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CHAPTER 7

STRATA PROPERTIES (CONDOMINIUMS) AND COOPERATIVES IN BRITISH COLUMBIA

Learning Objectives

After studying this chapter, a student should be able to:

- Distinguish between the strata corporation and the strata council and be able to describe the duties of each
- Explain how strata bylaws and rules are created and amended
- List the responsibilities of a strata lot owner and, if they do not fulfil these responsibilities, the remedies available to the strata corporation or another owner
- List the rights of a strata lot owner and the remedies they have against the strata corporation or other owners
- Discuss the records that must be kept by a licensee and who has access to these records
- Explain how a cooperative development is created and distinguishable from a strata development

INTRODUCTION

In Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”, we discussed the various estates and interests in land that can be held in British Columbia. In Chapter 4: “The Subdivision of Land and Title Registration in British Columbia”, we introduced the increasingly popular strata concept, which generally allows for the division of a property into two parts: privately owned strata lots, held in fee simple, and common property, held by the owners as tenants in common. This occurs, for example, in residential strata developments, where a buyer acquires fee simple ownership of a unit in a high-rise tower together with a proportionate interest in common features, such as the tower’s recreational facilities. Similarly, in a strata shopping mall, a retailer can purchase a fee simple interest in a store together with an interest in common features such as the loading dock. In Chapter 4, we also discussed leasehold strata developments, in which a purchaser of a strata lot acquires a long term lease instead of fee simple ownership.

This chapter will pick up where Chapter 4 left off and delve more deeply into the function and governance of strata developments. The chapter will introduce the roles of the strata corporation and the strata council, consider the rights and responsibilities of strata owners, and discuss strata finances, bylaws, and rules.

Historical Background

British Columbia has had strata legislation since 1966. In 2000, the provincial government significantly modified our strata legislation. Effective July 1, 2000, the *Strata Property Act* replaced the former *Condominium Act*. The *Strata Property Act* retains most of the legal fundamentals contained in previous strata legislation and adds many refinements.

Strata Concept

In Chapter 4, we discussed how the strata concept allows for the subdivision of a building or land into separate parts for private ownership together with joint ownership of common property. We discussed how a strata development is created by the filing of a strata plan by an owner developer. On the strata plan, the entirety of the building is divided between strata lots and common property. In this chapter, we will introduce the Schedule of Unit Entitlement before taking a more detailed look at common property and methods of exclusive use of common property.

Unit Entitlement

The Schedule of Unit Entitlement displays each strata lot’s proportionate rights and liabilities for the common property of the strata development. Each strata lot is assigned a particular number, known as its “*unit entitlement*”. This number is used in numerous instances. Firstly, it determines each owner’s proportionate, undivided ownership share as a tenant in common of the common property in the strata plan. Although the owners own the common property, the strata corporation exercises exclusive control over it. Secondly, unit entitlement determines the share of the strata corporation’s expenses and liabilities for which each strata lot is responsible. The schedule can be found in Form V, which must be filed by the developer, along with the strata plan, in the land title office. Generally, residential strata lots calculate unit entitlement using the total “habitable area” of a strata lot. “Habitable area” is defined in the *Strata Property Regulation* as the area of a residential strata lot that can be lived in, but does not include patios, balconies, garages, parking stalls, or storage areas other than closet space. However, unit entitlement may be calculated on a basis other than “habitable area,” depending on the type of lot involved (residential or non-residential) and the date on which the strata plan was filed (before or after July 1, 2000).

unit entitlement

the number assigned to a strata lot that is used to determine the owner’s proportionate ownership in the common property and the strata expenses and liabilities for which the owner is responsible

The Schedule of Unit Entitlement is important for licensees to review. It allows licensees to determine the contribution required from each strata lot towards common expenses, including special levies and strata fees. The *Strata Property Act* sets out the following formula for calculating a strata lot’s contribution to an expense:

$$\frac{\text{Unit Entitlement of Strata Lot}}{\text{Total Unit Entitlement of All Strata Lots}} \times \text{Total Contribution}$$

“Total contribution” is the total cost of the repair or expense that is being allocated. Appendix 4.1 (in Chapter 4) contains a sample excerpt from a strata plan that shows a Schedule of Unit Entitlement. Using this schedule and the formula above, we can calculate the contribution of Strata Lot 70 towards a special levy of \$1,000:

$$\frac{123}{8,675} \times \$1,000 = \$14.18$$

As a Licensee...

According to the *Strata Property Act*, common expenses, such as strata fees, must be allocated according to the statutory formula based on unit entitlement (see above). Therefore, licensees should take care to review the Schedule of Unit Entitlement when dealing with particular strata lots, in order to inform owners and purchasers about the strata fees associated with a particular lot. A licensee will be able to access the Schedule of Unit Entitlement, and other relevant strata documents, by using myLTSA or by visiting the land title office. Licensees should also note that the Act allows for strata fees to be allocated in a manner other than unit entitlement by passing a resolution by a unanimous vote approving the new formula, and registering the resolution and formula. Therefore, licensees should also check the land title office for such a resolution, as this would mean that unit entitlement may not be an accurate indicator of the contribution expected from a strata lot towards common expenses.

Since July 1, 2000, the registrar is required to record many of the documents that must be filed during the life span of a strata corporation in a General Index, which must be established for each strata plan. These documents include the Schedule of Unit Entitlement, as well as resolutions of the type discussed above. A licensee should review the General Index when ordering copies of strata plans from myLTSA.



ALERT

Before the *Strata Property Act* came into force on July 1, 2000, the previous strata legislation required every strata plan to have a Schedule of Interest on Destruction. The Schedule of Interest on Destruction determines, for example, the distribution of insurance proceeds for damage to the building if a fire destroys the strata complex and the owners decide to take the insurance money instead of rebuilding. A Schedule of Interest on Destruction looks like a Schedule of Unit Entitlement and operates in a similar way. Schedules of Interest on Destruction are not found in strata plans filed on or after July 1, 2000. Instead, the *Strata Property Act* provides for a “conversion schedule” (section 273) or “interest schedule” (section 278) that will be employed if a strata plan is cancelled and the strata corporation is dissolved or wound up. However, if the strata plan was deposited before July 1, 2000, the schedule of interest on destruction still prevails.

Common Property

Section 1 of the *Strata Property Act* defines common property as follows:

“common property” means

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land, or
 - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

Using Common Property

The owners, as tenants in common, own the common property, each in the proportion set out in the Schedule of Unit Entitlement. Therefore, each owner has the right to use the common property, except to the extent that the owner’s use is restricted by the *Strata Property Act*, any regulations passed under the Act or the strata

corporation's bylaws or rules. Bylaws and rules are discussed later in this chapter. Although the owners own the common property, the strata corporation must manage, repair, and maintain it.

There are several ways that a strata corporation can permit an owner to exclusively use common property. The first method is to designate the area as limited common property. Alternatively, the strata corporation may agree to permit an owner or tenant to exercise short term exclusive use (also sometimes characterized as a special privilege) over the relevant common property area. Strata corporations will be discussed later in this chapter.

Limited Common Property

Section 1 of the *Strata Property Act* defines *limited common property* ("LCP") as follows:

"limited common property" means common property designated for the exclusive use of the owners of one or more strata lots.

The LCP designation attaches to a strata lot rather than the registered owner of the strata lot. In other words, the designation "runs with the land". Every owner who has the right to use LCP must allow the strata corporation reasonable access to the LCP for the strata corporation to perform its duties.

limited common property

common property designated for the exclusive use of the owners of one or more strata lots

A developer can designate common property as LCP on the strata plan when they deposit the strata plan at the land title office. The developer's LCP designation appears on the strata plan. Readers can see an example of developer-designated LCP among the sample strata plan excerpts in Appendix 4.1.

Alternatively, the owners can designate common property as LCP by either amending the strata plan or through a vote at an annual or special general meeting.

If the owners decide to amend the strata plan, the *Strata Property Act* requires a unanimous vote of the owners at a general meeting. The strata corporation must then file the necessary documents at the land title office to amend the strata plan. If the owners want to remove an LCP designation that they previously made by amending the strata plan, they must pass a unanimous vote and further amend the strata plan.

The owners can also designate common property as LCP without amending the strata plan. This requires a $\frac{3}{4}$ vote at an annual or special general meeting. After passing the necessary resolution designating common property as LCP, the strata corporation must file the resolution at the land title office with a plan that defines the area of LCP and specifies which strata lot(s) are entitled to use the LCP. The resolution designating common property as LCP is not effective until it is filed at the land title office. When the owners use this method to designate common property as LCP, the LCP designation does not show up in the drawing for that area in the strata plan. This is because the owners have not amended the strata plan. Instead, the Registrar records the resolution changing the designation from common property to LCP in the Common Property Record (formerly called the "Dealings Affecting Common Property" under the *Condominium Act*). If the owners want to remove an LCP designation that they previously made by $\frac{3}{4}$ vote, they require a new $\frac{3}{4}$ vote at an annual or special general meeting and must file the resolution at the land title office.

Short-Term Exclusive Use

The strata corporation may also give an owner or tenant permission to exclusively use common property that is not designated LCP, or to use a common asset. The *Strata Property Act* refers to this approach as a *short-term exclusive use* agreement or a special privilege. For example, in strata plans where parking stalls and storage lockers are common property, strata corporations often use short term exclusive use arrangements to allocate the use of particular stalls and lockers to individual owners and their tenants.

short-term exclusive use

a special privilege granted to owners and tenants to exclusively use common property that is not designated limited common property

If the permission or privilege involves a significant change in the use or appearance of common property or land that is a common asset, the owners must approve the permission or privilege by a $\frac{3}{4}$ vote at a general meeting. If the permission or privilege does not involve such changes, the strata council may, by majority vote on behalf of the strata corporation, grant the privilege. However, the strata corporation must not grant the permission or privilege for more than one year. The strata corporation can also impose conditions on the permission or privilege. Upon any renewal, the strata corporation can change the period (bearing in mind the one year maximum) and the conditions.

The strata corporation can also cancel the permission or privilege at any time by giving the owner or tenant reasonable notice of the cancellation.

Many owners entered short term exclusive use arrangements under the *Condominium Act* before July 1, 2000, when the *Strata Property Act* came into force. In such cases, the regulations permit those arrangements to continue beyond July 1, 2000 in accordance with their terms. However, the renewal of those arrangements must be made in accordance with the *Strata Property Act*.



As a Licensee...

Parking Stalls and Storage Lockers

Licensees should be aware that the rights to use parking stalls and storage lockers may be the product of various forms of legal arrangements. Strata plans typically have one or more of the following arrangements.

- The parking stall or storage locker is a separate strata lot on the strata plan. This is no longer allowed in residential strata plans. However, in some rare cases an older residential strata plan may have parking stalls or storage lockers designated as individual strata lots.
- The parking stall or storage locker may be part of an individual strata lot.
- The parking stall or storage locker may be designated as limited common property. This designation will either appear on the strata plan or on a resolution filed at the land title office.
- The parking stall or storage locker may be common property, with short term exclusive use privileges granted to an individual or corporation to allow them to make use of the space for a period of time. If the parking stall or storage locker is common property, one of two arrangements will likely apply:
 1. the strata corporation will have allocated the use of the space to an individual by way of contractual licence or lease; or
 2. the strata corporation will have licensed or leased the space to the developer, who in turn will partially assign or sell their rights to individuals.

When acting for a seller or buyer, licensees should ensure that they understand the legal relationship that a particular strata lot has with an assigned storage locker or parking stall. Licensees must be able to accurately explain to their clients all of the rights and duties that are associated with a particular strata lot.

Electric Vehicles

Licensees should be aware that the installation of electric vehicle (EV) charging infrastructure in a strata corporation is subject to certain approvals of the strata corporation. What approvals are needed will depend on the circumstances, but, generally, approval of the owners under the *Strata Property Act* will be needed for a significant change in the use or appearance of common property (section 71), acquisition of personal property by the strata corporation (section 82), and an expenditure from the contingency reserve fund (section 96). These approvals generally have a threshold of 75%, but, if the proposed change is related to the installation of EV charging infrastructure or the management of electricity used by EV charging infrastructure, then each of these sections of the *Strata Property Act* lowers the approval threshold to a majority (i.e., more than 50%). The lower approval threshold aims to encourage EV use by making it easier for people who live in strata corporations to charge their EVs at home, which supports the provincial government's overarching goal of reducing reliance on fossil fuels.

THE STRATA CORPORATION

A corporation is an artificial legal person. In other words, the law recognizes the corporate entity as a person for the purposes of the law, even though it is not a human person. In general, a corporation has the same ability as a natural person to do things of a legal nature. For example, a corporation can enter contracts to buy or sell property or services, and a corporation can sue or be sued.

strata corporation

a legal entity created by the deposit of a strata plan in the land title office. The corporation's responsibilities are set out in the *Strata Property Act* and include the duty to manage, repair, maintain, and insure common property and common assets

The developer creates a *strata corporation* by depositing the strata plan in the land title office. Section 2 of the *Strata Property Act* states:

2. (1) From the time the strata plan is deposited in a land title office,
 - (a) a strata corporation is established, and
 - (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name "The Owners, Strata Plan [*the registration number of the strata plan*]".

