<p>Negotiated a holdback for 1 year with the seller but the lawyer would not release the holdback for reasons that were not ascertainable.</p> <p>Within a year, a 2nd engineering report was done and the repair cost was approximately 400% of the first estimate. (1998)</p> <p>Comment: The emergence of a 2nd engineering report could not be predicted at the time of purchase.</p>

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<p>2. Preliminary investigation by an engineering firm to gather evidence of water penetration issues.</p>	<p>Buyer was assured that work was covered by New Home Warranty. Four days after moving in, New Home Warranty collapsed.(1999)</p> <p>Comment: The buyer had no way of knowing of the impending collapse of New Home Warranty.</p>
<p>3. Building envelope ‘survey’ done by an engineering firm identified work required and provided a letter one year later confirming work was complete and that there were no major concerns.</p>	<p>The buyer had the ‘survey’ and the letter confirming the work done reviewed by another engineer and believed the building was free of any concerns. Approximately 1 year after the letter from the engineer stating there were no major problems, another engineering study was commissioned which identified the need for major repairs. (1999)</p> <p>Comment: A person knowledgeable about building envelope work would have questioned the ‘survey’ investigation and the caulking program that was supposed to remedy the problems.</p>
<p>4. Buyer received a page believed to be from an engineering report. It was a schedule setting out costs for the repairs.</p>	<p>Based on this information, the buyer negotiated that the seller would pay the special assessment. After taking possession, the buyer discovered the page was a partial extract from the engineering report and it represented only 25% of the required work in the engineering report.</p> <p>When this portion of the work was tendered, bids came in at more than double the estimate (2002)</p> <p>Comment: The engineering report was not obtained for the buyer though it appears that the real estate agent was aware that it existed.</p>

3.8.2 Buyer did not know of an existing engineering report. In 6 cases, there was an existing engineer’s report that the buyer did not know about.

- In 4 cases, there was evidence in the minutes that some kind of report had been done in the past. In 2 cases, the buyer did not have the minutes. In the other 2 cases, there were clues in the minutes but only a sharp eyed reader would have realized the significance of the clues.
- In 2 cases the report became available between the date the buyer made the offer and completion of the Contract, and there was no evidence beforehand that this was in the works.

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Obtaining existing engineering reports is crucial for the buyer to understand the condition of the property. However, the report will probably not be obtained if:

- The existence of the report is not known; or clues in the minutes about the existence of the report are not recognized by the buyer.
- The Contract of Purchase and Sale does not contain a request for engineering reports. Since real estate agents normally do not read the minutes they would not know if there are clues in the minutes about existing reports.
- The Strata Council may refuse to release the report.

Even if an engineering report is obtained, the buyer may not have the knowledge to critically read it. While some reports are straightforward, some have subtleties that would only be detected by a knowledgeable reader. Currently, the advice from the Real Estate Council is that the buyer might confer with their property inspector or lawyer to assist in understanding an engineering report – however – there is no assurance that either one of these parties is experienced in reviewing an engineers report. While an engineering report should be the ultimate source of information about the physical condition of the building, this is dependent on a number of factors and it is not necessarily so.

It is believed the efficacy of building envelope investigations has greatly improved since the 1990's and that recent engineering reports may be more definitive than some of the older ones.

3.9 SPECIAL CASES

Three types of special cases arose in this study. One was the sale of a unit where the entire building had been rented since it was new; another was the sale of a unit on federal Crown land in a Reserve, and finally, there were a number of cases involving phased stratas.

3.9.1 SALE OF A PREVIOUSLY RENTED BUILDING

The intent of this research project was to examine the sale of strata units that were not new. The term ‘not new’ is awkward and was replaced with ‘re-sale.’ This substitution of terms was not intended to change the criteria for the study. There is one case where the purchased unit was not new, but it was not a re-sale.

A developer had retained ownership and rented all units in a strata title building for more than 6 years. When the decision was made to sell the units, the Developer produced an updated Disclosure Statement for purchasers as required by the Real Estate Act of BC.

The Developers Disclosure stated that consultants had been engaged to assess the physical condition and state of repair of the building. The result of the consultant’s assessment was purported to be that the physical condition was good with no major repairs required in the immediate future. The name and qualifications of the consultants, the terms of reference and the scope of the assessment and the date which it was performed are not included in the Disclosure. The length of time contemplated by the term ‘no major repairs in the immediate future’ is not known.