The name given to a strata corporation under subsection 2(b) of the *Strata Property Act* is the legal name of the strata corporation. Subject to any limitation in the *Strata Property Act* and the regulations, section 2 of the *Strata Property Act* says that a strata corporation has the legal capacity of a natural person. Although a strata corporation and a business corporation (often informally called a “company”) are both corporations, a strata corporation is not the same as a company. In a strata corporation, an individual member’s liability is not limited like it is in a company. In a company, the members, in their capacity as shareholders, are not personally liable when someone obtains a judgment against their company. The judgment binds the company, not its members. However, if someone sues and obtains a judgment against a strata corporation, section 166 of the *Strata Property Act* provides that it serves as a judgment against all owners. Each owner is liable to pay their share of the judgment according to the Schedule of Unit Entitlement. Similarly, the Act provides that an arbitration award against a strata corporation can be filed in the Supreme Court and enforced like a judgment.

Sections

A *section* is a legal entity, often described as a “mini strata corporation”, within a strata development comprised of strata lots that share similar characteristics. For example, sections can be formed in a development that contains both residential and non-residential strata lots; non-residential strata lots used for different purposes; or townhouse and apartment style strata lots. Sections have their own executive and are created to represent the owners of specifically identified strata lots.

Section 191 of the *Strata Property Act* provides that sections may be created to represent the different interests of owners of specifically identified strata lots. The *Strata Property Act* does not identify the “different interests” that may arise. One interest that is considered is cost allocation. The general rule requires costs to be allocated by unit entitlement, without regard to whether a particular strata lot benefits from the expense. However, if sections have been created, owners in one section may assume all costs in respect of matters that relate solely to the strata lots in that section. For example, if only the strata lots in the residential section benefit from elevator maintenance and window washing services, the creation of sections would enable the non-residential section to avoid contributing to those costs.

Another interest that may influence the creation of sections is the autonomy granted to the owners in a section in respect of certain decisions. For example, if a section is responsible for repair and maintenance of specific items, the owners in the section responsible can make decisions relating to those items without involving the owners in the other section(s).

The strata corporation continues to exist as a legal entity whether a strata development has sections. After the creation of sections, the strata corporation retains its powers and duties in matters of common interest to all owners. The strata corporation will, at a minimum, still be responsible for obtaining insurance. The responsibility of the strata corporation for repair and maintenance will depend on the design of the development, and whether sections are comprised of residential and non-residential strata lots or townhouse and apartment style strata lots.

section

a legal entity, often described as a “mini strata corporation”, comprised of strata lots that share similar characteristics. Sections have their own executive and are created to represent the owners of specifically identified strata lots

The Strata Corporation’s Principal Duties

The strata corporation must manage, repair, maintain, and insure the common property and the strata corporation’s common assets. The strata corporation also has important record keeping responsibilities and must enforce its bylaws and rules.

The Duty to Manage

Section 3 of the *Strata Property Act* requires the strata corporation to manage and maintain the common property and common assets of the strata corporation for the benefit of the owners. The term “common assets” refers to property (such as a lawn mower or gardening equipment) that the strata corporation owns. Some strata corporations also own real property. For instance, in a residential strata development, a strata corporation might own one of the strata lots in the strata plan for use as a caretaker’s suite.

The Duty to Repair and Maintain

The *Strata Property Act* requires the strata corporation to repair and maintain the common property and common assets.

The Duty to Insure

The *Strata Property Act* requires the strata corporation to obtain and maintain full-replacement-value property insurance against harm to the common property, including any buildings shown on the strata plan, the common assets and any fixtures built or installed on a strata lot by the developer as part of the original construction of that strata lot. In addition, the strata corporation must maintain insurance against liability to others for property damage and bodily injury.



As a Licensee...

Licensees should be aware of the limits to a strata corporation's duty to insure. There are many instances of losses that the strata corporation's policy may not cover. For instance, individual owners may want to seek their own coverage for personal property inside the unit, special levies that may occur when a strata corporation's insurance is insufficient to pay for a loss, and deductibles that a strata corporation may pass on to an individual strata lot in accordance with its bylaws.

During the purchasing process, licensees should advise clients considering the purchase of a strata property to consult with an insurance broker to understand their insurance needs and determine if a satisfactory insurance policy can be obtained.

The strata council, on behalf of the strata corporation, must enforce the bylaws and rules, as will be discussed later in this Chapter.

The Duty to Keep Records

The *Strata Property Act* requires every strata corporation to prepare and keep various records, and to allow various persons access to those records.

Section 35(1) of the *Strata Property Act* says that the strata corporation must prepare all of the following records:

- minutes of annual and special general meetings and council meetings, including the results of any vote;
- a list of council members;
- a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements;
- a list of names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60 of the Act;
- a list of names of tenants;
- a list of assignments of voting or other rights by landlords to tenants under sections 147 and 148 of the Act;
- books of account showing money received and spent and the reason for the receipt or expenditure; and
- any other records required by the regulations.

In addition to these records, the strata corporation must keep a lengthy list of other records for the duration of time indicated in the regulations.

Access to the Strata Corporation's Records

Section 36(1) of the *Strata Property Act* guarantees access to several records of a strata corporation to:

- an owner;
- a tenant who has received an assignment of a landlord's right to inspect and copy records under sections 147 or 148 of the Act; or
- a person authorized in writing by an owner or by a tenant who has been assigned the owner's rights.

There are two ways that an owner can assign their powers and responsibilities to a tenant, including the right to access the strata corporation's records:

1. Section 148 of the *Strata Property Act* provides that a tenant who leases a residential strata lot from the owner for a set term lease of three years or more is assigned the powers and duties of their landlord, including access to the strata corporation's records. However, before this power can be exercised the tenant must forward written notice of the assignment to the strata corporation.
2. Section 147 of the Act permits an owner to assign some or all of the owner's powers and duties, including the owner's right to inspect and copy the strata corporation's records, to a tenant. The assignment is not effective until the landlord gives the strata corporation written notice of the assignment, stating the name of the tenant, the powers and duties that have been assigned, and the time period during which the assignment is valid.

Upon request by an authorized person, the strata corporation must make the records available for inspection and provide copies of them within two weeks, unless the request is for access to the bylaws and rules, in which case the corporation has only one week to comply. When drafting offers that include obtaining documents for review by a possible buyer, licensees should recommend a subject removal date that allows enough time for the strata corporation to respond to the request for the buyer to review the documents.

Licensees who post strata records on the Internet without ensuring that the requirements of the *Strata Property Act* are followed may be in contravention of the *Real Estate Services Rules* and subject to disciplinary procedures.

Purchasers

Purchasers are not yet owners and they are not yet members of the strata corporation. Section 1 of the *Strata Property Act* defines the term "purchaser" as follows: "a person ... who enters into an agreement to purchase a strata lot or to acquire a strata lot lease in a leasehold strata plan ... but to whom the strata lot or strata lot lease has not yet been conveyed or assigned." As can be seen, this definition does not require the buyer of a strata lot to have an unconditional contract of purchase and sale before they qualify as a "purchaser". Even if certain conditions or "subjects" remain on the contract, the contracting party will qualify as a "purchaser."

A purchaser can obtain access to the strata corporation's records by several means. First, under the *Strata Property Act*, the purchaser can ask the strata corporation to provide information in an Information Certificate (Form B) or in a Certificate of Payment (Form F). The purchaser usually obtains both certificates. Second, the purchaser can obtain access to the records set out in section 35(1) of the *Strata Property Act* via the contract of purchase and sale with the seller.

Information Certificate

Section 59 of the *Strata Property Act* entitles an owner, a purchaser, or a person authorized by an owner or purchaser, to request an Information Certificate from the strata corporation. The reader will find a copy of an Information Certificate at Appendix 7.1. The Certificate must disclose all of the following information concerning the strata corporation and the strata lot for which the request is made, as at the date of the Certificate:

- the monthly strata fees payable by the owner;
- any amount that the owner owes the strata corporation, other than disputed amounts paid into court or to the strata corporation in trust under section 114 of the Act;
- any agreements under which the owner takes responsibility for expenses relating to alterations to a strata lot, the common property or the common assets;
- 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 that have already been approved but not yet taken from the fund;
- any amendments to the bylaws that are not yet filed in the land title office;

- any resolution passed by a $\frac{3}{4}$ vote or unanimous vote that is required to be filed in the land title office but that has not yet been filed;
- any winding-up resolution that has been passed;
- any notice that has been given for a resolution that has not been voted on, if the resolution requires a $\frac{3}{4}$ vote, 80% vote or unanimous vote or deals with an amendment to the bylaws;
- any court proceeding, arbitration or tribunal proceeding in which the strata corporation is a party and any judgments or orders against the strata corporation;
- any notices or work orders received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets;
- which parking stalls and storage lockers, if any, have been allocated to the strata lot;
- a summary of the strata corporation's insurance coverage; and
- any other information required by the regulations.

The strata corporation must attach copies of its rules, the current budget, and the most recent depreciation report, if any, to the Information Certificate. All of this information must be provided within 8 days of the request and at a charge of no more than \$35, plus the cost of photocopying at up to 25 cents per page.

A strata corporation must ensure the accuracy of the information in the certificate. If the strata corporation is unable to verify the accuracy of any information in the certificate, the corporation should alert the person who requested the certificate with an appropriate written warning accompanying the certificate.

Certificate of Payment

Certificate of Payment

a document that informs a buyer of a strata lot whether there is any money owing to the strata corporation in respect of a strata lot

Section 115 of the *Strata Property Act* entitles a purchaser to request a *Certificate of Payment*, which informs the buyer whether there is any money owing to the strata corporation in respect of the strata lot. The reader will find a copy of the Certificate of Payment at Appendix 7.2. The strata corporation must comply with the request for a Certificate of Payment within one week if the following conditions are met:

- a. The owner does not owe money to the strata corporation, or,
- b. If the owner does owe money, but
 - i. they have paid any disputed funds into court or to the strata corporation in trust, or
 - ii. the owner has otherwise made satisfactory payment arrangements with the corporation.

The Certificate must certify that the owner meets these conditions. In completing the Certificate, the strata corporation may include money owing for any of the following:

- strata fees;
- a special levy;
- reimbursement of the cost of work done by the strata corporation following the owner's failure to comply with a work order from a public or local authority under section 85 of the Act;
- the strata lot's share of a judgment against a strata corporation;
- fines; and
- costs charged by the strata corporation for remedying a contravention of a bylaw or rule.

The Certificate must not include any claims or damages against an owner that have not been determined by a court, by arbitration, or by the Civil Resolution Tribunal and the strata corporation must not charge more than \$15 for a Certificate of Payment.

Apart from court-ordered sales, the Registrar of Land Titles cannot register any conveyance, lease, assignment of a lease, or an agreement for sale of a strata lot unless accompanied by a Certificate of Payment. Once issued, the Certificate is current for 60 days. The buyer's lawyer or notary will order the Certificate of Payment shortly before the completion date. Licensees do not ordinarily request a Certificate of Payment unless there is a special reason for it. In a court-ordered sale (for example, in a foreclosure) a Form F is not necessary.

Contract of Purchase and Sale

A buyer may also indirectly obtain access to the strata corporation's records via the contract of purchase and sale with the seller. When drafting a purchaser's offer, a licensee typically makes the offer subject to the seller obtaining the necessary strata documents for the buyer's review. The seller, or owner of the strata lot, has full access to the strata corporation's records. Alternatively, the contract might simply contain the seller's delegation of access rights to the buyer and the buyer agent's brokerage. Recall that the *Strata Property Act* entitles an owner, or their authorized delegate, to inspect and obtain copies of virtually all of the strata corporation's records. If an owner, as seller, authorizes a buyer in writing to inspect the strata corporation's records or to obtain copies of them, the corporation must allow the buyer to inspect and copy the records specified in the owner's written authorization. In effect, the purchaser borrows the seller's access rights. The strata corporation must not charge the buyer, or their real estate licensee, any fee for inspecting the records. Although the strata corporation can charge for photocopies, the corporation must not charge more than 25 cents per page for copies of the strata corporation's records. The strata corporation may refuse to supply copies to the buyer, or to their representative, until the copy fee is paid.

Sask v. Brooke, 2000 BCSC 1745

In *Sask*, a buyer entered into a contact of purchase and sale for a condominium unit in Langley for \$133,000. The contract included a condition precedent which made the purchase conditional upon the buyer's perusal and approval of the strata council's minutes, bylaws, and financial statements. This condition precedent was satisfied and the sale completed. Shortly thereafter, because of leakage issues in her unit and others, the strata corporation passed a special levy requiring the buyer to pay \$60,000 towards repairs to address the leakage issues. Furthermore, the value of the buyer's condominium plummeted to \$22,000. The buyer sued the sellers, arguing that she was induced to purchase the unit by negligent misrepresentations made by the sellers in the property condition disclosure statement, which indicated that there were no building leakage issues.

In applying the five-step test for negligent misrepresentation, as set out by the Supreme Court of Canada, the Court found that the sellers were negligent in making a false statement in the property condition disclosure statement about a lack of leakage issues; however, the claim for negligent misrepresentation failed because an essential element of the test, reasonable reliance, was not satisfied. The Court found that the strata council minutes included reports of the building's leakage history. By complying with the condition precedent about the strata documentation, the sellers were effectively providing the buyer with the history of the leakage problems. Therefore, the buyer had the opportunity to review the strata documents and to refuse the transaction upon discovering the building's leakage history, but she chose not to. As a result, it could not be said that she reasonably relied on the statements in the property condition disclosure statement, but rather that she relied upon her own due diligence and assessment of the strata unit and documentation.

The *Sask* case serves as an example of the difficulties buyers may face in proving misrepresentations if they do not carry out reasonable due diligence of the strata properties they purchase. Specifically, where a purchase contract includes a condition precedent that contemplates the buyer's approval of certain documents, the buyer should ensure that those documents are read and understood. When in doubt, buyers should be asking for the assistance of their licensee or other professional (e.g., lawyer).

What Licensees Should Check in the Strata Corporation's Records

A licensee who markets a strata property, whether as the representative of the seller, the buyer, or both, should request and familiarize themselves with the following documents. To the extent that any of the following minutes are available, they should span at least the preceding two years:

- strata council minutes;
- minutes from all annual, extraordinary or special general meetings;
- minutes of the executive and of any general meetings of any section to which the strata lot belongs;
- the budget and financial statements; and
- the bylaws and rules.

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Licensees may be disciplined by BC Financial Services Authority (BCFSA) for failing to review and advise their clients of material information in strata documents. In this case, a licensee acting as the buyer's agent was reprimanded for professional misconduct and faced disciplinary penalties for failing to review strata documents containing information about an imminent roof replacement. He also failed to obtain all of the strata documents made available to the buyer, many of which contained references to the roofing project. As a result of the licensee's inactions, the buyer was not informed about the impending expenses and, at the licensee's recommendation, purchased the lot without any conditions. After becoming the owner of the strata lot, the buyer received a special assessment for \$17,402 for her lot's share of the expenses.

This case is an important reminder that licensees must take proper care to review strata documents and identify any information that might be material to the buyer's decision on whether or not to proceed with a transaction.

**ALERT**

The former Real Estate Council of British Columbia (the former industry regulator) determined that a licensee was in breach of the Act when they failed to disclose to the buyers or their salesperson that there was significant water and structural damage to the envelope of the building in which the properties were located. Upon appeal to the Commercial Appeals Commission, the Commission upheld the Council's finding. The Commission also found that the buyer's agent was negligent, in part because they did not read the strata minutes that were provided to their clients pursuant to a subject clause in the contract.

HOW A STRATA CORPORATION IS GOVERNED

As an artificial legal person, the strata corporation can only carry out activities through its members, the strata lot owners.

The Council

The executive body that oversees the strata corporation between general meetings is called the *council*. This body is elected by the strata lot owners and effectively functions as a board of directors. Section 26 of the Act says, in part:

council

an executive body elected by the strata lot owners to carry out the duties of the strata corporation and oversee its affairs. Generally speaking, only strata lot owners are eligible to sit on the council

26. Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

After the developer creates the strata corporation by depositing the strata plan, the developer serves as the first council. Section 6 of the *Strata Property Act* requires the developer, while serving as the council, to act honestly and in good faith with a view to the best interests of the strata corporation. The developer must also exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

After the developer sells a sufficient number of strata lots, or enough time passes, the developer must hand over the responsibilities of the strata council to elected owners. This occurs at a meeting called the first annual general meeting. Section 16 of the *Strata Property Act* requires the developer to call the first annual general meeting within six weeks of whichever occurs first: the conveyance of 50% plus one of the strata lots or the passage of nine months from the date of the first conveyance of a strata lot to a purchaser. If the developer fails to call the first annual general meeting as required, the regulations require the developer to pay \$1,000 to the strata corporation for the first 30 days of delay, and \$1,000 for every additional seven days of delay. If the developer fails to hold the first annual general meeting, an owner may hold the meeting after giving the necessary notice for the meeting.

At the first annual general meeting, the owners must elect a council for the first time. From that point onward, the owners must elect a new council every year at the strata corporation's annual general meeting.

Eligibility for Council

In each case, the strata corporation's bylaws determine the number of seats on council.

Owners are eligible to sit on council. If two or more persons are registered on title as owners of a strata lot, only one of them at a time may sit on council unless all the owners are on council. If a corporation owns a strata lot, the corporation may choose an individual to represent the corporate owner on council. Only one representative of the corporation at a time can sit on council. The *Strata Property Act* also extends eligibility to tenants in some circumstances, as discussed in detail below.

Section 31 of the *Strata Property Act* sets out the standard by which council members must carry out their work:

31. In exercising the powers and performing the duties of the strata corporation, each council member must
 - (a) act honestly and in good faith with a view to the best interests of the strata corporation, and
 - (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

Regardless of an individual council member's lack of experience, they will be held to the standard expected from a reasonable person in comparable circumstances who is informed of all the relevant facts. Section 22 of the Schedule of Standard Bylaws exempts a council member from personal liability if they have acted honestly and in good faith. The *Strata Property Act* also permits a strata corporation to purchase errors and omissions insurance for its council members.

The Members

The owners of the strata lots are the members of the strata corporation. The members convene in general meetings to carry out their business. Sections 45 and 61(3) of the *Strata Property Act*, when read together with Section 25 of the *Interpretation Act*, require the strata corporation to give at least 20 days written notice of every general meeting.

Every year the strata corporation must hold an annual general meeting of its members. The meeting must be held no later than two months after the strata corporation's fiscal year end. Among other things, the members at the annual general meeting must elect a new council and approve the budget. All other general meetings of the members are called special general meetings. Under the former *Condominium Act*, special general meetings were called "extraordinary general meetings" or, informally, "EGMs".

At any time, the strata council may call a special general meeting by giving proper notice. In addition, persons holding at least 20% of the strata corporation's votes may demand in writing that the strata corporation hold a special general meeting to consider a resolution or other matter. At the meeting, the resolution or other matter specified in the demand must be the first item on the agenda.

The members can waive holding a general meeting, or waive the notice requirements for a general meeting, if the members follow certain procedures set out in the *Strata Property Act*.

The *Strata Property Act* permits strata corporations to hold annual and special general meetings by telephone or other electronic means, provided that:

1. the notice of the meeting includes instructions for how to attend;
2. all persons attending the meeting must be able to communicate with each other; and
3. the chair of the meeting must be able to identify whether all those attending are eligible voters.

Voting

All matters at general meetings are decided by majority vote, unless the bylaws or legislation require a $\frac{3}{4}$ vote or a unanimous vote. In some cases, eligible voters from non-residential strata lots will have to meet a different voting threshold to amend a bylaw.

If two or more persons share one vote with respect to a strata lot, only one of them may vote on a given matter. If they cannot agree how to vote on a specific matter, then the chairperson must not count their vote with respect to that matter.

Only strata lot owners may vote, unless the owner has otherwise assigned the right to vote to a tenant or a mortgagee.

In limited circumstances, a lender with a mortgage over a strata lot may vote in place of the owner. The mortgage document must give the lender the right to vote. The lender must also give the strata corporation at least three days written notice of their intention to vote. The lender can only vote in respect of insurance, maintenance, finance or other matters affecting the security of the mortgage.

A person has the capacity to vote at a general meeting if they are 16 years of age or older. If the person who would otherwise be able to vote is unable to do so because they are under 16 years of age, only the person's parent or guardian may exercise their right to vote. If a person who is otherwise entitled to vote lacks the legal capacity to make a decision for any other reason, the person's right to vote may be exercised by someone who is legally authorized to act for that person with respect to the strata lot. For example, suppose that the sole owner of a residential strata lot is rendered comatose in a car accident and cannot vote at a general meeting. Someone holding a valid enduring power of attorney could vote on behalf of that owner at the meeting.

Management Contract

Many of the day-to-day responsibilities of a strata corporation are time-consuming or require management expertise. For these reasons, the *Strata Property Act* permits the strata corporation to hire a strata property manager to carry out these functions. Every person who, for remuneration, provides strata management services to a strata corporation, or to a section, must be licensed under the *Real Estate Services Act*, unless otherwise exempted.

When a strata corporation hires a strata property manager, the manager represents the strata corporation, not individual owners. The strata property manager must only take their instructions from the council.

In addition to the manager's duties under the strata property management contract, the manager also has fiduciary responsibilities to the strata corporation. As a fiduciary, the courts expect the strata property manager to act only in their client's best interests.

FINANCES

Every strata corporation must have two funds: an operating fund and a contingency reserve fund (CRF). The strata corporation must account for each fund separately. All of the owners contribute to the funds through their strata fees.

The operating fund is for common expenses that usually occur one or more times each year. The strata corporation is responsible for the corporation's common expenses. Common expenses relate to the common property and common assets of the strata corporation or, in some cases, to limited common property or to expenses that are otherwise required to meet the corporation's obligations.

The strata corporation must also establish a CRF to pay for common expenses that occur less than once per year.

The Budget Process

To meet its operating expenses and to create a financial reserve for contingencies, every strata corporation must have a budget. In the early stages of a strata corporation, the developer is responsible for the budget process. Later, after the first annual general meeting, the council takes over budget responsibilities.

The Developer's Interim Budget and The Owners' First Budget

Before the first conveyance of a strata lot, the developer carries all the operating expenses of the strata corporation.

The first conveyance marks the point at which financial responsibility for these expenses shifts from the developer to the strata corporation. The first conveyance triggers the start of a budget called the developer's "*interim budget*." The interim budget governs the finances of the strata corporation until the first annual general meeting, when the developer hands over supervision of the strata corporation to an elected strata council. The budget must include, among other things:

- estimated operating expenses;
- a contribution to the CRF; and
- each strata lot's monthly share of the estimated operating expenses and contribution to the CRF, based on the Schedule of Unit Entitlement.

The developer, or the salesperson representing the developer, must deliver a copy of the interim budget to each prospective purchaser.

interim budget

in the context of a strata corporation, the budget created by the owner developer that governs the finances of the strata corporation until the first annual general meeting

Once the developer's interim budget takes effect, the owners must start contributing financially to the strata corporation. Each month, every strata owner must pay their share of the budgeted operating expenses as well as the budgeted contribution to the CRF. Like any other owner, the developer must make monthly contributions for each of the strata lots belonging to the developer that remain unsold.

The *Strata Property Act* encourages each developer to budget accurately in their interim budget. If, at the time when the owners first approve their own budget at the first annual general meeting, there is a shortfall between the actual expenses for the interim period and those set out in the interim budget, the developer must pay the difference. If the shortfall exceeds 10% of the estimated operating expenses in the interim budget, the developer is also liable to pay a penalty of double or, in some cases, triple the shortfall. If actual expenses are less than those budgeted and there is a surplus, the strata corporation must refund the excess to the owners in proportion to their respective contributions, unless the resultant refund would be \$100 or less for each entitled owner, in which case the strata corporation may deposit the difference in the contingency reserve fund.

In preparation for the first annual general meeting, the developer must send a notice to every owner. Among other things, the notice must include a draft first annual budget together with a financial statement. The draft budget and the financial statement must include the information required by the regulations.

At the first annual general meeting, the owners must approve their first annual budget by a majority vote. Thereafter, the budget cycle repeats itself every year at the annual general meeting where the owners must approve the budget for the next fiscal year.

If there is a deficit in the operating fund at the end of a fiscal year, the strata corporation must eliminate the deficit during the next fiscal year.

The Contingency Reserve Fund

Every strata corporation must have a CRF. The former *Condominium Act* did not require developers to create a CRF. In most cases, strata corporations did not start saving funds for contingencies until the passage of the first annual budget at the first annual general meeting. This often meant that strata corporations lacked any contingency reserve for several years after the first conveyances of property.