Within 3 years of the commencement of sales, the building was experiencing leaks that were severe enough to warrant a building envelope investigation. The investigation revealed major repairs were required.

An avenue of investigation not available in this transaction was the ability to review minutes of meetings. Since the developer had retained all the units for the years prior to offering the units for sale, there were not any strata council minutes or meetings of the strata corporation. Thus the buyer was left with the assertions of the property condition in the Developers Disclosure Statement. This type of document would be considered by most to be a reliable source of information.

3.9.2 SALE OF UNIT LOCATED ON FEDERAL CROWN LAND IN A RESERVE.

One participant in the study was the purchaser of a unit located on a Reserve. The property was presented to the buyer as “a condo on Indian Lands;” the Contract of Purchase and Sale used clauses for strata property transactions and the Property Disclosure Statement was the specialized form for Strata Title properties. Financing was available from a well known Canadian chartered bank with CMHC mortgage insurance. It looked like any other condo. The buyer was never made aware that there are substantive differences between this form of homeownership and a legitimate strata title property.

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In this purchase, the buyer obtained a sub-lease and one share in a company that was purported to mirror a Strata Corporation in form and in function. However, this company operates under the Company Act of BC -not the Strata Property Act. The sub-lease acquired was not registered in the Land Title Office in BC because the building was located on federal Crown land that is in a Reserve. The protection provided to strata title property owners under legal structures such as The Land Title Act, the Strata Property Act and Part 2 of the Real Estate Act are not available for purchasers of these units.

The buyer discovered almost immediately that the unit was leaking and had a serious mold problem that the company (purported to be like a Strata Corporation) was not prepared to resolve. The issues were dismissed by the property manager as a *'condensation problem'* even though the buyer expended considerable amounts of money hiring appropriate experts to verify the problems.

The buyer appealed to a variety of municipal, provincial and federal bodies but at every turn was told *'no jurisdiction on Indian lands'* and *'these issues are too complex – we are trying to help condo owners on freehold property.'* Even finding a lawyer conversant in the issues was time consuming and expensive.

The Contract of Purchase and Sale for this transaction did not clarify that:

- The unit is located on Indian Lands and the buyer should seek legal advice before being bound to the Contract.

That the interest they were acquiring was a sub-lease coupled with one share in a company that operates under the Company Act, not the Strata Property Act.

This transaction lacked transparency not only in understanding the physical condition of the property, but more importantly, in clarifying the nature of the interest in land and the implications of a non-native residing on federal Crown land in a Reserve.

3.9.3 PHASED STRATAS

Some strata corporations consist of a number of buildings constructed over a period of time. However, they operate as one strata corporation. There are a variety of issues arising from this type of arrangement that are not obvious to a homebuyer.

The advice to real estate agents from the Real Estate Council of BC , with respect to phased stratas is:

“A developer who wants to build in stages can deposit the strata plan in phases over a period of time. There are a number of complex issues surrounding phased strata plans. For example, where a phased development has been constructed over a period of time that spans the introduction of the HPA⁴, strata lots within that phased strata plan may be affected by a variety of warranties. When assisting buyers with the

⁴ Homeowner Protection Act. This is significant because residential construction that comes under the jurisdiction of this legislation requires builder licensing and warranty coverage. Construction that occurred prior to the Act coming into force does not have these requirements.

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purchase of a strata lot within a phased strata plan, licensees should advise buyers to seek legal advice.”

Licensee Practice Manual, 2000. published by the Real Estate Council of BC

None of the Contracts of Purchase and Sale reviewed advised the buyer to obtain legal advice regarding the potential complexities of buying a unit in a phased strata. There was one case (previously mentioned in the Property Inspection section) where the buyer discovered that this was a significant issue due to the fact the other phase of the strata had a building with serious repair problems. Additionally, there was internal strife within the strata corporation that was aligned with the different phases. At the time of purchase, the buyer did not understand that the problems of the other building would be wrapped up with their own.

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4. CONCLUSION

The object of this study was to understand how it happens that homebuyers purchasing a re-sale condo are not aware of the condition of the building. The possibilities that were examined were that

1. the Contract of Purchase and Sale did not mandate the use of investigative tools for the purchaser to discover the true condition of the building
2. that the tools that are currently being used are ineffective
3. that the buyer did not understand the implications of the information that was received.

The methodology employed was to examine transactions where the buyer discovered within one year of purchase that there was a material problem that was not known at the time of purchase. Forty cases from the Greater Vancouver area, the Fraser Valley and Vancouver Island were reviewed.

Over the time period spanned by the cases in this study (1996-2002), there is a noticeable change in the drafting of the Contracts of Purchase and Sale. Since 1999, Contracts more consistently used the investigative tools to assist the purchaser in bringing transparency to the transaction than those drafted in 1996 to 1998. Out of 14 cases in 1999 - 2002:

- The Property Disclosure Statement was requested 14 out of 14 times
- At least 12 months of minutes of the Strata Corporation were requested 13 out of 14 times
- A professional Property Inspection was requested 7 out of 14 times

Since July 2000 when the new Strata Property Act came into effect, a Form B Information Certificate was also available to assist buyers in determining the state of the building.

Though the use of the investigative tools appears high since 1999, (save for Property Inspections) the buyers still discovered a serious problem within 1 year of purchase. This lack of transparency leads to the next question, are the investigative tools effective?

Between 1999 – 2002, 13 cases had used the newer form of the Property Disclosure Statement. This form - designed solely for strata properties - elicited a number of positive responses regarding special assessments that had been proposed but answered 'no' to subsequent questions about '*damage due to wind, fire or water*' and awareness of '*any leakage or unrepaired damage.*' This contradiction in responses cannot be explained (interviewing the sellers was not part of this study) but this inconsistency would be confusing to buyers.

The Property Disclosure Statement cannot be relied upon – on its own – as a tool to reveal the physical condition of the property. A recent court decision in BC has stated that it is not reasonable for a buyer to rely on the Property Disclosure Statement alone if the minutes of the Strata Corporation reveal problems.

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Additionally, when a material change in what is known about the property occurs between the date of the Contract of Purchase and Sale and the completion date, the seller's declarations in the Property Disclosure should be amended and drawn to the attention of the buyer. However, in 4 cases in this study, though new information emerged, it was not made known to the buyer.

For these reasons, the Property Disclosure Statement is limited as an aid to the buyer.

The minutes of the Strata Corporation and Strata Council are considered an essential tool for the buyer to gain insight to the knowledge and operations of the Strata Corporation. In the recent period 1999 – 2002; though the minutes were requested 13 out of 14 times, there were challenges for the buyer to benefit from this information: :

- The current norm is to request 12-24 months of minutes which gives the buyer an onerous amount of material that requires careful reading usually in a limited time period.
- The minutes are often drafted in a manner that does not reveal the true condition of the building.
- Persons knowledgeable with the phenomenon of building envelope failure may be able to discern certain 'red flags' in the minutes but the typical homebuyer has little chance of interpreting these signs.

Understanding condominium terms (e.g. limited common property, phased strata, unit entitlement) is another barrier to many buyers. Though this study did not have cases of 'English as second language buyers' it is clear that they would have a tremendously difficult time interpreting the meaning of seller's disclosures and strata minutes.

The least used investigative tool is the professional Property Inspection. It was only used in 50% of the cases in the 1999 – 2000 time period, and even less prior to that. The Property Inspection suffered as an investigative tool due to:

- The extent to which the exterior of the building was inspected varied greatly.
- The 'checklist' format of report sometimes had significant information buried in the pre-printed part of the form.
- Written comments by the inspector appeared benign in some cases but closer inspection by a person knowledgeable with building envelope failure would recognize ominous warnings couched in soft language.

Only one inspection report gave warnings in plain, simple language that ensured the buyer understood that there was risk attached to the purchase decision.

The reasons given for not having a property inspection include the perception that they are ineffective. An important reason for not having an inspection that was cited in a number of instances of purchases made prior to 1999 was the existence of a warranty. The collapse of the New Home Warranty in 1999 temporarily removed the comfort of warranty. However, a number of units are now available on the market that fall under the jurisdiction of the Homeowner Protection Act and the dual umbrella of builder licensing and required warranty. It may be that the existence of a warranty will once again become

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a prominent reason for buyers not obtaining a property inspection. Additionally, the costs of property inspections have increased.

The Form B Information Certificate which has only been in use since July 2000 should have been acquired for the buyer in 5 cases. It was requested in 4 cases, and only delivered to the buyer in 3 cases. The reliability of the information should be high even though it is limited.

Engineering reports, if they exist, are critically important for the buyer to review in their entirety. None of the Contracts of Purchase and Sale contained a request for an engineering report. However, in 4 cases, the buyer did receive information from an engineering study.