The *Strata Property Act* requires the developer to pay a lump sum into the CRF when the first strata lot is conveyed to a purchaser. Informally, we say that this lump sum payment "seeds" the CRF. The timing of the first conveyance determines the amount that the developer must pay. If the conveyance occurs no later than one year after the deposit of the strata plan, the developer's minimum contribution is 10% of the estimated operating expenses in the interim budget. If the conveyance occurs later than one year after the deposit of the strata plan, the Act requires the developer to contribute an amount that is up to 50% of the estimated operating expenses in the interim budget. The minimum amount that the developer must contribute to the CRF will be the lesser of:

- 10% of the estimated operating expenses as set out in the interim budget, multiplied by the number of years since the strata plan was deposited, and
- 50% of the estimated operating expenses, as set out in the interim budget.

For example, suppose the interim budget forecasts that operating expenses will be \$100,000. If the developer conveys the first strata lot within one year of depositing the strata plan, the developer will have to pay into the CRF a lump sum equal to 10% of the estimated operating expenses (\$10,000).

In addition to seeding the CRF with a lump sum payment, the developer's interim budget must also include a contribution to the CRF. During the period covered by the interim budget, every owner, including the developer in respect of any of the developer's unsold strata lots, must contribute to the CRF through their monthly strata fees.

At the first annual general meeting, supervision of the strata corporation passes from the developer to the newly elected strata council. The council must ensure that the corporation meets the CRF requirements of the *Strata Property Act* in every annual budget. When approving budgets at annual general meetings, strata corporations and sections are legally required to contribute a minimum of 10% of the total amount budgeted for the annual operating fund to the CRF. For a fiscal year other than the fiscal year following the first annual

contingency reserve fund

a fund maintained by a strata corporation for common expenses that usually occur less often than once a year or that do not usually occur. The *Strata Property Act* requires both developers and the strata corporation to make contributions to the fund

general meeting, a strata corporation must determine the annual contribution to the CRF after consideration of the most recent depreciation report, if any.

The strata corporation must invest the money in the CRF in investments permitted by the regulations or in insured accounts at savings institutions in British Columbia.

Strata Fees

Every owner must pay strata fees (formerly called “maintenance fees” under the *Condominium Act*) which cover the strata corporation’s operating expenses and any contribution to the CRF. The Schedule of Unit Entitlement determines the share payable for each strata lot.

Sometimes, strata owners who sell their lots ask the strata corporation to return some or all of the owner’s contributions to the CRF. The *Strata Property Act* expressly prohibits any such return (section 101).

Special Levies

The *Strata Property Act* permits strata corporations to raise money by special levies against the owners. A *special levy* is equivalent to what business partners sometimes describe as a “cash call”. For instance, the strata corporation might need a special levy to pay for major repairs if there is not enough money in the CRF, or if the owners otherwise prefer not to deplete the CRF with this expenditure.

special levy

an additional contribution applied against owners by the strata corporation, usually for unexpected expenses. Depending on how the special levy is proportioned between strata lots, approval will require either a $\frac{3}{4}$ vote or a unanimous vote

Depending on the way the levy is applied against the owners, a $\frac{3}{4}$ or unanimous resolution is required. A $\frac{3}{4}$ resolution is necessary if the strata corporation intends to collect contributions to the special levy according to the Schedule of Unit Entitlement, like strata fees. On the other hand, if the corporation intends to seek contribution on some other basis, a unanimous vote is necessary.

In each case, the resolution to approve the special levy must set out the purpose of the levy, the total amount, the method used to determine each strata lot’s share of the levy, the amount of each strata lot’s share, the date by which the levy must be paid, or, if payable by instalments, the dates of the instalment payments. The strata corporation may charge interest on a late special levy payment if the special levy resolution or the bylaws permit it.

A majority vote at a general meeting may be sufficient, in certain cases, to approve a special levy for the repair of common property. In order to pass such a resolution, a strata corporation must, within 90 days of the special levy failing to gain a $\frac{3}{4}$ vote, apply to the Supreme Court of British Columbia for approval. Section 173(2) of the *Strata Property Act* requires that the intended repair be “necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise.” This remedy provides strata corporations with an avenue for relieving the difficult situation of having a statutory duty to repair common property, yet being unable to pass a $\frac{3}{4}$ resolution for a special levy due to a group of voters who are concerned by the amount of the special levy.

A strata corporation must account for special levy monies separately from the operating fund or the CRF. The strata corporation must use the special levy money for the purpose set out in the resolution. Afterwards, the corporation must inform the owners about how the money was spent.

If the amount collected exceeds the amount required, the strata corporation must return the surplus money to the current owners in proportion to their contributions. However, if none of the owners would receive more than \$100, the corporation may deposit the excess in the CRF rather than returning those funds to the respective owners.

Sometimes, special levies arise after an owner agrees to sell their strata lot, but before completion. Before the completion date, the seller is the owner and is responsible for the contribution due from their strata lot. The buyer becomes the owner on the date the seller conveys their interest in the strata lot to the buyer. The conveyance marks the transition where the buyer becomes the owner who is responsible for the contribution due from the strata lot. Section 109 of the *Strata Property Act* codifies this division of responsibility between the seller and the buyer. When a buyer expects that the strata corporation might approve a special levy before the completion date, the buyer typically insists in their contract with the seller that, if any portion of a levy is payable after the completion date by the buyer, as the new owner, then the seller will compensate the buyer for any amount that the buyer has to pay the strata corporation. In such a case, a licensee should use the relevant clause recommended for that purpose by BCFSA’s Knowledge Base, or alternatively, the licensee’s real estate board.



As a Licensee...

Licensees may try to negotiate a holdback in anticipation of special levies in connection with a contract of purchase and sale. The holdback clause should be drafted using the same language found in Section 108 of the *Strata Property Act*, as this will help to ensure that lawyers can properly administer the holdback. For example, the holdback clause should provide that the obligations of the lawyer to deal with the holdback will only arise if the special levy is approved in accordance with Section 108 of the *Strata Property Act*. The holdback clause should use the phrase “approved” rather than “passed”; use the phrase “special levy” rather than “assessment”; and identify what is to be done with the holdback if a special levy is not approved in accordance with Section 108 of the *Strata Property Act* by a certain date. If licensees wish to include a holdback clause in the agreement, they should consult with a legal professional beforehand.

Expenditures

A strata corporation must meet various conditions before it can spend money from the operating fund or the CRF.

Operating Fund

The strata corporation can only spend funds from the operating fund if the expenditure is consistent with the purpose of the fund (i.e., common expenses that usually occur either once a year or more often than once a year) and the expenditure falls into one of the following categories:

1. The expenditure is authorized in the budget.
2. The expenditure is approved by a $\frac{3}{4}$ vote at a general meeting.
3. The expenditure is an authorized unapproved expenditure. Under the *Strata Property Act*, there are two types of authorized unapproved expenditures from the operating fund:
 - i. A strata corporation may pass a bylaw allowing the strata council to spend operating funds without prior approval up to a certain spending limit. If the bylaws are silent as to an amount, the Act permits a council to spend up to 5% of the total contribution to the operating fund for the current year or \$2,000, whichever is less.
 - ii. A strata corporation may spend operating funds if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage (i.e., an emergency). In an emergency, the strata may only spend the minimum amount necessary to ensure safety or avoid loss.

Contingency Reserve Fund

In contrast, the strata corporation can only spend funds from the CRF if the expenditure is consistent with the purpose of the fund (i.e., common expenses that usually occur less often than once a year or that do not usually occur) and the expenditure falls into one of the following categories:

1. The expenditure is approved by a $\frac{3}{4}$ vote at a general meeting; however, only a majority (more than 50%) vote is needed if the expenditure is for a depreciation report, recommended in the depreciation report, related to the installation of EV charging infrastructure or the management of electricity used by EV charging infrastructure, or necessary to obtain a report respecting the installation or operation of EV charging infrastructure or the management of electricity used by EV charging infrastructure. Depreciation reports are discussed in the following section.
2. The expenditure is an authorized unapproved expenditure. Under the *Strata Property Act*, the strata corporation may spend from the CRF if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise (i.e., an emergency). The *Strata Property Act* clearly states that this ability to spend from the CRF for an emergency includes spending from the CRF if there are reasonable grounds to believe that an immediate expenditure is necessary to obtain and maintain the strata corporation’s insurance required by the *Strata Property Act* or its bylaws. In an emergency, the strata corporation may only spend the minimum amount necessary to ensure safety or prevent significant loss or damage and must inform the owners as soon as feasible about any such emergency expenditure. The strata corporation must also inform owners and tenants as soon as feasible of any material change in the strata corporation’s insurance coverage, including any increase in an insurance deductible.

Depreciation Reports

As of December 13, 2011, section 94 of the *Strata Property Act* states that a strata corporation must obtain depreciation reports. *Depreciation reports* estimate the repair and replacement cost for major items in the strata corporation and the expected life of those items. For strata corporations formed on or before December 14, 2011, the first depreciation report must be obtained by December 14, 2013. For strata corporations formed after December 14, 2011, the first depreciation report must generally be obtained within six months of the second annual general meeting. After obtaining the first depreciation report, the strata corporation must obtain one every three years.

depreciation report
an estimation of the repair and replacement cost for major items owned by the strata corporation and the expected life of those items

The depreciation report requirement gives a strata corporation a tool to address the necessary costs to maintain its common property and assets as they age. It encourages strata corporations to be proactive in repair and maintenance, as well as financial planning. While depreciation reports were obtained voluntarily by some strata corporations as a forecasting tool, the *Strata Property Act* now makes depreciation reports mandatory, in addition to providing guidelines of what must be included in such reports.

Aside from a strata corporation benefiting from such a requirement, the individual owners in a strata development will benefit from having increased knowledge of the state of their strata corporation's common property and assets. Furthermore, prospective purchasers will be provided with more information about the development, allowing them to make a more informed purchase decision. The biggest downside to such a requirement is the cost that will be required in obtaining the report.

A strata corporation need not obtain a depreciation report if, on or before the date by which the corporation would otherwise be required to obtain a depreciation report, the requirement to obtain one is waived by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting; however, a depreciation report (or another waiver) must be obtained within 18 months following the date of the resolution. Furthermore, a strata corporation is excused from obtaining a depreciation report if there are fewer than five strata lots in the strata plan.

Depreciation reports must be prepared by a “qualified person,” defined broadly in the regulations as an individual with the knowledge and expertise to understand the components, scope and complexity of the assets and property that the strata corporation is responsible for and the strata corporation’s bylaws.

Depreciation reports must be based on an on-site visual inspection of the site by the preparer of the depreciation report and must contain all of the following components:

1. a physical component inventory and evaluation;
2. a summary of repairs and maintenance work for common expenses that occur less often than once a year or that do not usually occur;
3. a financial forecasting section that includes the anticipated maintenance, repair and replacement costs for common expenses that occur less often than once a year or that do not usually occur, projected over 30 years, and how such costs impact the contingency reserve fund;
4. information about the person from whom the depreciation report was obtained, including their name, qualifications, insurance coverage, and relationship with the strata corporation;
5. the date of the report; and
6. any other information or analysis that the strata corporation or preparer of the depreciation report considers advisable.

Collecting Money Due to the Strata Corporation

The corporation’s most important responsibility is to manage and maintain the common property and common assets of the corporation for the benefit of the owners. To carry out those responsibilities, it is often necessary for the strata corporation to collect money due to the corporation from owners and, in some cases, from their tenants who, for example, owe unpaid fines. Before suing or beginning arbitration to collect money from an owner or tenant or before an initiating notice is given by the Civil Resolution Tribunal in respect of the collection of money from an owner or tenant, the strata corporation must give the owner or tenant at least two weeks’ written notice demanding payment and indicating that action may be taken if payment is not made within that two week period.

In many cases, the *Strata Property Act* also permits the strata corporation to file a *lien* in the land title office against a strata lot for money owing to the corporation. The lien can cover the owner's indebtedness for:

- strata fees, with interest;
- a special levy, with interest;
- reimbursement for work done to the owner's strata lot by the strata corporation for which the owner is responsible;
- the strata lot's share of a judgment against the strata corporation; and
- the reasonable legal costs and disbursements for filing the lien.

lien

a claim or charge on real or personal property for the payment of some debt, lien obligation, or duty

The strata corporation cannot file a lien if the owner has paid the disputed amount to a court or into a trust held by the strata corporation or has otherwise made satisfactory arrangements with the corporation to pay the money.

The *Strata Property Act* also prohibits the strata corporation from filing a lien for money owing for a fine or for the cost of remedying the owner's contravention of a bylaw or rule. In either of these cases, it appears that the strata corporation may collect the money owing by one or both of the following methods. First, the strata corporation, as an unsecured creditor, may sue the owner in court or file a claim with the Civil Resolution Tribunal to recover the fine or reimbursement for remedying a contravention. The strata corporation must respect the two-year limitation period for bringing an action, which means debts that have been outstanding for more than two years cannot be pursued in court (or at the Civil Resolution Tribunal). If the strata corporation succeeds in court (or with the Civil Resolution Tribunal), the corporation can register its judgment against title to the owner's strata lot. Failing payment of the judgment debt, the strata corporation may apply to court for the sale of the strata lot, the proceeds of which would be used to pay the judgment. Alternatively, the strata corporation may wait until the owner wishes to sell their strata lot, at which time the seller will need a Form F, Certificate of Payment, to transfer title to the buyer. When the owner requests a Certificate of Payment, the strata corporation may withhold the Certificate until the owner pays all money owing for a fine or the cost of remedying a contravention.

Once registered, the strata corporation's lien ranks ahead of every other lien or registered charge, except:

- a lien for the strata lot's share of a judgment against the strata corporation;
- a lien in favour of the Crown and which is not a mortgage; and
- a charge under the *Builders Lien Act*.

The lien serves as notice of the strata corporation's claim for the amount owing. In many cases, a lien remains on title until the owner needs to refinance a mortgage or sell the strata lot. In these instances, the owner is effectively forced to deal with the problem because they cannot refinance or sell without discharging the lien from title. The owner may then either pay the debt or dispute it. If the owner disputes the strata corporation's claim, the strata corporation will normally agree to discharge the lien upon payment of the disputed funds into court or into a trust held by the strata corporation.

If the strata corporation does not want to wait to enforce its lien, the corporation must sue the owner for a judicial determination of the amount owing. Once the corporation obtains judgment against the owner, the corporation may register that judgment against the owner's interest in their strata lot. The strata corporation can then apply to court for an order to sell the owner's strata lot and to apply the sale proceeds to pay off the judgment.



As a Licensee...

A forced sale allows a strata corporation to take extraordinary action against an owner who has failed to pay strata fees or special levies. In a forced sale as a result of an unpaid lien, the strata corporation acts as the seller of the strata lot; therefore, the buyer will not receive the normal representations they would have received if they had purchased the strata lot directly from the owner, which can include things like the condition of the strata lot and common property or the residency status of the seller. In order to mitigate some of the risk, the buyer's lawyer should ensure that the vesting order (i.e., the order approving the sale) will allow the buyer to take title to the strata lot free and clear of all encumbrances.

BYLAWS AND RULES

Bylaws serve as the strata corporation's constitution. The bylaws govern the owners' obligations, including the use of their strata lots, the common property and common assets, and the administration of the strata corporation.

bylaws

in the context of a strata, the strata corporation's constitution that provides for the control, management, maintenance, use, and enjoyment of the strata lots, common property, and common assets of the strata corporation, and for the administration of the strata corporation

rules

in the context of a strata, optional, informal regulations made by strata councils to govern the use, safety, and condition of the common property and common assets

Every strata corporation must have bylaws, and only the members can amend the bylaws. *Rules* are less formal than bylaws and are optional; a strata corporation does not need to have them. Councils can make rules to regulate the use of common property and common assets. Rules cannot regulate the use of strata lots. Owners, tenants, occupants and visitors must comply with the strata corporation's bylaws and rules.

Bylaws

The Schedule of Standard Bylaws (the "Standard Bylaws") in the *Strata Property Act* applies to every strata corporation in the province, regardless of when the strata corporation was created. The Standard Bylaws in the *Strata Property Act* can be viewed by accessing the *Strata Property Act* on the BC Laws website at www.bclaws.ca. The bylaws are at the very end of the Act, following Part 17.

The strata corporation may amend the Standard Bylaws by changing the wording or otherwise deleting or adding to it. In other words, a strata corporation can create a custom-made bylaw to change anything in its Standard Bylaws. For instance, a custom-made bylaw can override a standard bylaw, add something new that is not present in the Standard Bylaws, or delete something from the Standard Bylaws. A custom-made bylaw is called an "amended bylaw."

The strata corporation may not enforce an amended bylaw until the corporation files it at the land title office. A strata corporation may pass an amended bylaw, but refrain for any length of time from filing it at the land title office, thereby rendering it unenforceable.

Bylaw amendments are not enforceable if they contravene the *Strata Property Act*, the regulations, the *Human Rights Code*, or any other law. This means that even if the members unanimously pass an amendment, it is still unenforceable if it violates the law.

In addition, but with some exceptions, the *Strata Property Act* provides that amendments are not enforceable if they prohibit or restrict the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of their lot. However, as you will read later, strata corporations can pass bylaws that require one or more persons residing in a strata lot to have reached a specified age that is not less than 55 years, even though such a bylaw may affect an owner's ability to dispose of their strata lot.

A developer's ability to amend the bylaws varies depending on the circumstances. Before the first conveyance of a strata lot, the developer may simply file an amended bylaw at the land title office.

When the first conveyance occurs, special restrictions may constrain a developer's ability to change the bylaws in some cases. If so, the special restrictions change the type of approval required to approve a bylaw amendment before the second annual general meeting. For instance, in a residential strata plan, a bare land strata plan, or a residential section, no amendment may be made to the bylaws before the second annual general meeting unless that amendment is approved by a unanimous resolution. In other words, if the developer seeks a bylaw change in any of these situations, a unanimous vote is necessary.

On the other hand, after the first conveyance occurs in a fully non-residential strata plan or in a non-residential section, the bylaws may be amended anytime in accordance with the ordinary requirements for approving a bylaw amendment, as described in Figure 7.3.

At or after the second annual general meeting, the ordinary requirements to approve a bylaw amendment always apply, as shown in Figure 7.3.

FIGURE 7.3: Ordinary Requirements for Approval to Amend a Bylaw at an Annual or Special General Meeting

Strata Type	Approval Required	
	Before the Second Annual General Meeting	At or After the Second General Meeting
Entirely residential	Unanimous vote	$\frac{3}{4}$ vote
Entirely non-residential	$\frac{3}{4}$ vote or as otherwise provided in the bylaws	$\frac{3}{4}$ vote or as otherwise provided in the bylaws
Mixed residential and non-residential	Unanimous vote	Both a $\frac{3}{4}$ vote of the residential lots and a $\frac{3}{4}$ vote of the non-residential lots or as otherwise provided in the bylaws for the non-residential lots
Bare land strata	Unanimous vote	Refer to the above approval requirements for entirely residential, entirely non-residential and mixed residential and non-residential

If sections have been created under Part 11 of the *Strata Property Act*, the voting thresholds may be different, depending on the section. Refer to sections 127 and 128 of the *Strata Property Act* for more information on bylaw voting thresholds for sections.

The *Strata Property Act* also limits some amendments by exempting certain persons and pets from the immediate consequences of the newly amended bylaw. These are sometimes called “grandfather provisions.” For instance, a bylaw restricting the age of persons who may reside in a strata lot does not apply to someone residing there when the bylaw is passed. Similarly, a bylaw prohibiting pets does not apply to a pet living with an owner, tenant or occupant at the time the bylaw is passed.

Rules

Strata councils can pass rules to regulate the use, safety and condition of the common property and common assets. Under the former *Condominium Act*, we called these rules “regulations.” The *Strata Property Act* provides that every regulation previously made under earlier legislation is deemed to be a rule to which the new Act applies.

Councils must be careful when passing rules. A rule will have no legal effect if it contravenes the Act, the *Human Rights Code* or any other law. In addition, if a rule conflicts with a bylaw, the bylaw prevails.

Rules created on or after July 1, 2000 cease to have effect at the first annual general meeting held after council made the rule, unless a majority of owners ratifies the rule either at that general meeting or at a prior special general meeting. On the other hand, once ratified at a general meeting a rule remains effective until it is repealed, replaced, or altered.

The Effect of the *Strata Property Act* on Bylaws and Regulations Existing on July 1, 2000

On July 1, 2000 the *Strata Property Act* came into force, bringing with it the Standard Bylaws. At that point, the Standard Bylaws applied only to a strata corporation created by the filing of a strata plan on or after that date. Effective January 1, 2002, however, the Standard Bylaws in the *Strata Property Act* became the Standard Bylaws for every strata corporation in the province, regardless of the date the corporation was created. Today, the Standard Bylaws under the *Strata Property Act* prevail, except to the extent that before January 1, 2002 a strata corporation has already dealt with the same subject matter by passing valid amended bylaws that are filed in the land title office.

Enforcing Bylaws and Rules

A strata corporation must take a series of steps before it can enforce its bylaws and rules. First, the strata corporation must receive a complaint. Next, the corporation must give written particulars of the complaint to the relevant owner or tenant and give them reasonable opportunity to answer the complaint, including a hearing if they ask for one. If a tenant is the subject of the complaint, the strata corporation must also notify that person's landlord about the allegation.

After considering any response, the strata corporation must promptly provide its written decision in the matter to the person accused of breaching the bylaw or rule. Once the strata corporation has complied with these requirements, it can enforce the bylaw or rule.

The *Strata Property Act* permits a strata corporation to enforce a bylaw in several ways. The strata corporation can impose fines against owners and tenants to the extent permitted by the bylaws. The strata corporation must set out in its bylaws the maximum amount it may fine an owner or tenant for each violation of a bylaw or rule. If the strata corporation has adopted the Standard Bylaws in the *Strata Property Act*, the maximum fines are \$50 for each contravention of a bylaw and \$10 for each contravention of a rule. If the activity that constitutes a contravention of the bylaws or rules continues for more than seven days without interruption, the strata corporation can impose a fine every seven days. If the strata corporation amends its bylaws to create larger fines, the amount or frequency of those fines must not exceed the maximums established, from time to time, in the regulations.

Section 7.1 of the *Strata Property Regulation* provides for a maximum fine of \$200 for each contravention of a bylaw and \$50 for each contravention of a rule. For a continuing contravention of a bylaw or rule, a strata corporation may impose a fine every seven days. In the case of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel or temporary accommodation, the maximum fine may be \$1,000 for each contravention and the fine may be imposed daily.

Note that the *Strata Property Act* prohibits the strata corporation from filing a lien against an owner's strata lot for an unpaid fine, as discussed above.

If an owner or tenant fails to carry out work to remedy a bylaw or rule violation, the strata corporation can also do the work and charge the person responsible for the reasonable costs of the work. The strata corporation can carry out remedial work on a member's strata lot or on common property or common assets.

Owners who rent their strata lots to tenants are vicariously liable for the fines or remedial costs incurred by their tenants. However, if an owner, as landlord, pays a fine or costs levied against their tenant, the tenant is liable to reimburse the landlord for the amount paid.

When a bylaw or rule violation relates to the use of a recreational facility that is common property or a common asset, the *Strata Property Act* permits a strata corporation to deny an owner, tenant, occupant or visitor the use of the recreational facility. The corporation can only deny access for a reasonable length of time.

Smoking and the Mandatory Enforcement of Strata Bylaws

Section 26 of the *Strata Property Act* (the "Act") makes the enforcement of bylaws mandatory. In other words, if a strata adopts a bylaw, the strata council *must* enforce it. This means that the strata council has a positive obligation to act and a failure to do so may have consequences, as illustrated by the following case:

Bahmutsky v. Petkau, 2020 BCCRT 244

In *Petkau*, the parties to the dispute resided in adjacent townhouse-style strata lots. The lots had limited common property ("LCP") courtyards directly beside each other. Both the respondent and the strata council agreed that the respondent routinely smoked in her LCP courtyard, but argued that this was permitted under the bylaws. The applicants, however, argued that the smoking caused a significant nuisance due to its unpleasant smell and the health hazard it created, and that the strata council had not taken sufficient steps to stop the smoking nuisance.

The Civil Resolution Tribunal (the "CRT") found that, while there was no bylaw in this case which expressly prohibited smoking, the respondents' smoking violated Bylaw 3(1)(a) of the Standard Bylaws, which the strata had adopted. This was because while the smoking occurred, unpleasant fumes were detectable from the applicant's LCP courtyard. The CRT deemed this to be a nuisance which created an unreasonable interference with the applicants' use and enjoyment of their strata lot, and which thus contravened the bylaw.

The CRT ruled that, as section 26 of the Act makes the strata responsible for enforcing bylaws, a strata corporation may be liable for damages where it takes insufficient steps to investigate complaints and enforce its bylaws. Here, the CRT found that while the strata threatened to enforce the bylaws by imposing a fine, when this threat did not cause the smoking to stop, the strata neither imposed a fine nor took any further steps. By declining to take any further action, the strata failed to satisfy its duty under section 26 to enforce its bylaws. As a result, the CRT ordered that the strata pay half of the \$1,000 in damages awarded to the applicants as compensation for the unabated nuisance of ongoing smoke exposure for 16 months.

Licensees should understand *Petkau* to stand for the general proposition that because the strata council has a statutory duty under the Act to enforce bylaws, a failure to do so may lead to liability for damages flowing from a breach of those bylaws being imposed on the strata corporation.