- In one case, it appears the scope of the engineering study was limited and the work that was recommended was a temporary measure. However, this was not explicitly stated. A knowledgeable reader may have discerned this but the typical homebuyer would likely take the information at face value and conclude that was that the building was fine.
- In one case, the buyer received information extracted from an engineering report but did not receive the entire report which recommended a repair that cost 400% of what the extract suggested.

Buyers – and real estate agents – place a high premium on the reliability of the information in an engineering report without realizing that building envelope investigations and repairs endured a steep learning curve in the 1990's. Recent reports are more likely to be useful than older ones. However, all engineering reports are an important source of information for the buyer.

There were some transactions that occurred in special circumstances. The buyers in these cases needed more information about these special circumstances than was provided.

- The sale of a unit in a building that had been rented for more than 6 years by the developer. Units were sold under an updated Developers Disclosure Statement.
- The sale a unit that was in a building on federal Crown land in a Reserve. The property was described to the buyer as a 'condo on Indian Land' and that it was substantially the same as any other condominium unit. However, a variety of legal structures that protect strata homebuyers in BC (e.g. the Strata Property Act, the Land Title Act, Part 2 of the Real Estate Act) do not have jurisdiction on Reserve Land.
- The sale of a unit in a phased strata.

The investigative tools have shortcomings and even where a buyer employed every tool available, a clear understanding of the risk was not apparent. Participants explained why, in a number of cases, they arrived at a purchase decision:

- Some clues were believed to be normal maintenance items that would be resolved.
- In some cases, they were told it had problems but it had been fixed. Most homebuyers are not aware of the high rate of failure of 'fixes.'
- Some believed leaky condo syndrome does not affect concrete buildings, or townhouses.

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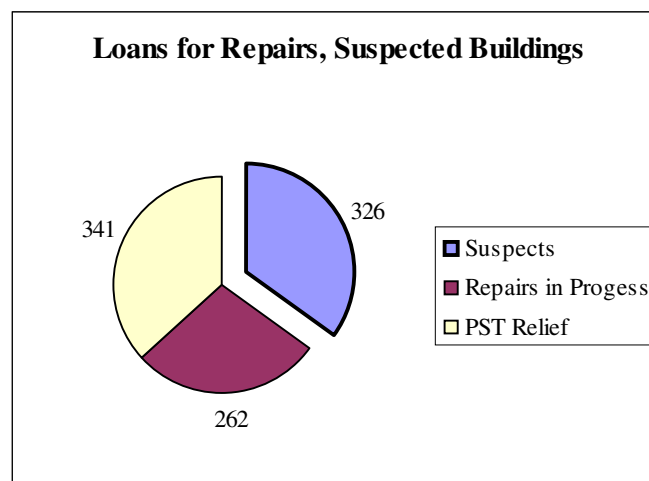
- Some believed they had an accurate estimate of the cost of the repair at the time of purchase and they negotiated a price to reflect that cost.
- Some believed the investigative tools would give them clear answers, not just hints. They interpreted couched language to mean there was not a serious problem.

Previous home owning experience is not necessarily an asset in understanding leaky condo syndrome. Twenty-nine out of 40 participants in this study had previously owned a detached home, a condo or lived in a co-operative. Many had 'hands-on' experience in maintenance and home repairs. This experience predisposed many of them to consider any evidence of leaks to be a manageable repair rather than a life changing event. Catastrophic building envelope failure – and the resultant impact on their finances and their strata community - was not in their experience.

Some persons in the condo repair industry believe that the peak of the leaky condo crisis is passed. The Homeowner Protection office in BC tracks the following buildings:

- Building where loans have been provided to individual homeowners for repairs. These buildings have undergone an engineering investigation, approved a repair plan and funded it through a special levy on the owners. At any point in time they are in one of two categories:
 - At some stage in the repair process, though not necessarily having begun the actual work.
 - Completed the repair and applied for PST relief.
- Buildings that are 'suspect' - where problems are evident - but a repair plan has not yet been approved and funded through a special assessment.

As of March, 2003, the number of buildings in each category is:



Source: Homeowner Protection Office, March 2003

In this study, there are instances of:

- Buildings that have been waiting for substantial periods of time for the repair to get underway due to a shortage of construction crews. It is not known how much

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additional deterioration will occur while they wait, or how the original cost estimates will stand up with the passage of time.

- Buildings that are waiting for the building envelope investigation to commence, even though it was commissioned some time ago.
- Buildings that are experiencing considerable infighting within the strata corporation members as they try to come to grips with the need for repairs.

Even if the use of investigative tools is more frequent, or the crisis has peaked, it is clear that there will be many more condo buyers who discover, after the fact, that '*what they got is not what they thought they bought.*' The tools themselves are flawed, the Contract of Purchase and Sale may still fail to request all the documentation and there is little assistance for the buyer in understanding and analyzing the information they receive.

APPENDIX 1: Interview Guide

1. Describe the problem that you discovered AFTER you bought your condominium/townhouse.
2. How long after the date of purchase was this discovery?
3. Confirm: “And you had no knowledge of this at the time you purchased?”
4. How has this impacted your homeownership? Financially? Health wise?
5. In hindsight, can you see there was evidence at the time of purchase? If yes, what was the evidence?
6. Did you review the minutes of strata meetings themselves or did you have assistance?
7. What criteria did you use to select a private home inspector? Do you know inspector’s qualification?
8. What was your expectation of the extent of the inspection -
 - Just the unit you were buying?
 - Other parts of the complex to be inspected
9. What was your previous residence -
Detached home? Condo? Rental? Owner?
10. Why did you buy a re-sale condo? (Prompts: why not a house; why not a new condo?)
11. Who did you rely on to guide you through the transaction?
 - Real estate agent
 - legal adviser
 - friends
 - Property Manager
 - Strata Council
 - Buyer's Guides.
 - Others
12. At the time of purchase, did you know about the leaky condo phenomenon?
13. Demographics of owner(s): Age, Gender, Household size?
14. Building data: Age, Type, Number of Units, Phased?
15. Would you ever buy another condo?

APPENDIX 2 Clauses used in the Contract of Purchase and Sale for strata title properties to invoke use of investigative tools.

1995 Clauses	1999 Clauses	2000 Clauses (July 1: new Strata Property Act)
<p>1. Receipt of By Laws and Financial Statements Clauses <i>"Subject to Buyer approving the By-Laws and Financial Statements of the Strata Corporation on or before (date). Buyer is aware of a monthly levy of \$_____ which covers (identify utilities and services.). This condition is for the sole benefit of the buyer.</i></p> <ul style="list-style-type: none"> • Salespersons were advised to obtain minutes from last Annual General Meeting forward and deliver them to the buyer with by-laws. Note: This request for minutes was not part of the standard clause until 1999. <p>2. Clause to obtain (or confirm receipt of) Property Condition Disclosure Statement.</p> <p>3. Clause for professional Inspection of Property</p>	<p>1. Addition to Receipt of By-laws and Financials clause – included a demand for minutes.</p> <ul style="list-style-type: none"> • Salespersons were advised to obtain minutes from at least the last 12 months of Strata Council meetings and the most recent Annual General Meeting. <p>2. Clause to obtain (or confirm receipt of) Property Disclosure Statement – Strata Title Properties</p> <p>3. Clause for professional Inspection of Property</p>	<p>1. Receipt of By-laws and Financials clause includes a demand for –</p> <ul style="list-style-type: none"> ○ Form B ○ Registered Strata Plan ○ By laws and financial statements Minutes of strata council, General Meetings or any section ○ Other reports as requested • Salespersons were advised to obtain minutes for last 12-24 months or more. <p>2. Clause to obtain (or confirm receipt of) Property Disclosure Statement – Strata Title Properties</p> <p>3. Clause for professional Inspection of Property</p>
<p>Notes:</p> <ol style="list-style-type: none"> 1. The clauses could be a 'subject' clause making the Contract conditional upon the buyer's receipt and approval of the documents; or it could be an 'acknowledgement' clause that the buyer had already received and approved the documentation. 2. Professional property inspections gradually came into common use after the BC real estate community adopted a model of buyer agency in 1995. In 2000, the Real Estate Council of BC issued a bulletin stating that the buyer agent <i>should always advise a buyer to have an independent inspection of a property</i> and that this advice <i>should be documented if a buyer chooses not to have an inspection</i>. 3. There are other clauses that may also be included in a Contract for a purchase of a strata title property, for instance, a clause verifying parking stalls and lockers. For the purposes of this study, it is the clauses that mandated the investigative tools i.e. the Property Disclosure Statement, the professional Property Inspection and documentation from the Strata Corporation that are relevant. 		

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