Restrictions in the Bylaws or Rules

Bylaws may restrict various activities in a strata lot or on common property. Similarly, rules can restrict the use of common property. A licensee who represents a buyer must check the bylaws and rules, and, in the case of a leasehold strata unit, any Schedule of Restrictions for provisions that could adversely affect the buyer. Some common restrictions are those that limit or prohibit pets, those that limit the ability of an owner to use their property for short-term rentals, and those that define the minimum age of an occupant of a strata lot.

Rental Restrictions

Previously, the *Strata Property Act* permitted a strata corporation to enact bylaws that restricted the ability of strata lot owners to rent their strata lots. Such restrictions were subject to any rental disclosure statements filed by the developer before the first strata lot was offered for sale, which could designate some or all of the strata lots as able to be rented (and the length of time the strata lots may be rented). Rental restriction bylaws either prohibited the rental of all residential strata lots or limited the number or percentage of strata lots that could be rented or the period of time for which they could be rented. There were various exemptions in the case of rentals to family members and rentals due to hardship on the strata lot owner.

On November 24, 2022, the *Strata Property Act* was amended to prohibit the ability of strata corporations to have rental restriction bylaws. The purpose of this amendment was to address the shortage in British Columbia of housing available for rent. However, bylaws restricting short-term rentals (e.g., Airbnbs) are still permitted.

Strata corporations must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot. However, before a landlord rents their residential strata lot, they must give the prospective tenant(s):

1. the current bylaws and rules of the strata corporation; and
2. a Notice of Tenant's Responsibilities (Form K, as seen in Appendix 7.4).

The Form K must be signed by the tenant(s) and be provided to the strata corporation within two weeks of the start of the tenancy.

If the owner/landlord fails to comply with these requirements, the tenant can, within 90 days of learning about the landlord's breach, end the tenancy without penalty by giving notice. Furthermore, the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.

Age Restrictions

The *Strata Property Act* permits a strata corporation to pass a bylaw that requires one or more persons residing in a strata lot to have reached a specified age that is not less than 55 years. This age restriction bylaw impacts owners, tenants, and occupants and can hinder an owner's right to freely sell their strata lot.

There are exemptions in the *Strata Property Act* from an age restriction bylaw for individuals who are younger than the specified age and either lived in the strata lot immediately before the passage of the bylaw and were not contravening an age restriction bylaw and who continue to reside in the strata lot, or are caregivers who live in the strata lot for the purpose of providing care to another person who resides in the strata lot and is dependent on the caregiver for continuing assistance or direction because of disability, illness, or frailty. There are also additional exemptions contained in the Act that allow certain people under the specified age to move in with a resident who is:

- the specified age or older; or
- younger than the specified age, but resided in the strata lot immediately before the age restriction bylaw was passed and was not contravening an age restriction bylaw, and continues to reside in the strata lot after the age restriction bylaw is passed.

These certain people include the children, adult children, and younger spouses or partners of those residents.

Prior to November 24, 2022, strata corporations were permitted to adopt an age restriction bylaw of any age, such as one that required all persons residing in a strata lot to be at least 19 years of age; however, that ability has been removed from the *Strata Property Act*.

While the *Strata Property Act* states that bylaws that contravene the *Human Rights Code* will not be enforceable, the Code allows for distinctions to be made on the basis of age if specifically permitted by another act or regulation. Accordingly, age restriction bylaws permitted under the *Strata Property Act* do not contravene the *Human Rights Code*, since they are specifically permitted by the *Strata Property Act* and they are, thus, enforceable under the *Strata Property Act*.

Strata corporations have the authority to enforce valid age restriction bylaws, and will do so even in unique or unusual situations, as demonstrated by the following case.

The Owners, Strata Plan NWS3075 v. Stevens, 2018 BCSC 1784

In *Stevens*, the strata corporation had an age restriction bylaw that required occupants to be 55 years or older. Ms. Stevens and her mother were joint tenants of a strata lot within the strata development; however, Ms. Stevens' mother was the sole occupant of the unit. In 2015, Ms. Stevens' mother passed away and, due to the right of survivorship, Ms. Stevens became the sole owner of the property. Ms. Stevens then moved into the unit and asked the strata council to exempt her from the age restriction bylaw. The strata council denied her request and, because Ms. Stevens continued to reside in the unit, she was assessed fines amounting to over \$13,000 (\$200 per week). Ultimately, the Supreme Court of British Columbia upheld the fines imposed by the strata corporation.



As a Licensee...

You should always review the bylaws of a strata corporation to determine whether that particular strata corporation has passed an age restriction bylaw. You should not rely on the lack of "adult only" or "senior living" signage or the presence of children to determine whether a strata development restricts the age of its residents.

When representing a buyer who is interested in purchasing a strata lot in a development that has an age restriction bylaw, it is extremely important to bring this fact to their attention. If they have any questions about the legal effect or enforceability of such a bylaw, advise them to seek legal advice. Similarly, when listing a property for sale, you must ensure that you accurately answer questions from potential buyers about restrictions set out in bylaws.

In one disciplinary case, a licensee acting for the seller was found to be negligent under the *Real Estate Act* (the predecessor to the *Real Estate Services Act*) for failing to ascertain whether the strata lot they were listing for sale was subject to an age restriction bylaw. The licensee was told by both their seller client and a licensee who was listing a different unit within the development that there was no age restriction bylaw. The licensee passed this incorrect information on to the licensee acting for the buyer. The contract of purchase and sale was subject to a review of the bylaws, among other strata documents; however, the licensee provided an out-of-date copy of the bylaws to the buyer's licensee. The seller's licensee failed to note that the minutes showed that at a special general meeting of the owners, the owners passed a $\frac{3}{4}$ vote resolution to amend the bylaws to adopt an age restriction bylaw. The buyer completed the sale and was then subject to bylaw enforcement measures by the strata council enforcing the age restriction bylaw. The buyer ultimately had to sell the unit. As a result, the seller's licensee's licence was suspended for 14 days and they were ordered to take two courses on strata law and to pay legal costs to the Real Estate Council (the former industry regulator).

Pet Restrictions

A strata corporation can adopt bylaws that restrict the ability of residents to keep pets in their strata lot. In fact, the Standard Bylaws contain the following pet restriction in section 3(4):

An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:

- a. a reasonable number of fish or other small aquarium animals;
- b. a reasonable number of small caged mammals;
- c. up to 2 caged birds;
- d. one dog or one cat.

While many strata corporations have the same pet bylaws as the above, many have varying versions of it. A bylaw prohibiting pets does not apply to a pet living with an owner, tenant, or occupant immediately before the bylaw is passed and that was not contravening any pet prohibition bylaw, as long as the pet continues to live with the owner, tenant, or occupant after the bylaw is passed.

A licensee who represents a buyer who wishes to buy a strata lot should inquire whether the buyer owns any pets (or has plans to own any pets in the future) because, if so, the buyer will have to carefully review the bylaws for any pet restrictions.



As a Licensee...

Section 123(3) of the *Strata Property Act* allows strata lot:

- owners, tenants, occupants, and visitors to have certified guide and/or service dogs; and
- owners, tenants, and occupants to have their retired certified guide and/or service dogs,

on strata premises, regardless of tenancy agreements or strata bylaws restricting or banning pets. Licensees should be aware of this limitation to pet restriction bylaws in assessing and advising on the suitability of strata properties.



As a Licensee...

The *Cannabis Control and Licensing Act* does not make any amendments to the *Strata Property Act*. Given that the Government of British Columbia has not introduced any specific restrictions on strata councils with respect to cannabis, the implication is that strata councils are free to enact bylaws and rules that restrict the smoking and/or growing of cannabis.

A strata council or landlord that attempts to unduly restrict an individual's use of medical cannabis may find themselves in contravention of human rights legislation, such as the BC *Human Rights Code*. At this stage, there is significant uncertainty regarding the degree to which strata councils and landlords can restrict individual consumption of medical cannabis. In some cases, it may be permissible to include a no-smoking provision in a strata bylaw or lease if medical cannabis can be ingested in ways other than smoking.



As a Licensee...

When working with a client who is considering the purchase of a strata property for a specific use, you should be aware that even if the present bylaws for a strata corporation do not contain a prohibition against that specific use, it may be possible for the corporation to pass an enforceable bylaw shortly after learning about the buyer's proposed use, resulting in the new owner's planned use being prohibited.

In the case of *Kunzler v The Owners, Strata Plan EPS 1433*, 2020 BCSC 576, the plaintiffs purchased a 16-acre lot in a bare land strata plan, relying on the bylaws in force at the time of purchase which had no prohibition on any specific agricultural uses. In the process of obtaining municipal permits, the plaintiffs informed the strata corporation of their plans to use the strata lot for cannabis production. Shortly thereafter, the strata council received a petition demanding a Special General Meeting to pass new bylaws prohibiting cannabis production. The new bylaws were passed approximately one month later.

The plaintiffs petitioned to the Supreme Court of British Columbia, arguing that the new bylaw was "significantly unfair" and could be declared unenforceable under section 164(1) of the *Strata Property Act*. However, the Court found that the actions of the strata corporation were not unfairly prejudicial, and the plaintiffs could not reasonably expect that bylaws would not change in the future. The Court suggested that the plaintiffs should have expected opposition, and could have raised their proposal with the strata before purchasing the property. The Court found that the bylaw was not unenforceable and dismissed the plaintiffs' claims. This decision was upheld on appeal to the British Columbia Court of Appeal (2021 BCCA 173).

REPAIRS

In strata repair disputes, it is important to remember that the person or entity that carries out the repair work may well be different from the person or entity that is responsible for paying for that work. For most strata corporations, the Standard Bylaws under the *Strata Property Act* identify who is responsible for carrying out the work, since relatively few strata corporations substantially amend their bylaws to create their own repair scheme.

While identifying the party responsible for carrying out the work may be relatively straightforward, the *Strata Property Act* contains more complex rules concerning the allocation of repair costs amongst owners. A

detailed review of these provisions is beyond the scope of this text. Generally speaking, however, the responsibility to carry out a repair is divided between the strata corporation and the individual owners of the strata lots, depending whether the repair in question involves common property, limited common property (LCP), or part of a strata lot. A strata corporation will generally only be responsible for damage to an individual strata unit where the damage was caused by the common property (such as a leaking pipe that is designated as common property) and the strata corporation failed to act in a reasonable manner in repairing and maintaining the common property.

Carrying Out a Repair

In the case of common property, section 72 of the *Strata Property Act* and sections 8(a) and (b) of the Standard Bylaws place the sole responsibility for carrying out the repair work on the strata corporation, unless the regulations specifically provide otherwise. Typically, the owners each contribute their strata lot's share of the cost of the repair work through their strata fees or a special levy.

In the case of LCP that an owner is entitled to use, section 8(c) of the Standard Bylaws in the Act requires the strata corporation to carry out the work for repair and maintenance that ordinarily occurs less often than once per year. In addition, the strata corporation is always responsible for repairing the following, no matter how often the repair or maintenance ordinarily occurs:

- the structure of a building;
- the exterior of a building;
- chimneys, stairs, balconies and other things attached to the exterior of a building;
- doors, windows and skylights on the exterior of a building or that front on the common property; and
- fences, railings and similar structures that enclose patios, balconies and yards.

To the extent that the bylaws do not require the strata corporation to repair the LCP area, section 2(2) of the Standard Bylaws requires the owner to do it. In other words, in respect of LCP that the owner is entitled to use, the owner must perform the repairs on any portion that isn't otherwise the responsibility of the strata corporation.

Section 2 of the Standard Bylaws requires an owner to carry out any other repairs on their strata lot.

Paying For a Repair

If the strata corporation must carry out a repair, then the general rule requires every strata lot to contribute to the cost of that repair according to the Schedule of Unit Entitlement, unless an exception requires otherwise. There are exceptions to the general rule, a discussion of which is beyond the scope of this chapter. Where an exception exists, some but not all strata lots, or perhaps only one strata lot, must contribute to the repair.



As a Licensee...

Financing can be a useful alternative means of paying for major repairs where there is not enough money in the contingency reserve fund and owners are unable or unwilling to pay a lump-sum special levy. Recently, it has become more common for strata corporations to turn to financing to pay for major repairs, as the costs associated with postponing a repair (e.g., further damage/deterioration) can far outweigh the costs of promptly completing the repair. Strata repair financing generally functions similarly to a line of credit, whereby the strata corporation can withdraw funds as needed to finance the repairs, allowing the strata corporation to minimize debt and interest payments. The funds are typically paid directly to the contractor(s) as directed by the strata corporation.

Strata lot owners often make upgrades or alterations to their units over time. These alterations can range from simple renovations to more complicated reconfigurations of the living space. Typically, the strata corporation's consent is required in order to carry out any alterations to the strata lot.

It is important for buyers to understand their obligations in relation to any improvements made to the strata lot. Strata corporation bylaws usually contain provisions on altering a strata lot (e.g., section 5 of the Standard Bylaws) and owners will typically have to sign an indemnity agreement. The indemnity agreement may require the owner, as well as any potential buyers, to assume full responsibility for any alterations. If the

alterations were carried out without the strata corporation's consent, the owner or buyer (after they purchase the strata lot) may be forced to remove the alteration.

As a Licensee...

You should review the Information Certificate and all attached agreements (e.g., indemnity agreements) to determine if an owner has obtained the necessary approvals from the strata corporation for alterations to their strata property. If the owner has not obtained the required approval, a buyer may be responsible for removing the alteration after they purchase the strata lot.

Cancellation of a Strata Plan and Winding Up of a Strata Corporation

As older strata corporations reach the end of their life cycle, the cost of maintenance, repairs and renovations increase significantly, while the land may have increased significantly in value. In these situations, many strata owners, as a single group, may wish to sell the entire property to a developer. Such properties may be attractive to developers to build a new strata development with more units. This would also increase available housing on the market. To proceed with such a sale, strata owners must cancel the strata plan and wind up the strata corporation, which may be done according to sections 272-289 of the *Strata Property Act*. To terminate a strata corporation, a resolution passed by an 80% vote at an annual or special general meeting, and an order from the British Columbia Supreme Court approving the sale, is required.

Dubas v. The Owners of Strata Plan VR 92, 2019 BCCA 196

In *Dubas*, the strata council held an informal poll where the majority of owners favoured hiring a real estate brokerage to market the complex to developers. Some owners sued for a declaration that the decision to hire a brokerage to market the property required an 80% vote, just like a winding-up resolution. The Court of Appeal dismissed the appeal and confirmed the British Columbia Supreme Court (BCSC) decision, refusing to require an 80% vote to engage a brokerage. The BCSC held that a strata corporation does not require an 80% vote, but rather a majority vote at a general meeting is sufficient in deciding whether or not to engage a brokerage.

LEGAL PROCEEDINGS

The *Strata Property Act* permits a strata corporation to sue persons against whom the corporation has a legal claim, including individual owners. Among other things, a strata corporation may apply to the Supreme Court of British Columbia for an order compelling an owner, tenant or other person to comply with the Act, the regulations, the bylaws or the rules.

In addition, owners, tenants and others can sue a strata corporation. Persons may sue the strata corporation with respect to any matter relating to the common property, common assets, bylaws or rules, or with respect to any act or omission by the corporation. The expense of defending the suit is shared by all of the owners according to the Schedule of Unit Entitlement. However, an owner who is suing the strata corporation is not required to contribute to the corporation's defence.

If a person's lawsuit against the strata corporation succeeds, a judgment against the strata corporation is a judgment against all the owners. Every strata lot owner is liable to pay the judgment in the portions set out in the Schedule of Unit Entitlement. However, an owner who obtains a judgment against the strata corporation does not have to contribute, as an owner, to paying that judgment.

Section 165 of the *Strata Property Act* permits an owner, a tenant, the mortgagee of a strata lot, or an interested person to sue the strata corporation for an injunction to compel it to perform its duties or otherwise restrain a breach of the Act, the regulations, the bylaws or the rules. The Act does not define the term "interested person".

Section 164 of the *Strata Property Act* also permits an owner or tenant to apply to the Supreme Court of British Columbia to prevent or remedy a significantly unfair action by the corporation or the strata council. Alternatively, an owner or tenant can apply to the court to prevent or remedy a significantly unfair exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at a general meeting.

The *Strata Property Act* also permits arbitration between the strata corporation, owners and tenants if certain criteria are met, as well as for the appointment of an administrator in certain circumstances.

LEASEHOLD STRATAS

Most strata developments in British Columbia are freehold stratas, where the developer, as registered owner of the property, subdivides the land by depositing a strata plan with the land title office. The developer then becomes the registered owner in fee simple of each strata lot, and may then sell or otherwise dispose of the fee simple interest in each strata lot.

Buyers of these strata lots obtain a transfer of fee simple title.

An alternative to freehold strata is leasehold strata, which may be utilized by developers for land that they cannot purchase in fee simple, but nevertheless want to develop. Leasehold stratas are governed by Part 12 of the *Strata Property Act*. Developers of leasehold stratas may only

lease the land from a “*leasehold landlord*” as defined in the *Strata Property Act*. Leasehold landlords may be:

- the governments of British Columbia and Canada;
- a municipality;
- a regional district;
- a Nisga'a Village or Nisga'a Nation;
- a treaty first nation, which includes Tsawwassen First Nation, Maa-nulth First Nations and Tla'amin Nation; or
- another public authority as defined by the *Strata Property Regulation*.

Section 12.1 of the *Strata Property Regulation* provides that a public authority means any of:

- a university;
- the Sechelt Indian Band;
- the Provincial Rental Housing Corporation;
- a board as defined in section 1 of the *School Act*;
- Musqueam Block F Land Ltd.; and
- MST (Marine Drive, WV) Land Holdings Ltd.

Depending on the leasehold landlord, leasehold stratas may be dealt with slightly differently, and the following discussion is largely based on leasehold stratas with the City of Vancouver.

ground lease

a lease document (for a term of at least fifty years) that sets out the terms and conditions of a developer's lease of land from a leasehold landlord

leasehold strata plan

a strata plan submitted by a developer over land covered by a ground lease, that converts the land into individual strata lots and common property

leasehold tenant

a person registered under a strata lot lease as a tenant of the leasehold landlord, and informally referred to as the “owner” of a leasehold strata lot

To begin the process of developing a leasehold strata, the developer will lease the land from the leasehold landlord under a document called a “*ground lease*”, which sets out the terms and conditions of the developer's lease. The ground lease must be for a term of at least fifty years. The developer registers the ground lease as a charge against the leasehold landlord's land. A model strata lot lease must be attached to the ground lease.

The strata plan filed by the developer is called the “*leasehold strata plan*”. The deposit of the leasehold strata plan converts the parent parcel into individual strata lots and common property. Deposit of the strata plan triggers two other important events. First, the land title office issues new fee simple titles in the name of the leasehold landlord for each of the strata lots created. Second, the ground lease is converted into individual strata lot leases between the leasehold landlord and the developer for each strata lot. A buyer (*leasehold tenant*) is deemed to have agreed to observe the terms of the strata lot lease, and is not bound by any term in the ground lease that is not in the strata lot lease.

Selling and Owning a Leasehold Strata

So, what interest does the developer have to sell? The developer cannot sell a fee simple interest. It can only sell its interest as a leasehold tenant under the strata lot lease (a contract). The transfer of a party's contractual rights to another person is known as an assignment. As such, the developer assigns its leasehold interest

to the buyer. In other words, the buyer becomes the leasehold tenant of the leasehold landlord's fee simple interest. The buyer registers that interest as the "leasehold tenant" as a charge against title to the strata lot. In practical terms, the title of the strata lot will show a lease registered in favour of the buyer with a notation that the buyer took an assignment of the original strata lot lease in favour of the developer.

As a leasehold tenant, the buyer is purchasing an interest under the existing lease. This means that the buyer acquires exclusive possession of the strata lot for the balance of the term remaining under the strata lot lease, plus the value of any improvements constructed by the developer on the strata lot. With each passing year, the term remaining diminishes. The leasehold tenant may, in accordance with their strata lot lease, "sell" or assign its leasehold interest, and that buyer acquires the lease rights for the balance of the term.

A leasehold landlord may impose restrictions on the further leasing, assignment, or occupancy of the strata lots included in the leasehold strata plan. The restrictions must be set out in a *Schedule of Restrictions* filed in the land title office when the leasehold strata plan is deposited. The restrictions are binding on the strata corporation and everyone who buys a leasehold interest in any of the strata lots. Licensees involved in the sale of a leasehold strata lot should always check for the presence of a Schedule of Restrictions registered with the strata plan.

During the term of the lease, leasehold strata lot owners, like freehold strata lot owners, will be responsible for strata fees, any special levies passed by the strata corporation, and annual property taxes. However, unlike with fee simple strata ownership, leasehold strata lot owners may have additional rent obligations, as set out in the strata lot lease. Depending on the terms of the lease, the rent may either be paid by regular rent payments throughout the lease, or may be prepaid. If the lease requires ongoing payment of rent, there is normally a rent review clause that allows the leasehold landlord to periodically adjust the rent. This may trigger a substantial increase and could catch uninformed leasehold tenants by surprise.

Schedule of Restrictions

a list of restrictions, registered at the land title office with the leasehold strata plan, that imposes further leasing, assignment, or occupancy of strata lots in a leasehold strata plan



As a Licensee...

Under the *Home Buyer Rescission Period Regulation*, the Home Buyer Rescission Period does not apply to leasehold interests in residential real property or to residential real property that is located on leased land. As a result, buyers of leasehold residential strata lots will not have the right to rescind the contract of purchase and sale within the Home Buyer Rescission Period, unlike purchasers of other types of residential real property. Licensees must bring this fact to their client's attention to avoid any misunderstandings or confusion. The Home Buyer Rescission Period will be discussed further in later chapters.

Expiry of the Lease Term

At the end of the lease term, the leasehold landlord will choose whether or not to renew the lease. The leasehold landlord must inform the leasehold tenant at least one year prior to the lease expiry of its election to renew or not renew the lease. Any renewal must be for a period of at least five years on the same terms, except rent and length of renewal term. A new rent will be established by the landlord pursuant to section 211 of the *Strata Property Act*, and is subject to arbitration. Additionally, if the landlord fails to give notice of non-renewal at least one year before expiry of the strata lot lease, the default outcome is an automatic five-year renewal of the lease.

Alternatively, the leasehold landlord may choose not to renew the lease. In this case, the leasehold landlord must purchase the leasehold tenant's interest in the strata lot. According to the *Strata Property Act*, the purchase price is either to be calculated according to the formula provided in the strata lot lease, if any, or failing that, in a schedule filed with the strata plan. If the strata lot lease is silent and no schedule exists, the *Strata Property Act* requires the leasehold landlord to pay the fair market value of the leasehold tenant's interest in the strata lot calculated in accordance with the regulations, as if the strata lot lease did not expire. No regulations have been passed to establish the formula for this calculation. That purchase price must be agreed upon by the leasehold landlord and the leasehold tenant. If an agreement cannot be reached, the determination is made by arbitration under the *Arbitration Act*.



ALERT

Be cautious when asked to give advice to clients with respect the consequences of a leasehold landlord not renewing a strata lot lease, as the answer could be complex. The City of Vancouver is the leasehold landlord in a number of leasehold strata developments, including some in the False Creek South area. The City has expressed the view that the fair market value does not include the value of the land. This means that payment would be based on the fair market value of the improvements constructed on the land. That view is not shared by some existing leasehold tenants. As these leases have not yet expired, this issue has not yet had to be resolved between the parties, or in the courts.

Section 216 of the *Strata Property Act* permits the leasehold landlord to transfer fee simple title for each of the strata lots to their respective leasehold tenants. Doing so is called converting the project to freehold. When the leasehold landlord sells a strata lot to its leasehold tenant, that tenant becomes the fee simple owner of the strata lot with a proportionate interest as a tenant in common in the common property. This may only happen if the leasehold landlord transfers fee simple title of each strata lot to every respective leasehold tenant. After all the leasehold tenants have bought their respective strata lots, the development continues like any other freehold strata development.

In conclusion, Figure 7.4 contains the four key principles to remember about leasehold stratas.

FIGURE 7.4: Leasehold Stratas – Key Principles

1. **The buyer buys (i.e., is assigned) a leasehold interest, not a fee simple interest:** Leasehold interests have a limited life (i.e., the lease term). It is possible that a strata lot lease will not be renewed by the leasehold landlord.
2. **There may be an obligation to pay rent:** While some strata lot leases have been prepaid, others require regular rent payments that may be adjusted over time. Sometimes, these rent adjustments can be significant and will catch uninformed leasehold tenants by surprise.
3. **The leasehold landlord has the sole right to choose what happens at the end of the term:** The landlord may renew the lease or terminate it, with unique and potentially complex consequences with each option.
4. **Upon termination, the strata lot owner's payout is likely not equivalent to fee simple value.**

STRATA TITLES COMPARED WITH COOPERATIVE CORPORATIONS

Cooperative ownership is one of the oldest forms of property ownership. The modern cooperative enables a large number of individuals to participate in cooperative ownership of a single property or complex, called a cooperative association (also commonly known as “co-ops”). Cooperative corporations in British Columbia are created under the *Cooperative Association Act*, and were previously created under the *Societies Act* or the *Business Corporations Act*.

Cooperative ownership differs from strata title ownership in that it does not bestow an individual fee simple title to the cooperative owner’s unit. Instead, the owner in a cooperative possesses shares in a non-profit corporation. This corporation in turn holds title to the land.

In the cooperative model, the cooperative corporation acquires the fee simple or a long term lease to the land, including any building. In some instances, especially with government-sponsored cooperatives, the cooperative corporation will construct the necessary building. Our discussion in these materials does not include government-sponsored cooperatives.

The organizers of the cooperative then determine what number of shares in the cooperative corporation will be allocated to each unit. Normally, the number of shares allocated to an individual unit will bear the same relation to the total number of shares as the value that the individual unit bears to the total value of the cooperative project. Therefore, if unit #1 is allocated 2 out of 50 shares, it is likely that the value of unit #1 represents 4% of the total value of the project.

These shares, once allocated to specific units, are then sold to buyers. A buyer of shares allocated to a particular unit thereby becomes entitled to lease that unit from the cooperative association. The right to occupy will be for either a very long specified period of time, or until the buyer, in turn, sells the shares.

cooperative ownership

a form of property ownership whereby owners possess shares in a non-profit corporation that holds title to the land, including any building, and whereby owners of these shares are entitled to lease a unit of the building from the non-profit corporation

The cooperative corporation is the landlord and the shareholders are tenants of the corporate landlord. Since the cooperative owner does not own an estate in land other than their leasehold interest, financing of a cooperative purchase may be more difficult. A buyer can only grant the lender a security interest in their shares under the *Personal Property Security Act* as well as, if not prohibited by the cooperative corporation, a mortgage of their leasehold interest. If the lease is not registered, that can make financing even more difficult. Banks and other lending institutions are less willing to lend on this security, and consequently rates on the loan may be higher.

One way in which the cooperative corporation can indirectly provide financing to buyers is through the use of a mortgage over the cooperative association's real property. The cooperative association, as the registered owner of the land in fee simple, grants a mortgage over the land to a lender, such as a bank, in return for a loan. The buyer, in purchasing the cooperative association's shares, is making the equivalent to a conventional down-payment. Once a tenant of the cooperative association, the cooperative owner pays monthly rent to the cooperative association. In addition to paying rent, the cooperative owner also pays their proportionate share of the cooperative association's monthly mortgage payment. Over time, as the cooperative association's mortgage is paid off, the value of the cooperative owner's shares will increase, paralleling the increase in the cooperative association's equity in the property. After the cooperative association's mortgage is substantially paid-down or paid off, a buyer who purchases will not have the benefit of this internal financing. Such a buyer will have to make a large investment of equity, or alternatively face the financing problems discussed above. However, the danger to the cooperative owner is this: if it is a small cooperative (for example 10 members) and three members fail to make their monthly mortgage payments, the remaining seven will have to come up with the money or the cooperative may ultimately face a foreclosure.



As a Licensee...

When dealing with leasehold strata lots, you should ask yourself the following questions:

- Have I searched the title and obtained a copy of the strata lot lease for every transaction?
- Does the seller understand what they are selling? Does the buyer understand what they are buying?
- How was the listing price set? Does it take into account relevant factors such as the remaining term of the strata lot lease?
- Should the seller and buyer seek legal advice?
- What documents will be required for the sale transaction to close? What will the leasehold landlord require?
- Will the buyer be able to obtain financing? What will the lender require?

These are complicated transactions. Both buyers and sellers must be aware of the relevant issues so that they are able to make informed decisions. Keep in mind the following key obligations in the *Real Estate Services Rules*:

- **Section 33:** You have a duty to act with reasonable care and skill when providing real estate services. If you do not have any experience with leasehold stratas, or you do not have anyone within your brokerage that can assist you in these transactions, you may be under a duty to decline to act for the client because you cannot provide them with reasonable care and skill.
- **Section 30(d):** You have a duty to advise your clients to seek independent professional advice on matters outside of your expertise. This means that you should avoid answering legal, tax, or appraisal inquiries relating to leasehold stratas, instead referring them to the appropriate professional.

Both cooperatives and condominiums can involve leasehold land. Where this is the case, the owner's interest will be a wasting asset in the sense that, as the term of the leased land elapses, the value of the owner's investment will diminish. A right to occupy for 125 years is worth more to a prospective buyer than a right to occupy for 39 years.

Another major difference between cooperatives and condominiums is in the rights of owners to sell their estates or interests. With some exceptions, a strata lot owner may not be restricted in any way as to whom they wish to sell the strata lot. The situation with the cooperative owner is very different. Typically, a cooperative association's board of directors (analogous to the strata council) must approve the person who proposes to buy a cooperative owner's shares, and the proposed sale of those shares will be subject to the board's approval. The board has wide discretion in granting approval and there are many instances in which approval has been refused for reasons totally unrelated to financial ability.

The disclosure requirements in the *Real Estate Development Marketing Act* apply to cooperatives as well as to condominiums. Earlier, Chapter 2: “The *Real Estate Services Act*” explained how the *Real Estate Development Marketing Act* works. Recall that a developer who creates a project involving two or more cooperative interests in a cooperative association must provide each buyer with a disclosure statement, unless otherwise exempted.

In addition, where a building is being converted to a cooperative, any residential tenants who are required to move will be entitled to the protections of the *Residential Tenancy Act*.



As a Licensee...

Under the *Home Buyer Rescission Period Regulation*, the Home Buyer Rescission Period applies to “a cooperative interest, as defined in section 1 of the *Real Estate Development Marketing Act*, that includes a right of use or occupation of a dwelling”. Therefore, buyers of certain types of cooperative interests will enjoy the right to rescind their contract of purchase and sale within the Home Buyer Rescission Period. The Home Buyer Rescission Period will be discussed further in later chapters. Licensees who are unsure about whether a buyer will have the right to rescind a contract of purchase and sale under the Home Buyer Rescission Period should consult with their managing broker or recommend their client to seek legal advice.

FIGURE 7.5: Comparison of Fee Simple Strata Properties and Cooperatives

Fee Simple Strata Properties	Cooperative
Created by strata plan which is filed in the land title office.	Created by the incorporation of a company or a cooperative association.
Owner owns fee simple estate in strata lot plus share of common property as tenant in common with other owners.	Company or cooperative association has fee simple estate in building and lands. Owner owns shares in the cooperative association or company, and is a tenant of the association or the company, as the case may be, on a long term lease.
Governed by <i>Strata Property Act</i> , the regulations, the bylaws and rules.	Governed by the <i>Cooperative Associations Act</i> (formerly also <i>Company Act</i> and <i>Society Act</i>); and possibly also a shareholders' agreement.
To sell, owner transfers fee simple estate to buyer, who can grant a mortgage secured by the fee simple estate.	To sell, owner transfers shares and assigns the rights under their long term lease. Buyer may have trouble obtaining financing.

APPENDIX 7.1**Strata Property Act Form B – Information Certificate**

(Section 59)

The Owners, Strata Plan[the registration number of the strata plan] certify that the information contained in this certificate with respect to Strata Lot[strata lot number as shown on strata plan] is correct as of the date of this certificate.

[Attach a separate sheet if the space on this form is insufficient].

- (a) Monthly strata fees payable by the owner of the strata lot described above
\$.....
- (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*)
\$.....
- (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?
 no yes [attach copy of all 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. The payment is to be made by[month day, year]. \$.....
- (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
\$.....
- (f) Amount in the contingency reserve fund minus any expenditures which have already been approved but not yet taken from the fund
\$.....
- (g) Are there any amendments to the bylaws that are not yet filed in the land title office?
 no yes [attach copy of all amendments]
- (h) Are there any resolutions passed by a ¾ vote or unanimous vote that are required to be filed in the land title office but that have not yet been filed in the land title office?
 no yes [attach copy of all resolutions]
- (h.1) Are there any winding-up resolutions that have been passed?
 no yes [attach copy of all resolutions]
- (i) Has notice been given for any resolutions, requiring a ¾ vote, 80% vote or unanimous vote or dealing with an amendment to the bylaws, that have not yet been voted on?
 no yes [attach copy of all notices]
- (j) Is the strata corporation party to any court proceeding, arbitration or tribunal proceeding, and/or are there any judgments or orders against the strata corporation?
 no yes [attach details]
- (k) Have any notices or work orders been received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets?
 no yes [attach copies of all notices or work orders]

APPENDIX 7.1, continued**Strata Property Act Form B – Information Certificate**

- (l) Repealed. [B.C. Reg. 6/2023, s. 6(a).]
- (m) Are there any parking stall(s) allocated to the strata lot?
- no yes
- (i) *If no, complete the following by checking the correct box.*
- No parking stall is available
- No parking stall is allocated to the strata lot but parking stall(s) within common property might be available
- (ii) *If yes, complete the following by checking the correct box(es) and indicating the parking stall(s) to which the checked box(es) apply.*
- Parking stall(s) number(s) is/are part of the strata lot
- Parking stall(s) number(s) is/are separate strata lot(s) or part(s) of a strata lot [strata lot number(s), if known, for each parking stall that is a separate strata lot or part of a separate strata lot]
- Parking stall(s) number(s) is/are limited common property
- Parking stall(s) number(s) is/are common property
- (iii) *For each parking stall allocated to the strata lot that is common property, check the correct box and complete the required information.*
- Parking stall(s) number(s) is/are allocated with strata council approval*
- Parking stall(s) number(s) is/are allocated with strata council approval and rented at \$ per month*
- Parking stall(s) number(s) may have been allocated by owner developer assignment

Details:

.....

[Provide background on the allocation of parking stalls referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

***Note: The allocation of a parking stall that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future.**

- (n) Are there any storage locker(s) allocated to the strata lot?
- no yes
- (i) *If no, complete the following by checking the correct box.*
- No storage locker is available
- No storage locker is allocated to the strata lot but storage locker(s) within common property might be available
- (ii) *If yes, complete the following by checking the correct box(es) and indicating the storage locker(s) to which the checked box(es) apply.*
- Storage locker(s) number(s) is/are part of the strata lot
- Storage locker(s) number(s) is/are separate strata lot(s) or part(s) of a separate strata lot [strata lot number(s), if known, for each locker that is a separate strata lot or part of a separate strata lot]

APPENDIX 7.1, continued**Strata Property Act Form B – Information Certificate**

- Storage locker(s) number(s) is/are limited common property
- Storage locker(s) number(s) is/are common property

(iii) *For each storage locker allocated to the strata lot that is common property, check the correct box and complete the required information.*

- Storage locker(s) number(s) is/are allocated with strata council approval*
- Storage locker(s) number(s) is/are allocated with strata council approval and rented at \$ per month*
- Storage locker(s) number(s) may have been allocated by owner developer assignment

Details:

[Provide background on the allocation of storage lockers referred to in whichever of the 3 preceding boxes have been selected and attach any applicable documents in the possession of the strata corporation.]

***Note: The allocation of a storage locker that is common property may be limited as short term exclusive use subject to section 76 of the Strata Property Act, or otherwise, and may therefore be subject to change in the future.**

- (o) a summary of the strata corporation's insurance coverage

[Provide a summary of the insurance coverage on a separate sheet or sheets.]

Required Attachments

In addition to attachments mentioned above, section 59 (4) of the *Strata Property Act* requires that copies of the following must be attached to this Information Certificate:

- The rules of the strata corporation;
- The current budget of the strata corporation;
- The most recent depreciation report, if any, obtained by the strata corporation under section 94.

Date: [month day, year].

.....
Signature of Council Member

.....
Signature of Second Council Member (not required if council consists of only one member)

OR

.....
Signature of Strata Manager, if authorized by strata corporation

APPENDIX 7.2

Strata Property Act Form F – Certificate of Payment

(Section 115)

The Owners, Strata Plan[the registration number of the strata plan]
certify under section 115 of the *Strata Property Act* that the owner of the strata lot described as

[parcel identifier] [legal description of strata lot]

- (a) does not owe money to the strata corporation, or
- (b) does owe money but
 - (i) the money claimed by the strata corporation has been paid into court, or to the strata corporation in trust, under section 114 of the *Strata Property Act*, or
 - (ii) arrangements satisfactory to the strata corporation have been made to pay the money owing.

Date:[month day, year]*.

.....
Signature of Council Member

.....
Signature of Second Council Member (not required if council consists of only one member)

OR

.....
Signature of Strata Manager, if authorized by strata corporation

* Section 115 (2) of the Act provides that a Certificate of Payment is current for the purposes of section 256 of the Act for a period of 60 days from the date it is issued.

APPENDIX 7.3**Strata Property Act Form K – Notice of Tenant's Responsibilities**

(Section 146)

Re: Strata Lot [strata lot number as shown on strata plan] of Strata Plan
[the registration number of the strata plan]

Street Address of Strata Lot

Name(s) of tenant(s)

Tenancy commencing [month day, year].

IMPORTANT NOTICE TO TENANTS:

- 1 Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).
- 2 The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.
- 3 If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

Date: [month day, year].

.....

Signature of Landlord, or Agent of Landlord

Address of landlord, or agent of landlord:

.....

.....

.....

.....

Signature of Tenant

.....

Signature of Tenant

